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STATUTORY INSTRUMENTS

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**2002 No. 2439 (C. 79)**

**EDUCATION, ENGLAND AND WALES**

**The Education Act 2002 (Commencement No. 2 and  
Savings and Transitional Provisions) Order 2002**

Made - - - - 22nd September  
2002

In exercise of the powers conferred by section 216(2), (4) and (5) of the Education Act 2002<sup>(1)</sup>, the Secretary of State for Education and Skills hereby makes the following Order:

**Citation and Interpretation**

1.—(1) This Order may be cited as the Education Act 2002 (Commencement No. 2 and Savings and Transitional Provisions) Order 2002.

(2) In this Order—

“the 1998 Act” means the School Standards and Framework Act 1998<sup>(2)</sup>;

“the 2002 Act” means the Education Act 2002.

**Provisions coming into force**

2. The following provisions of the 2002 Act shall come into force on 1st October 2002—

sections 76 and 77;

section 78 so far as it is not already in force;

sections 79 to 96;

section 119;

section 120(1), and (3) to (5);

section 121;

section 130 to the extent that it repeals section 1 of, and the Schedule to, the School Teachers' Pay and Conditions Act 1991<sup>(3)</sup>;

section 189 to the extent that it relates to the paragraphs of Schedule 17 specified below;

section 215 to the extent that it relates to the provisions of Schedule 21 and Schedule 22 specified below;

Schedule 11;

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(1) 2002 c. 32.

(2) 1998 c. 31.

(3) 1991 c. 49.

in Schedule 17, paragraphs 1 to 4 and 9;

in Schedule 21, paragraphs 14 and 18;

in Schedule 22—

section 1 of, and the Schedule to, the School Teachers' Pay and Conditions Act 1991,  
sections 26(9) and 48 of the Further and Higher Education Act 1992,

in the Education Act 1997—

in section 23, in subsection (2), paragraph (f) and the word “and” immediately preceding  
it, and subsections (3) and (4),

in section 26(3), the words “or approve” and the words “and subject to such conditions”,  
paragraphs 25, 44 and 214(a) of Schedule 30 to the School Standards and Framework Act 1998.

**3.** The following provisions of the 2002 Act shall come into force except in relation to Wales  
on 1st October 2002—

section 1 except for the words “(b) a maintained nursery school” in the list of qualifying schools  
in section 1(3);

sections 2 to 5;

sections 14 to 17;

section 19(6);

section 30;

section 37;

the definition of “budget share” in section 39(1);

section 39(2);

section 41(1) and (3);

section 42;

sections 47 to 49;

section 51 to the extent that it relates to the paragraphs of Schedule 4 specified below,

sections 62 to 64;

section 131;

section 148 to the extent that it relates to the paragraphs of Schedule 12 specified below;

sections 149 to 150;

section 151(1);

section 152 to the extent that it relates to the paragraphs of Schedule 13 specified below;

section 155 to the extent that it relates to the paragraphs of Schedule 14 specified below;

section 156;

section 177;

section 178(1) and (2);

sections 179 and 180;

section 187;

section 188 to the extent that it relates to the paragraphs of Schedule 16 specified below;

section 205;

section 206;

section 215 to the extent that it relates to the paragraphs of Schedule 21 and Schedule 22 specified below;

Schedule 1 so far as it is not already in force;

in Schedule 4, paragraphs 1, 3, 5 to 7, 10, 11, 13 and 14;

in Schedule 12, paragraphs 1, 2, 4(1) and (3), 6, 9, 11 and 12(1) and (2);

in Schedule 13, paragraphs 1 to 3, 6, 7(1) and (3) and 8;

in Schedule 14, paragraphs 5, 6 and 7;

Schedule 15 except for the words “(b) a nursery school” in paragraph 2(2);

in Schedule 16, paragraphs 7 to 9;

Schedule 20;

in Schedule 21—

paragraphs 8, 11, 13, 16, 19, 20, 21, 31, 32, 33, and 39(5);

paragraph 45 for the purpose of the substitution of paragraph (aa), save for sub-paragraph (ii), for paragraph (a),

paragraph 46 (1) to (3);

paragraph 46 (4) for the purposes of inserting sub-section (4) save for the words “and, (b) sections 97 to 117 (the curriculum in Wales)”;

paragraph 46(5) for the purposes of inserting the new text save for the words “or 7”;  
paragraph 47 (1), (2) and (4);

paragraph 48 for the purpose of substituting the new text save for the words “or 109” and “or National Curriculum for Wales” in sub-paragraph (2), and the words “or 109” in sub-paragraph (3);

paragraph 51;

paragraph 57(b) and (c);

paragraph 63(b);

paragraph 66 for the purpose of substituting the new text save for the words “or 101(1) (a)”;

paragraphs 68 and 69;

paragraph 85(a);

paragraph 91;

paragraph 100(1) and (2);

paragraph 104 for the purpose of substituting the new text save for the words “or 101(1) (a)” in sub-paragraphs (2) and (3);

paragraph 105 for the purpose of substituting the new text save for the words “or 101(1) (a)”;

paragraph 108;

paragraph 111;

paragraph 113 (c), (d), and (g);

paragraph 117 for the purpose of substituting the new text save for the words “or 101(1) (a)” in sub-paragraphs (2) and (3);

paragraph 118(6);

paragraph 124;

in Schedule 22, Part 3 the repeal of—

section 40 of the Local Government (Miscellaneous Provisions) Act 1982;

section 49 of the Education Act (No. 2) 1986;

in the Children Act 1989,

in section 19, subsections (1) and (2) and in subsection (4) the words “the two authorities, or, in Scotland,”;

in section 79M(1), the word “or” at the end of paragraph (a);

in the Further and Higher Education Act 1992, section 23(4)(b) and the word “and” immediately preceding it, sections 39 to 42 and section 60;

in the Education Act 1996—

in section 2(3)(a) the words “(including vocational, social, physical and recreational training)”;

in section 4(1) the words “part-time education suitable to the requirements of junior pupils or”;

in section 5(1) the words “part-time education suitable to the requirements of junior pupils or”;

section 350 to 369;

section 408(4)(a);

in section 409(1) the words “with the approval of the Secretary of State and”;

section 410;

section 483(3A);

section 483A(7);

section 497A(3);

in section 548(8) paragraph (c);

in section 568, in subsection (3) the words from “section 354(6)” to “401”, and subsection (4);

in Schedule 37, paragraph 55;

in the School Inspections Act 1996—

in section 3(3), the word “and” at the end of paragraph (a);

in section 6(3), the word “and” at the end of paragraph (a);

in section 16(3), the word “and” preceding paragraph (d);

in the Education Act 1997, in Schedule 7, paragraphs 9(3), 27(a) and 28(b);

in the School Standards and Framework Act 1998—

sections 10(3) and (7);

in section 11, in subsection (2) the words from “and” to the end, and subsection (3);

section 36(2);

section 42;

section 46;

section 57;

in section 84(6), the definition of “the relevant standard number”;

section 86(3) (b) and (6);

section 91;  
section 93;  
in section 119(5), the word “and” at the end of paragraph (a);  
in section 120(2)(a), the words “of proposals” and “and”;  
in section 121, in subsection (1), the words “the authority’s statement of proposals” and  
in subsection (9) the words “early years development”;  
in section 138—  
    in subsection (2)(b), the words “paragraph 3(5) or 4 of Schedule 10”;  
    in subsection (4)(b) the words “paragraph 4 or 8 of Schedule 23 or”, and  
    in subsection (5)(b)(ii) the word “46”;  
in subsection 143, the entries relating to local schools budget and relevant standard  
number;  
in Schedule 4, paragraph 5(4)(e);  
Schedule 10;  
Schedule 23;  
in Schedule 26, paragraphs 8(9), and 15;  
in Schedule 28, paragraph 4(1);  
in Schedule 30, paragraphs 14, 85 to 90, 194(3)(a)(ii) and 204(b);  
in the Learning and Skills Act 2000—  
section 148(2);  
in Schedule 9, paragraphs 26, 30 and 35.

**4.** The Schedule to this Order shall have effect for the purposes of making transitional provision and savings in relation to the provisions to which it refers.

SCHEDULE

Article 4

TRANSITIONAL AND SAVING PROVISIONS

PART I

THE FINANCING OF MAINTAINED SCHOOLS

1. Section 41(1) shall have effect in the period ending immediately before 1st April 2003 only for the purposes of the financing of schools in any financial year beginning on and after that date.

2. Despite the coming into force of the repeal of section 46 of the 1998 Act and of the consequential amendments to sections 49(4) and 143 of that Act and to section 7 of the Learning and Skills Act 2000(4) (made by section 41(3) of, paragraphs 100(1) and (2), 113 and 124 of Schedule 21 to, and Part 3 of Schedule 22 to, the 2002 Act)—

- (a) the repeal of section 46 of the 1998 Act,
- (b) the substitution of “LEA budget or schools budget” for “local schools budget” in section 49(4) of the 1998 Act,
- (c) the substitution of “section 45A(3)” for “section 46(2)” in the entry beginning “individual schools budget” in section 143 of the 1998 Act,
- (d) the repeal of the entry relating to local schools budget in section 143 of the 1998 Act, and
- (e) the substitution of “schools budget” and “Schools budget” for “local schools budget” and “Local schools budget” in subsections (1)(a) and (3) of section 7 of the Learning and Skills Act 2000

shall not have effect in relation to any financial year beginning on or before 1st April 2002.

PART 2

THE DETERMINATION OF ADMISSION ARRANGEMENTS  
AND ADMISSION OF CHILDREN TO MAINTAINED SCHOOLS

**Interpretation**

3. In this Part of this Schedule—

“school year”, in the context of references to the admission of a child to a school in any particular year, means the school year in which he would first take up a place there in consequence of a decision to admit him.

**Parental preferences**

4. Despite the coming into force of section 47(1) of, and paragraph 3 of Schedule 4 to, the 2002 Act, the amendments to section 86 of the 1998 Act shall not have effect in relation to the admission of a child to a maintained school in any school year earlier than the 2004–5 school year.

**Determination of admission arrangements (including admission numbers)**

5.—(1) Despite the coming into force of the repeals of—

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(4) 2000 c. 21.

- (a) sections 84(6) and 143 of the 1998 Act, insofar as those provisions apply to the definition of “the relevant standard number”,
- (b) section 93 of, and Schedule 23 to, the 1998 Act, and
- (c) paragraph 5(4)(e) of Schedule 4 to the 1998 Act,

those provisions shall continue to have effect in relation to any school year earlier than the 2004–5 school year.

(2) Despite the coming into force of section 47(2) of, and paragraph 5 of Schedule 4 to, the 2002 Act, neither section 89A of the 1998 Act nor the amendments to section 89 of that Act shall have effect in relation to the determination of a maintained school’s admission arrangements for any school year earlier than the 2004–5 school year.

#### **Objections to admission arrangements**

6. Despite the coming into force of paragraph 6 of Schedule 4 to the 2002 Act, the amendments to section 90 of the 1998 Act shall not have effect in relation to a maintained school’s admission arrangements for any school year earlier than the 2004–5 school year.

#### **Repeal of power to make special arrangements for preserving religious character**

7. Despite the coming into force of section 49 of the 2002 Act, and without prejudice to section 16(1)(c) of the Interpretation Act 1978<sup>(5)</sup>, section 91 of the 1998 Act (special arrangements to preserve religious character of foundation or voluntary aided school) shall continue to have effect in relation to a maintained school’s admission arrangements for any school year earlier than 2004–5.

#### **Direction to admit a pupil to a specified school**

8. Despite the coming into force of paragraphs 10 and 11 of Schedule 4 to the 2002 Act, the amendments to sections 96 and 97 of the 1998 Act shall not have effect in relation to any decision made by a local education authority before 1st October 2002 to direct a specified school to admit a pupil.

#### **Amendment of the Diocesan Boards of Education Measure 1991**

9.—(1) Despite the coming into force of paragraph 13 of Schedule 4 to the 2002 Act, the amendment to section 3(1) of the Diocesan Boards of Education Measure 1991 shall not have effect in relation to a church school’s admission arrangements for any school year earlier than the 2004–5 school year.

(2) In this paragraph “church school” means foundation or voluntary school which is a Church of England school as defined by section 142 (1) of the 1998 Act.

#### **Amendment of the Education Act 1996**

10. Despite the coming into force of paragraph 14 of Schedule 4 to the 2002 Act, the amendments to section 439(2) of the Education Act 1996<sup>(6)</sup> shall not have effect in relation to any school attendance order made under section 437 of that Act during any school year earlier than the 2004–5 school year.

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(5) 1978 c. 30.

(6) 1996 c. 56.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Education Act 2002 on 1st October 2002. The provisions are listed in articles 2, 3 and 4.

Article 2 relates to provisions concerning the curriculum in England, the School Teachers' Review Body and amendments of Part 5 of the Education Act 1997.

Article 3 relates to powers to facilitate innovation, financial assistance for education and childcare, powers of governing bodies, governors' reports and other information, payments in respect of dismissal etc., determination of specified Local Education Authority ("LEA") budgets, power to set minimum schools budget, admission numbers, co-ordination of admission arrangements, the repeal of the power to make certain special arrangements for preserving religious character, further provisions re the power to secure proper performance of a LEA's functions, power to require a LEA to obtain advisory services, school teachers' appraisal, certain provisions in respect of the General Teaching Council for England, duties of a LEA in respect of childcare, early years development and childcare partnerships and plans, childcare functions of Her Majesty's Chief Inspector, regulation of child minding and day care, inspection of nursery education, meaning of "nursery school", "primary education" and "secondary education", workplace training and education for 14 to 16 year olds, rights of entry in relation to inspections, Education Action Zones, the application of Part 5 of the Education Act 1996 to nursery education, and amendments to the law on nuisance or disturbance on educational premises.

The provisions listed in article 2 are those that only apply to England (curriculum), or are non-devolved (teachers' pay and conditions). They are brought into force for all purposes in accordance with the Secretary of State's power in section 216(2). The provisions listed in article 3 are brought into force for England only, in accordance with the Secretary of State's power in section 216(4).

Article 4 and the Schedule relate to transitional provisions in relation to the financing of schools for the remainder of this financial year, and admissions arrangements where the amendments take effect in respect of the school years 2004/2005 onwards.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 27 and 28	2nd September 2002	<a href="#">2002/2002</a> as amended by <a href="#">2002/2018</a>
Section 43	2nd September 2002	<a href="#">2002/2002</a>
Sections 54 to 59	2nd September 2002	<a href="#">2002/2002</a>
Sections 60 and 61	26th July 2002	<a href="#">2002/2002</a>
Sections 65, 67 to 69	26th July 2002	<a href="#">2002/2002</a>
Section 78 (partially)	26th July 2002	<a href="#">2002/2002</a>
Section 152 (partially)	2nd September 2002	<a href="#">2002/2002</a>

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 155 (partially)	2nd September 2002	<a href="#">2002/2002</a>
Section 204	2nd September 2002	<a href="#">2002/2002</a>
Section 215 (partially)	26th July 2002	<a href="#">2002/2002</a>
(partially)	2nd September 2002	<a href="#">2002/2002</a>
Schedule 1, (partially)	2nd September 2002	<a href="#">2002/2002</a>
Schedule 3, paragraphs 1 to 5	2nd September 2002	<a href="#">2002/2002</a>
Schedules 5 and 6	2nd September 2002	<a href="#">2002/2002</a>
Schedule 7	26th July 2002	<a href="#">2002/2002</a>
Schedule 13, paragraphs 4 and 5	2nd September 2002	<a href="#">2002/2002</a>
Schedule 14, paragraphs 1 to 4	2nd September 2002	<a href="#">2002/2002</a>
Schedule 21, (partially)	26th July 2002	<a href="#">2002/2002</a>
(partially)	2nd September 2002	<a href="#">2002/2002</a>
Schedule 22, (partially)	26th July 2002	<a href="#">2002/2002</a>
(partially)	2nd September 2002	<a href="#">2002/2002</a>