

# EDUCATION AND SKILLS ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Local education authority*

#### *Legal background*

### **Part 5: Miscellaneous and general**

#### *Chapter 2: Miscellaneous*

#### *Sections 150 to 153: School Admissions*

185. *Sections 150 to 153* apply to both England and Wales. Section 150 adds new sections 86A and 86B to Part 3 of the 1998 Act. New section 86A places a duty on local education authorities to make arrangements to enable a young person to apply for a place at a school, independently of his or her parents, either to study in the sixth form or, if they are above compulsory school age, to study at any level of education (for example to re-sit their GCSEs). Parents retain the right to apply to schools on behalf of their children.
186. New section 86B requires the admission authority for any maintained school (which is either the school's local education authority or its governing body) to comply with the preferences and admit the young person to the school he or she states as a first preference, unless the school is full, the child has not met the standard of academic ability the school requires for entry to its sixth form, or the child has been permanently excluded from at least two schools (and the latest of those exclusions was within the last two years). Consequential amendments have also been made to section 86 so that it no longer applies to sixth forms.
187. *Section 151* inserts new sections into the 1998 Act, to make improvements to the admissions system in England to ensure fair and lawful admission arrangements are set and applied to applications made by parents and young people. The effect of new sections 88B to 88G is to replace the requirement in primary legislation (section 89(2) and (3) of the 1998 Act) that admission authorities in England consult various bodies about their admission arrangements before determining them, with a power to make regulations about the consultation process. Currently, primary legislation requires admission authorities to consult annually with the bodies set out in section 89(2) of the 1998 Act. Removing this requirement from primary legislation and instead taking a power to make regulations to prescribe the consultation process in England will mean that a more flexible and adaptable consultation process can be designed that better engages with parents and communities. A school's admission arrangements in England set out the school's admissions policy, including the criteria it will use to decide how to allocate places if it receives more applications than it has places available, and the school's admission number. The provisions in this section enable regulations to prescribe who must be consulted, how often consultation must take place and circumstances in which no, or partial, consultation will be required.

*These notes refer to the Education and Skills Act 2008  
(c.25) which received Royal Assent on 26 November 2008*

188. New sections 88O and 88P place a new duty on local education authorities in England to produce an annual report to the Schools Adjudicator on the admission arrangements of maintained schools, Academies, city technology colleges and city colleges for the technology of the arts in their area. The purpose of the report is to inform the Schools Adjudicator (who will in turn report annually to the Secretary of State) of the extent to which admission arrangements comply with admissions legislation and the School Admissions Code, so that the Adjudicator can take appropriate action to ensure fair access. Section 88Q requires any person that the local education authority asks for information which it needs to complete the report, to supply that information to the local education authority. The content, form and timing of the reports will be prescribed in regulations.
189. New sections 88H to 88L place a new duty on the Schools Adjudicator to consider admission arrangements referred to him by the Secretary of State or mentioned in a local education authority report, and to decide whether they are lawful or not. He also has a new power to consider arrangements which he thinks may be unlawful and which have come to his attention by other means.
190. *Section 152* amends section 94 of the 1998 Act to provide those young people given the new right to apply to a school under section 150, the right to appeal to an independent appeal panel against any decision refusing him or her admission to the school, whether in response to an application made by the young person or his or her parents. The child, the parent, or the child and parent acting jointly can appeal against a refusal to admit the child, where an application has been made under section 86A. The section amends section 94(5) to enable the Secretary of State to make regulations setting out how appeals should be dealt with if both the parent and young person appeal against the same decision. Section 152 also allows a young person who is already at a school and is refused entry to the sixth form to appeal against the decision.
191. *Section 153* inserts section 98A into the 1998 Act, to define sixth form education for the purposes of Chapter 1 of Part 3 to the 1998 Act as “secondary education suitable to the requirements of pupils who are over compulsory school age.” *Subsection (2)* removes any doubt about whether consultation on a draft School Admissions Code, or School Admissions Appeals Code, which depends on amendments made by this Act is valid if it takes place before the Act is enacted. This makes it possible for a new Code to come into force for admissions from September 2010 rather than September 2011.
192. *Paragraphs 53 to 73* of Schedule 1 make amendments to Chapter 1 of Part 3 of the 1998 Act. Section 86 is amended so that it no longer applies to sixth form admissions, now they are covered by the new sections 86A and 86B. Certain provisions which currently apply to England and Wales are restricted to Wales, and certain provisions are repealed which currently apply to England only and which are being re-enacted by section 151. Finally, there are amendments in Schedule 1 which otherwise preserve the legal position in relation to Wales, or are consequential upon provisions in sections 150 to 153.