

# EDUCATION AND INSPECTIONS ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 9: Miscellaneous**

#### ***Section 160: Power of Chief Inspector to investigate complaints by parents about schools***

629. This section inserts three new sections into the 2005 Act in relation to the powers of the Chief Inspector.
630. **Section 11A** enables the Chief Inspector to investigate certain written complaints (“qualifying complaints”) about matters of a prescribed description relating to schools, for the purpose of deciding whether to take further action, and in particular whether to use his existing inspection functions. The schools which are covered are: community, foundation and voluntary schools; community and foundation special schools; maintained nursery schools; Academies; city technology colleges; city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the 1996 Act.
631. **Section 11B** applies to qualifying complaints made by registered parents of registered pupils at a school. It requires the governing body of a school (which, for a non-maintained school, is the proprietor of the school for the purposes of this section) and/or local education authority, in the case of a maintained school, to make specified information and other information relevant to the investigation available to the Chief Inspector on request.
632. **Subsections (4) and (5)** require the Chief Inspector, where he decides to hold a meeting with parents, to notify the governing body of the school (as defined), or, where the school is a maintained school which does not have a delegated budget, the local education authority. The governing body or local education authority (as appropriate) is required to co-operate in arranging the meeting, including fixing a date for the meeting, allowing for the meeting to take place on the school’s premises and notifying parents of the meeting.
633. **Subsection (6)** enables a representative of the governing body (as defined), and in the case of a maintained school, a representative from the local education authority, to attend the meeting.
634. **Section 11C** makes provisions relating to the preparation and distribution of any report made by the Chief Inspector as a result of an investigation of a qualifying complaint under section 11B.

#### ***Section 161 and Schedule 16: Powers to facilitate innovation***

635. This section introduces **Schedule 16**.

*These notes refer to the Education and Inspections Act 2006 (c.40)  
which received Royal Assent on 8 November 2006*

636. Part 1 of Chapter 1 of the 2002 Act introduced a new power for the Secretary of State, or the National Assembly for Wales, to respond to an application by a qualifying body by making an order conferring an exemption or relaxing requirements, or modifying education legislation, for a period of up to three years. The order enables innovative projects which in the opinion of the Secretary of State or National Assembly for Wales may contribute to raising educational standards achieved in England and Wales.
637. *Paragraph 1* of Part 1 of Schedule 16 has the effect of extending those eligible to apply for an order to include a governing body of a further education institution, a foundation (as defined by section 21(3)(a) of the 1998 Act), including foundations acquired in accordance with the provisions of Part 2 of the Act, and, with the agreement of the relevant school governing body, a headteacher. Paragraph 1(4)(b) adds a technical amendment to describe the qualifying body of an Academy, a city technological college or a city college for the technology of the arts as the proprietor. All other amendments in paragraph 1 are consequent upon these changes.
638. *Paragraph 2(2)* amends section 2 in respect of applications by foundations to allow the order to change law which relates to the governing bodies of the relevant schools.
639. The duration of the power is currently limited to 4 years from commencement (and was commenced in relation to England on October 1<sup>st</sup> 2002). *Paragraph 2(3)* removes this restriction.
640. *Paragraph 3(3)* requires that a headteacher of a maintained school obtains the consent of the governing body of the school to his application.
641. *Paragraph 3(4)* has the effect of ensuring that a qualifying foundation cannot make an application unless the governing body of each school to which the application relates and the local education authority who maintain the school have been consulted and that, where an application is to be made by the governing body of a maintained school that is a foundation or foundation special school with a foundation, the qualifying foundation has been consulted.

***Section 162: Power to repeal references to "local education authority" and "children's services authority" etc.***

642. This section gives the Secretary of State and the National Assembly for Wales, subject to the procedural requirements and limitations set out in the section, a power by order to repeal references in primary and secondary legislation to the terms "local education authority" and "children's services authority". The power will enable the Secretary of State or the Assembly to replace such references with references to a local authority, or to make other appropriate modifications to the references.
643. Such modifications might include modifications to legislation requiring local authorities to consult or cooperate with local education authorities, depending, for example, on whether or not the local authorities and local education authorities concerned were intended to be one and the same authority, or different authorities within two-tier areas, or neighbouring authorities; or the repeal of provisions that are spent or have ceased to be of any practical utility.
644. The Secretary of State's power can, with the consent of the Assembly, cover references to local education authorities and children's services authorities so far as those references relate to Wales. The Assembly's concurrent power can only cover references to local education authorities and children's services authorities so far as those references relate to Wales.
645. County level and unitary authorities provide children's services, and are subject to the provisions of the Children Act 2004 in relation to the designation of a lead member for children's services and the appointment of a Director of Children's Services. Such authorities are referred to in the Children Act 1989 as "local authorities" and in the Children Act 2004 as "children's services authorities". The same authorities

have responsibilities relating to education and, in the context of education, are “local education authorities”. This section is therefore intended to enable the completion of the statutory measures to facilitate the integration of children’s services in local authorities.

***Section 163: Provision of advice by adjudicator***

646. This section amends section 25 of the 1998 Act. New *subsection (3A)* requires an adjudicator to provide, on request by the Secretary of State, advice on such matters relating to the admission of pupils to relevant schools as may be specified by the Secretary of State. New *subsection (3B)* allows the adjudicator to request information from the admission authorities of community, foundation or voluntary schools and the proprietors of other relevant schools so as to enable the adjudicator to comply with the Secretary of State’s request under *subsection (3A)*. New *subsection (3C)* requires those from whom the adjudicator requests information under *subsection (3B)* to provide that information.
647. New *subsection (3D)* defines relevant schools for the purpose of *subsections (3A) and 3(B)* as schools falling within section 5(2)(a) to (f) of EA 2005 (that is, community, foundation and voluntary schools, community and foundation special schools, maintained nursery schools, Academies, city technology colleges and city colleges for the technology of the arts).

***Section 164: Provision of information about children receiving funded education outside school***

648. This section will enable the Department for Education and Skills to collect individual information about children receiving education funded by the local education authority otherwise than at a school (which includes children in hospital and those taught by voluntary providers).
649. The section inserts a new section 537B in the 1996 Act. This mirrors section 537A of the 1996 Act which provides for the same data to be collected for children educated in schools.
650. *Subsections (1) and (2)* of the inserted section allow regulations to be made requiring prescribed information relating to children for whom such education is provided to be provided by the education provider to the Secretary of State, or another prescribed person as defined in regulations. Provision is also made for the disclosure by the Secretary of State and certain other persons of information relating to children for whom such education is provided. *Subsection (7)* prohibits the publication of information received as a result of the section in a form including the name of the child to which it relates.
651. The main purpose of collecting the information provided for by this section is to enable the Department for Education and Skills to allocate funding to local education authorities more accurately following the introduction of the ring-fenced Dedicated Schools Grant from April 2006: information for these groups has previously been collected only on an aggregate basis, which is less reliable than using individual level data.

***Section 165: Power of members of staff of further education institutions to use force***

652. This section inserts new section 85C into the Further and Higher Education Act 1992 and extends the power to use reasonable force to members of staff at institutions within the further education sector, in order to prevent a student at the institution from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the institution.

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653. *Subsection (1)* of the inserted section 85C enables a member of staff to use reasonable force in certain defined circumstances: to prevent an offence or the continuation of one; to prevent personal injury or damage to the property of any person (including the student himself); and to prevent anything which prejudices the maintenance of good order and discipline at the institution. Thus, for example, reasonable force (such as leading by the arm) might be used to enforce an instruction for a student to leave a class room (in circumstances where any of paragraphs (a) to (c) of *subsection (1)* apply).
654. *Subsection (2)* provides that the power may be exercised only when both the member of staff and the student are on the premises of the institution or in other situations where the member of staff has lawful control or charge over the student involved (for example on a field trip).
655. *Subsection (3)* makes it clear that *subsection (1)* does not legitimise corporal punishment.
656. *Subsection (4)* has the effect that the power provided by *subsection (1)* does not remove any power that members of staff may have in addition to the powers conferred by the section. These include the common law rights of self-defence.
657. *Subsection (5)* contains a definition of “member of staff” for the purposes of the section.

***Section 166: Collaboration arrangements: maintained schools and further education bodies***

658. This section provides that regulations may enable the governing bodies of maintained schools to make collaboration arrangements with further education bodies, and further education bodies to make collaboration arrangements with schools and with other further education bodies. It will sit alongside the provisions of section 26 of the 2002 Act governing collaboration amongst maintained schools only.
659. *Subsection (2)* defines “collaboration arrangements” as arrangements for any of the functions of any of the bodies concerned to be discharged jointly or by a joint committee of the bodies.
660. *Subsections (3) and (4)* provide that regulations may make particular provision about the constitution and procedure of joint committees of the collaborating bodies, and the functions of collaborating bodies that may be discharged jointly or by joint committees.
661. *Subsection (5)* provides that regulations may modify any legislation relating to the functions of the collaborating bodies, or relating to the bodies by whom those functions are to be discharged, in its application to those functions or bodies.
662. *Subsection (6)* contains definitions of “further education body” and “maintained school” for the purposes of the section.

***Section 167: Consultation with young pupils***

663. **Section 167** amends section 176 of the 2002 Act which requires local authorities and governing bodies of maintained schools to have regard to any guidance issued by the Secretary of State about consultation with pupils on decisions affecting them. The amendment to section 176 adds maintained nursery schools to the schools to which the section applies, and deletes the definition of pupil which excluded a child being provided with nursery education.

***Section 168: Maintained nursery schools: amendment of sections 496 and 497 of EA 1996***

664. The 2002 Act required maintained nursery schools to have governing bodies from 1 September 2003 for the first time. Prior to that, the governance of such schools was covered by the functions of local education authorities. However, sections 496 and 497

of the 1996 Act were not amended by the 2002 Act to apply to these new governing bodies. This section therefore puts the governing bodies of maintained nursery schools on a similar footing to the governing bodies of other maintained schools by making it possible for the Secretary of State or the National Assembly for Wales to issue a direction under section 496, or make an order under section 497, if the governing bodies of maintained nursery schools are unreasonably exercising, or are in default with regard to, their functions.

***Section 169: Prohibition on participation in management of independent school***

665. **Section 169** inserts new sections 167A to 167D into Part 10 of the 2002 Act (Independent Schools). These sections prohibit or restrict unsuitable persons from taking part in the management of independent schools.
666. **Section 167A** provides for an appropriate authority to direct that a person be prohibited from taking part in the management of an independent school. The appropriate authority may also direct that a person may take part in the management of an independent school only in specified circumstances or if certain specified conditions are met. *Subsection (2)* of section 167A provides that a direction may only be made on a ground or grounds, which will be prescribed, connected with the suitability of the person to take part in the management of such a school. *Subsection (3)* provides that regulations may prescribe the procedure for making such a direction.
667. *Subsection (6)* of section 167A defines the appropriate authority in respect of both England and Wales. In both cases the appropriate authority will be the registration authority for the purposes of the register of Independent Schools (the Secretary of State in the case of England, or the National Assembly for Wales) or such other public authority as may be prescribed.
668. *Subsections (4) and (5)* of section 167A provide a power for the appropriate authority to vary or revoke a direction on grounds which may be prescribed.
669. **Section 167B** provides a right of appeal to the tribunal established under section 9 of the Protection of Children Act 1999, the Care Standards Tribunal. A person may appeal against a direction and a refusal to vary or revoke the direction in question. *Subsection (2)* allows regulations to prescribe the circumstances in which the Tribunal must allow an appeal and the powers available to the Tribunal on allowing such an appeal. Regulations may also provide that the Tribunal cannot entertain an appeal in circumstances where the appellant's case would be inconsistent with his previous conviction of an offence.
670. **Section 167C** provides powers for the exchange of information between relevant bodies in connection with the direction making power contained in section 167A. *Subsection (1)* allows the Secretary of State to provide to the appropriate authority information which he holds in connection with certain of his functions relating to the protection of vulnerable persons under the Protection of Children Act 1999, the Care Standards Act 2000 and the 2002 Act. The Secretary of State may also pass to the appropriate authority information held in connection with his function as the registration authority for Independent Schools in England. *Subsection (2)* similarly allows the National Assembly for Wales to provide to the appropriate authority information it holds in connection with its functions as the registration authority for Independent Schools in Wales.
671. *Subsection (3)* of section 167C permits the Independent Barring Board (created by the Safeguarding Vulnerable Groups Act 2006) to provide information to the appropriate authority. *Subsection (4)* permits the appropriate authority to share information it holds in connection with its functions with the Independent Barring Board, the General Teaching Council for England, the General Teaching Council for Wales, the Secretary of State and the National Assembly for Wales.

672. **Section 167D** sets out the notification requirements on the appropriate authority where a direction is made, varied or revoked. *Subsection (1)* provides that where the appropriate authority for England makes a relevant decision, it must notify the registration authority for England (unless the appropriate authority is the registration authority by virtue of section 167A(6)) and ensure that the appropriate and registration authorities for Wales are notified of the decision. *Subsection (2)* imposes similar notification requirements on the appropriate authority for Wales where it makes a relevant decision. The authority must ensure that the registration authority for Wales and the appropriate and registration authorities for England are notified of the decision.

***Section 170: Prohibition on participation in management: supplementary***

673. **Section 170** makes supplementary provisions in connection with the direction making powers conferred by section 168.
674. *Subsection (1)* amends Section 169 of the 2002 Act, which makes provision for the circumstances in which the employment or use in an independent school of unsuitable persons might lead to an independent school being removed from the register maintained under section 158 of the 2002 Act. The amendment made by *subsection (1)* provides a power to prescribe the type of work carried out by staff which would engage the de-registration power. *Subsection (1)* also provides a power to prescribe, in respect of such persons, the orders, directions and decisions (and the enactments from which they derive) to which the person must be subject in order for him to be considered unsuitable for the purposes of the de-registration power contained in section 169 of the 2002 Act.
675. *Subsection (2)* amends section 113BA of the Police Act 1997, which sets out the suitability information relating to children which will be provided, in prescribed cases, to applicants for an enhanced Criminal Records Certificate. *Subsection (2)* provides that an enhanced CRB disclosure will include information about whether the applicant is subject to a direction prohibiting or restricting his participation in the management of an Independent School.
676. *Subsection (3)* amends section 9 of the Protection of Children Act 1999. The amendment inserts the new right of appeal (created by section 167B) against a decision to make, vary or revoke a direction into the list of appeals in respect of which provision can be made in Regulations about the proceedings of the Care Standards Tribunal.

***Section 171: Prohibition on participation in management; transitional provisions.***

677. **Section 171** contains transitional provisions connected with the powers to prohibit unsuitable persons participating in the management of an independent school. *Subsections (1) and (2)* provide for a direction given under section 142 of the 2002 Act (Prohibition from teaching etc), which is repealed by the Safeguarding Vulnerable Groups Act 2006, to be treated for certain purposes as if it were a direction made by the appropriate authority under section 167A. These transitional arrangements will apply to any person who, on a relevant day (the date on which section 167A comes into force), was subject to a direction under section 142 of the 2002 Act and meets conditions which will be prescribed in regulations.
678. *Subsections (3) and (4)* provide a power for regulations to make provision concerning any outstanding appeals or applications for reviews made by a person subject to the transitional arrangements set out above. In particular, regulations may provide that an outstanding appeal or application for review may be treated as an appeal to the Care Standards Tribunal under the appeal provisions contained in section 167B.

***Section 172: Offences relating to independent schools.***

679. **Section 172** amends Part 10 of the 2002 Act (Independent Schools). *Subsection (2)* inserts new sections dealing with offences committed in connection with independent schools.
680. **Section 168A** provides for the consent of the registration authority for independent schools (the Secretary of State in the case of England, or the National Assembly for Wales) to be obtained before any proceedings for offences committed under Part 10 of the 2002 Act are brought. Alternatively, the registration authority may institute such proceedings. *Subsection (3)* of section 172 repeals the requirement contained in section 159(3) of the 2002 Act to obtain the registration authority's consent before proceedings are brought.
681. **Section 168B** provides that proceedings may be brought against senior officers of a body corporate where an offence has been committed by the body under Part 10 of the 2002 Act and certain other requirements are met. In particular, *subsection (1)* provides that where it can be shown that any director, manager, secretary, or person holding a similar position (or person purporting to act in such a capacity) consented or connived in the commission of the offence, or where the offence can be attributed to an act of negligence on the part of such a person, the person in question is also guilty of the offence and may be prosecuted accordingly. *Subsection (2)* provides that subsection (1) applies in relation to the acts and omissions if a body corporate's members where the body corporate is managed by its members.
682. **Section 168C** provides for the prosecution of offences committed by an unincorporated body. *Subsection (1)* provides that any proceedings against such a body are to be brought in the name of the body (and not its individual members) and, for the purposes of the proceedings, the court rules are to apply as if the body were a corporation. Accordingly, members are not to be served individually. *Subsection (3)* also provides that certain statutory provisions which may apply in connection with such proceedings are to apply as if the body were a corporation. *Subsection (2)* provides that any fine imposed as a result of such proceedings are to be paid out of the funds of the unincorporated body.
683. *Subsection (4)* makes similar provisions to those contained in section 168B in connection with the officers or members of an unincorporated body where an offence is committed by that body. Therefore, where it can be shown the offence was committed with the consent or connivance of the person, or where the offence is attributable to an act of negligence by that person, he may also be guilty of the offence. *Subsection (4)* makes similar provisions in respect of partners where an offence is committed by a partnership.
684. *Subsection (4)* of section 172 provides that sections 168B and 168C do not apply in relation to offences committed before section 172 comes into force.

***Section 173: Special educational needs co-ordinators***

685. This section amends section 317 of the 1996 Act, which imposes duties on the governing bodies of community, foundation or voluntary schools, as well as maintained nursery schools, in relation to pupils with special educational needs. The new subsection (3A) places a duty on those governing bodies to designate a member of the school staff as the person responsible for co-ordinating provision for children with special educational needs at the school (the special educational needs co-ordinator or SENCO). It also gives the Secretary of State power at new *subsection (3B)* to make regulations requiring governing bodies to ensure the special educational needs co-ordinators have certain experience or qualifications or both, and to confer other functions on these governing bodies relating to special educational needs co-ordinators.

***Section 174: Time limits relating to statements of special educational needs***

686. This section amends Schedules 26 and 27 of the 1996 Act to make further provision about the circumstances in which regulations may prescribe time-limits within which local education authorities must take certain steps in connection with assessments and statements of special educational needs.

***Section 175: Miscellaneous amendments relating to schools in Wales***

687. This section introduces Schedule 17 which contains minor amendments relating to schools in Wales.

***Section 176: Support schemes relating to education and training for persons aged 10 to 15***

688. This section confers on the Learning and Skills Council for England (LSC) a power to manage and fund particular types of support for learners aged between 10 and 15, for the purpose of encouraging them to undergo education and training. This will allow the DfES to continue the transfer of the management of learner support to the LSC as recommended in the Department's efficiency scrutiny.
689. Examples of provision that may be made by the LSC include support for childcare under the Care to Learn scheme. The Care to Learn scheme is a Departmental scheme to give financial support to teenage parents who want to continue their education or training and need help with the cost of their childcare. Responsibility for managing this scheme has already transferred to the LSC for young parents aged 16 to 18 and it is considered important for the scheme to be managed as a single and efficient scheme to offer support to return to learning to all young parents under 19. Provision in respect of learners aged under 16 is currently made by the Secretary of State under sections 14 to 17 of the 2002 Act.
690. It is also expected that the LSC will be involved in arranging other types of learner support including transport for students under 16 who are following a mixture of academic education and vocational training in further education institutions.

***Section 177: University bodies: amendments of section 29 of Leasehold Reform Act 1967***

691. The Leasehold Reform Act 1967 enables tenants of houses held on long leases at low rents to acquire the freehold or an extended lease of those houses. Section 29 of the 1967 Act enables university bodies who are landlords, on the acquisition of the freehold by, or the granting of an extended lease to, a tenant, to impose with the consent of the Secretary of State or the National Assembly for Wales (as the case may be) restrictive covenants on tenants for the purpose of reserving the relevant land for possible development by that body or a related university body.
692. "University body" and "related university body" are defined in section 28 of the 1967 Act and include bodies such as universities and colleges of a university.
693. This section amends section 29 of the Leasehold Reform Act 1967 so that university bodies will be able to impose covenants without needing first to obtain the consent of the Secretary of State or the National Assembly for Wales. The amendments also make clear that such covenants can only be imposed for the purposes of the university body concerned or any related university body.
694. The Secretary of State or National Assembly for Wales' consent will still need to be obtained in respect of applications not determined at the date on which this section comes into force: see *subsection (4)*.