

---

WELSH STATUTORY INSTRUMENTS

---

**2006 No. 1338 (W.130) (C.45)**

**EDUCATION, WALES**

**The Education Act 2005 (Commencement No. 1  
and Transitional Provisions) (Wales) Order 2006**

*Made* - - - -

*16 May 2006*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 120(2) and 125(4) of the Education Act 2005<sup>(1)</sup>, hereby makes the following Order:

**Title and interpretation**

**1.** The title of this Order is the Education Act 2005 (Commencement No. 1 and Transitional Provisions) (Wales) Order 2006.

**2.—(1)** In this Order—

“the 1996 Act” (“*Deddf 1996*”) means the School Inspections Act 1996<sup>(2)</sup>;

“the 1998 Act” (“*Ddeddf 1998*”) means the School Standards and Framework Act 1998<sup>(3)</sup>;

“the 2000 Act” (“*Ddeddf 2000*”) means the Learning and Skills Act 2000<sup>(4)</sup>; and

“the 2005 Act” (“*Deddf 2005*”) means the Education Act 2005.

(2) In this Order, unless otherwise stated, references to sections and Schedules are references to sections of and Schedules to the 2005 Act.

**Appointed day**

**3.** The provisions of the 2005 Act specified in Schedule 1 to this Order are to come into force on 1 September 2006 in relation to Wales.

**4.—(1)** Subject to paragraph (2), the provisions of the 2005 Act specified in Schedule 2 to this Order are to come into force on 1 September 2006 in relation to England and Wales.

(2) Sections 41 and 42 are to come into force only in their application to special schools of the description referred to in section 28(2)(d).

---

(1) 2005 c. 18.

(2) 1996 c. 57.

(3) 1998 c. 31.

(4) 2000 c. 21.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

5. The provisions of the 2005 Act specified in Schedule 3 to this Order are to come into force on 1 April 2007 in relation to England and Wales.

**Transitional provisions and savings**

6. The transitional provisions and savings set out in the Schedule 4 apply.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5)

16 May 2006

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

## SCHEDULE 1

Article 3

Provisions coming into force on 1 September 2006 in relation to Wales

<i>Provision</i>	<i>Subject matter</i>
Section 44	Categories of Schools causing concern.
Section 45	Cases where Assembly may direct closure of school.
Section 46	Sixth forms requiring significant improvement.
Section 47	Meaning of “denominational education”.
Section 51	Power of LEA to inspect maintained school for specific purpose.
Section 53, so far as relating to the provisions of Schedule 7 referred to below.	Inspection of child minding, day care and nursery education.
Section 54	Inspection of independent schools.
Section 58	Inspection of computer records.
Section 59	Combined reports.
Section 60	Repeal of School Inspections Act 1996.
Section 61, so far as relating to the provisions of Schedule 9 referred to below.	Further amendments relating to school inspection.
Section 71	Proposals relating to maintained special schools.
Section 105	Provision and funding of higher education in maintained schools. Provision Subject matter
Section 106	Admission arrangements to make special provision for looked-after children.
Section 115	Power of governing body to make alternative provision for excluded pupils.
Section 116	Failure of parent to secure regular attendance of child at alternative provision.
Section 117 so far as relating to the provisions of Schedule 18 below.	Further amendments relating to Part 4.
Section 118	Meaning of “the 2002 Act” in Part 4.
Section 123 so far as relating to the provisions of Schedule 19 referred to below.	Repeals.
Schedule 5	Sixth forms requiring significant improvement.
Paragraphs 6 to 24 of Schedule 7.	Inspection of child minding, day care and nursery education.
Schedule 8	Inspection of independent schools.
Paragraphs 8 to 21 and 28 to 30 of Schedule 9.	Further amendments relating to school inspection.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Provision</i>	<i>Subject matter</i>
Paragraphs 1, 6 and 15 of Schedule 18.	Further amendments relating to Part 4.
In Schedule 19, Part 1:	Repeals
The repeals relating to: Education Act 1996, School Inspections Act 1996, Education Act 1997, School Standards and Framework Act 1998, Learning and Skills Act 2000 (except the repeal of section 81), Education Act 2002.	Repeals.

## SCHEDULE 2

Article 4

Provisions coming into force on 1 September 2006 in relation to England and Wales

<i>Provision</i>	<i>Subject matter</i>
Section 19	Her Majesty's Inspectorate of Education and Training in Wales.
Section 20	Functions of Chief Inspector.
Section 21	Annual and other reports to Assembly.
Section 22	Power of Assembly to establish advisory panel.
Section 23	Powers of entry etc of Chief Inspector.
Section 24	Power of Chief Inspector to arrange for inspections.
Section 25	Registration of Inspectors in Wales.
Section 26	Removal from Register and imposition and variation of conditions.
Section 27	Appeals in relation to registration.
Section 28	Duty to arrange regular inspections of certain schools.
Section 29	Publication of inspection reports.
Section 30	Payment of fees into Consolidated Fund.
Section 31	Interpretation of Chapter 3.
Section 32	Inspections by members of the Inspectorate.
Section 33	Duty to report on section 28 inspections.
Section 34	Section 28 inspections by registered inspectors.
Section 35	Reports of Inspections by members of the Inspectorate.
Section 36	Timing of section 28 inspections by registered inspectors.
Section 37	Duty to notify where inspection shows maintained school causing concern.

<i>Provision</i>	<i>Subject matter</i>
Section 38 maintained schools.	Destination of reports:
Section 39	Statement to be prepared by appropriate authority for school.
Section 40	Statement to be prepared by local education authority.
Section 41 non-maintained schools.	Destination of reports:
Section 42	Statement to be prepared by proprietor of school.
Section 43	Interpretation of Chapter 4.
Section 50	Inspection of religious education: Wales.
Section 52	Provision of inspection services by LEAs in Wales.
Section 53, so far as relating to paragraph 5 of Schedule 7.	Inspection of child minding, day care and nursery education.
Section 61, so far as relating to the provisions of Schedule 9 referred to below.	Further amendments relating to school inspection.
Section 123, so far as relating to the provisions of to below.	Repeals.
Schedule 2	Her Majesty's Chief Inspector of Education and Training in Wales.
Schedule 3	Registration of inspectors in Wales: Tribunals hearing appeals under section 27.
Schedule 4	School Inspections in Wales under section 28.
Schedule 6	Inspections of denominational education in Wales.
Paragraph 5 of Schedule 7.	Inspection of child minding, day care and nursery education.
Paragraphs 6, 7, 22, 24, 25 and 27 of Schedule 9.	Further amendments relating to school inspection.
In Schedule 19, Part 1, in the Children Act 1989, the repeal in section 79T(2)(a) of the words "the quality and standards of".	Repeals.

## SCHEDULE 3

Article 5

Provisions coming into force on 1 April 2007 in relation to England and Wales

<i>Provision</i>	<i>Subject matter</i>
Section 55	Inspection of careers services in Wales.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Provision</i>	<i>Subject matter</i>
Section 56	Inspection of services relating to careers services in Wales.
Section 57	Inspections under sections 55 and 56 further provisions.
Section 123 so far as relating to the provisions of Schedule 19 referred to below.	Repeals.
In Schedule 19, Part 1, he repeals in the Teaching and Higher Education Act 1998 and the repeal of section 81 of the Learning and Skills Act 2000.	Repeals

#### SCHEDULE 4

Article 6

##### TRANSITIONAL AND SAVING PROVISIONS

1. Paragraphs 2 to 5 of this Schedule apply despite the bringing into force by article 3 of this Order of section 60 (Repeal of the 1996 Act).

2. Where the latest report of an inspection of a school was under the 1996 Act and identified that special measures were required to be taken in relation to the school, that report is to be treated as the report of an inspection which identified that special measures were required to be taken under Part 1 of the 2005 Act for the purposes of—

- (a) sections 34(7)(b) and 35(2)(b) and (5)(b); and
- (b) sections 14 to 19 of the 1998 Act (intervention in schools causing concern).

3. Where the latest report of an inspection of a school was under that Act and identified that the school had serious weaknesses, that report is to be treated as the report of an inspection which identified that the school required significant improvement under Part 1 of the 2005 Act for the purposes of—

- (a) sections 34(8)(b) and 35(3)(b) and (6)(b); and
- (b) sections 14 to 19 of the 1998 Act.

4. Where the latest report of an inspection of a school was under the 1996 Act and identified that the school has an inadequate sixth form, that report is to be treated as the report of an inspection which identified that the school requires significant improvement in relation to its sixth form for the purposes of section 113 of, and Schedule 7 to, the 2000 Act (as amended by section 46 of, and Schedule 5 to, the 2005 Act).

5. Where notice of appeal is served on the tribunal before 1 September 2006, section 27 and Schedule 3 are to apply to the appeal as though subsection (2) of section 27 were omitted.

6. Despite the bringing into force by this Order of section 27 and Schedule 3, and of the repeals of section 9 of, and Schedule 2 to, the 1996 Act on 1 September 2006, any regulations made by the Secretary of State under paragraph 2 of Schedule 2 to the 1996 Act in force on 31 August 2006 (“*the existing Regulations*”) are to continue to have effect in relation to Wales until the date on which regulations made by the National Assembly for Wales under paragraph 2 of Schedule 3 come into force, as if the existing regulations had been made by the National Assembly under that paragraph of that Schedule.

---

## EXPLANATORY NOTE

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

This is the first commencement order under the Education Act 2005 (“the 2005 Act”) to be made by the National Assembly for Wales. It brings into force all the provisions of the 2005 Act which require an order of the National Assembly to bring them into force, with the exception of section 101 and Schedule 16 (and related consequential amendments and repeals in Schedules 18 and 19) concerning the financing of maintained schools, and section 70 (and a related consequential amendment in Schedule 12) concerning proposals for the discontinuance of rural primary schools. However, sections 41 and 42 are brought into force only in their application to special schools of the kind referred to in section 28(2)(d).

Apart from provisions relating to the careers services in Wales, which are brought into force by the Order on 1 April 2007 (see Schedule 3), the provisions brought into force by the Order are brought into force on 1 September 2006 (see Schedules 1 and 2). The provisions listed in Schedule 1 are brought into force in relation to Wales only. For technical reasons those listed in Schedules 2 and 3 are brought into force in relation to England and Wales, although, for practical purposes, they have no application in England.

The provisions brought into force by the Order are described briefly below. In what follows, references to sections and Schedules are to sections of, and Schedules to, the 2005 Act.

Provisions in Part 1 brought into force by the Order

For the main part, separate (and different) provisions apply to Wales from those which apply to England. Chapters 1 and 2 of Part 1 of the 2005 Act, which came into force on Royal Assent (7 April 2005), are new provisions applying only to England. They replace, in relation to England, the law relating to school inspections in the School Inspections Act 1996 (“the 1996 Act”). By virtue of section 62, a similar system can be introduced in Wales when and if the National Assembly so decide. In the meantime, the provisions of Part 1 (including Schedules 1 - 9) brought into force by this Order largely re-enact the 1996 Act in its application to Wales. That Act is repealed in its entirety by section 60. Apart from the re-enacted provisions, the provisions brought into force by this Order make provision for the inspection of the careers services, and effect some amendments (largely consequential) to various enactments relating to inspections (including enactments relating to the inspection of sixth forms; child minding, day care and nursery education; and independent schools) - Schedules 5 to 9.

Changes of substance include—

- new provision for the inspection of the careers services in Wales (sections 55 - 57)
- powers for the National Assembly to provide advice on the appointment or removal of the Chief Inspector for Wales, and to establish an advisory board to provide advice relating to the Chief Inspector’s functions (sections 19 and 22)
- changes in the provision for schools causing concern; in particular, in the way in which such schools are to be categorised in inspection reports (Chapter 5 of Part 1)
- In the case of inspections of religious education, a new requirement for church schools to consult persons specified in regulations made by the National Assembly before choosing an inspector (section 50)
- new provision enabling combined reports to be made in respect of inspections carried out under the 2005 Act and various other enactments relating to education and children (section 59)

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

### **Provisions in Parts 2 and 4 brought into force by the Order**

Section 71 amends section 31 of the School Standards and Framework Act 1998 so as to require consultation in the case of certain proposals relating to a maintained special school.

Section 73 defines terms used in Part 2.

Section 105 inserts a new section 28A into the Education Act 2002 giving maintained schools limited powers to offer their pupils courses of higher education.

Section 106 inserts a new section 89(1A) into the School Standards and Framework Act 1998 concerning admission arrangements for looked after children.

Section 115 amends section 29(3) of the Education Act 2002 (concerning the power of the governing body of a school to direct pupils to attend alternative educational provision).

Section 116 inserts a new section 444ZA into the Education Act 1996 concerning failure to secure regular school attendance and penalty notices.

Section 117 introduces Schedule 18 which makes amendments to various enactments.

Section 118 defines “the 2002 Act” for the purposes of Part 4.

Section 123 introduces Schedule 19 (Repeals).

### **Transitional and saving provisions**

Schedule 4 contains transitional and saving provisions.