

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 5: Miscellaneous and general

Chapter 1: Powers of National Assembly for Wales

184. *Section 149* amends field 5 of Part 1 of Schedule 5 to the Government of Wales Act 2006 (legislative competence of National Assembly for Wales in the area of education and training). The changes include conferring power on the Assembly to regulate, and make provision about the inspection of, non-maintained schools and part-time independent educational institutions; and conferring power on the Assembly to make provision about the inspection of other education and training for those aged 16 and under.

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.

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.

Sections 154 and 155: Maintained schools in England: behaviour and attendance etc

193. A school governing body already has the power under section 29(3) of the 2002 Act (as amended by the 2005 Act) to "require registered pupils to attend at any place outside

the school premises for the purposes of receiving any instruction or training included in the secular curriculum for the school”.

194. *Section 154* introduces a new section 29A which allows a governing body of a maintained school in England to require a registered pupil to attend at any place outside the school premises, but for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil. In exercising this power, it is intended the governing body will be obliged under regulations (made using the power in subsection 29A(4)(a)) to have regard to guidance issued by the Secretary of State.
195. The inserted section 29A compels the Secretary of State to make regulations requiring persons (it is intended this will normally be parents) to be given information about the imposition of the requirement to attend a place off the school premises and to require the governing body to review their exercise of the power. The Secretary of State may make regulations requiring the governing body to request that persons (it is intended this will normally be parents) take part in a review of the exercise of the power; stipulating the timings of the initial and subsequent reviews; specifying the maximum number of days for which the requirement may be imposed in any school year; and in connection with other matters relating to the exercise of the power. It is intended that regulations will impose a requirement to review an off-site direction every 30 days during the time that the pupil is attending off-site provision, and will prohibit governing bodies from requiring a pupil to attend off-site provision for a greater number of days in a school year than is specified in the regulations. The Government's intention is that the requirement for an individual pupil to attend off-site provision must be for a limited period and subject to regular review.
196. *Section 155* makes amendments to section 444ZA of the 1996 Act. That section extends the circumstances in which a parent or a carer can be prosecuted for failing to ensure that a child for whom he or she is responsible regularly attends the alternative provision that has been made for the child.
197. *Section 155* extends the ambit of section 444ZA to cover pupils who have been directed off-site for receiving educational provision which is intended to improve the behaviour of the pupil to take account of requirements imposed by governing bodies under the new power introduced by section 154. There is also a change to section 444ZA to clarify that failure of the parent to secure regular attendance at a school where provision is made by the governing body of a school under section 100 of the 2006 Act (duty of governing body or proprietor to provide education where pupil is excluded for fixed period) is within the ambit of the section 444 offence, where the governing body has not expressly exercised its power under section 29(3) of the 2002 Act to require the attendance of the pupil there.

Section 156: Assessment arrangements

198. This section amends section 88 of the 2002 Act to remove the obligation on schools and local education authorities to implement the assessment arrangements for the National Curriculum as they stand at the start of the school year. Instead, schools and local education authorities are required through new subsection (1A) to implement assessment arrangements as they exist at a given point in time.

Sections 157 and 158: Pupils' views

199. *Section 157* inserts a new section 29B into the 2002 Act, the effect of which is to place duties on governing bodies of maintained schools in England and Wales to invite the views of registered pupils about prescribed matters, and consider any views on those matters expressed by pupils (whether or not in response to an invitation) in light of their age and understanding. The matters on which governing bodies must consult pupils are to be prescribed by regulations made by the Secretary of State for England and the Welsh Ministers for Wales (and paragraph 79 of Schedule 1 prescribes the procedure in the National Assembly for Wales for the latter). *Subsection (3)* of new

section 29B allows governing bodies to invite the views of all registered pupils at the school, or to consult only those pupils who it considers are affected by the matter or are representative of those groups of pupils.

200. *Section 158* amends section 176 of the 2002 Act (which requires local education authorities and governing bodies of maintained schools to have regard to guidance about consultation with pupils) so that it only applies to local education authorities in Wales. In England, section 3A of the Local Government Act 1999 (which was inserted by section 138(1) of the Local Government and Public Involvement in Health Act 2007) requires certain local authorities in England, including local education authorities, to involve representatives of local persons in the exercise of their functions, where they consider it is appropriate to do so. Section 29B of the 2002 Act (inserted by section 157 of this Act) will replace the duty currently imposed on governing bodies of maintained schools in England and Wales by section 176 of the 2002 Act.

Sections 159 to 163: External qualifications

201. *Section 159* amends section 98 of the 2000 Act which describes how qualifications may be approved for the purposes of sections 96 and 97 as they apply to England. *Subsection (2)* provides for the Secretary of State, or a body designated by him, to approve an external qualification. An "external qualification" is one which has either been awarded or authenticated by an outside body. Without this approval an external qualification is not eligible to receive public funding. Section 159 removes the current requirement in subsection (4) for the Secretary of State to give his consent to all approval decisions made by a body which he has designated under subsection (2). This enables designated bodies to approve such qualifications without further recourse to the Secretary of State.
202. *Section 159* further amends section 98 by the insertion of new *subsection (2A)* which enables the Secretary of State to designate a body to approve external qualifications for people under 19 (for the purposes of section 96), for people over 19 (for the purposes of section 97) or for both.
203. The changes to the Secretary of State's functions made in section 159 apply equally to the Welsh Ministers' functions in relation to Wales by virtue of *section 160*. This section removes the requirement in section 99(4) of the 2000 Act for the Welsh Ministers to consent to all approval decisions made by a body which they have designated under subsection (2).
204. *Section 161* amends section 24 of the 1997 Act to provide the QCA with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications or credits in respect of components of these qualifications; and, where they meet those criteria, to recognise them. Under these provisions, the QCA would first recognise a body wishing to award or authenticate a qualification and then accredit its individual qualifications. Provision is also made for the QCA to make rules and procedures where a recognised body ceases to be recognised. The reference to "credits" refers to the introduction by the LSC, working with other stakeholders, of the new national framework, the "Qualifications and Credit Framework", which divides all relevant qualifications into units which, when completed, confer "credits" which may be accumulated towards achievement of the full qualification. Consequential amendments are made to sections 26 and 26A of the 1997 Act to reflect these changes. These apply broadly the same powers which the QCA currently holds in respect of placing conditions on accreditation and making directions to the accredited bodies. This section applies to both England and Northern Ireland.
205. *Section 162* aligns the Welsh Ministers' remit, in relation to the recognition of persons wishing to award or authenticate qualifications in relation to Wales, with the functions of the QCA in relation to England and Northern Ireland. The section amends section 30 of the 1997 Act to provide the Welsh Ministers with a new function to develop and publish criteria for the recognition of bodies which wish to award or authenticate qualifications, or credits in respect of components of these qualifications; and, where

they meet those criteria, to recognise them. The reference to “credits” refers to the introduction by the Welsh Ministers of the new national framework, the “Qualifications and Credit Framework”, which divides all relevant qualifications into units (see previous paragraph). Consequential amendments are made to sections 32 and 32A of the 1997 Act to reflect these changes. These give the Welsh Ministers power to place conditions on recognitions and make directions to the recognised bodies. Such powers are equivalent to the powers the Welsh Ministers currently hold in respect of placing conditions on accreditation and making directions to the accredited bodies.

206. *Section 163* extends the powers of the QCA in Northern Ireland to cover the regulation of vocational qualifications currently excluded from the scope of that authority. In Northern Ireland most qualifications are regulated by the Council for the Curriculum, Examinations and Assessment (CCEA). They are those which are general and vocational and are provided for school pupils or persons in full-time attendance at an institution of further education. The only exception is National Vocational Qualifications which are regulated by the QCA. This section adds other vocational qualifications to the regulatory remit of the QCA. It is intended that at some future date legislation will be brought before the Northern Ireland Assembly to abolish the CCEA.

Section 164: Inspections of teacher training in England: removal of duty to notify

207. This section provides that the period of notice given to providers of initial teacher training prior to an inspection by Ofsted will now be at the discretion of the Chief Inspector, rather than specified in section 18B of the Education Act 1994 as a minimum of eight weeks.

Section 165: Constitution of schools forums

208. The requirement on local education authorities to establish Schools Forums was imposed by the 2002 Act, through the insertion of Section 47A into the 1998 Act. Schools Forums are local bodies, representing schools and (if the local education authority so decides) other interests, which advise authorities on matters relating to the authority’s schools budget.
209. Section 47A was amended by the 2005 Act and the 2006 Act to allow regulations to give Forums some decision-making powers in relation to the schools budget.
210. *Section 165* amends the arrangements for constituting a Schools Forum, so that regulations may make it compulsory for a Forum to include non-schools members. Section 165 applies to England and Wales.

Chapter 3: General

Section 167: Functions exercisable by Welsh Ministers

211. This section ensures that the functions conferred on the Secretary of State by sections 150, 152 or 165, so far as exercisable in relation to Wales, are taken to have been transferred to the Welsh Ministers by Order in Council under section 58 of the Government of Wales Act 2006. Section 167 also makes provision so that amendments to sections 89 to 90 of the 1998 Act in Schedules 1 and 2 are not to be taken to affect the application of those sections, or anything done under them, in relation to Wales. For the avoidance of any doubt, this section also ensures that the substitution of the references to the Secretary of State in sections 89 to 90 of the 1998 Act with references to the Welsh Ministers do not change the application of those sections in relation to Wales.

Section 168: General interpretation

212. *Section 168* provides that the sections in Part 1, Chapter 1 of Part 4, and sections 148 and 173(10) are to be construed as if they were contained in the 1996 Act unless a different meaning is given in the sections in the Act in which case that meaning prevails.

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

This means, in particular, that the general interpretation in section 579 of the 1996 Act, provision about guidance and notices in sections 571 and 572, and the Secretary of State's intervention powers in sections 496 and 497 apply to those sections. *Subsection (5)* provides that sections 561 and 562 of the 1996 Act — which provide that the Act does not apply to a person in the service of the Crown or persons detained under order of a court — do not apply for the purposes of Part 1 of the Act. Section 62 makes special provision about Crown employment in relation to Part 1 of this Act.

Section 170: Power to make consequential and transitional provision etc

213. *Section 170* enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Where such regulations amend or repeal primary legislation they are subject to the affirmative resolution procedure.