

*These notes refer to the Education Act 2002 (c.32)
which received Royal Assent on 24 July 2002*

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 6 – the Curriculum in England

Preliminary

Sections 76 and 77

215. This Part re-enacts sections 350 to 368 of the EA 96 in their application to England, and thereby makes separate provision for a National Curriculum for England.

Section 76: Interpretation of Part 6

216. This lists the definitions of terms used later in the Chapter. They are mainly taken from the EA 96 except for:

- ‘Foundation stage’, which was a new stage introduced on a non-statutory basis in September 2000. It covers the period from age three to the end of the reception year in primary school. The foundation stage is organised in six areas of learning with early learning goals, which set out what most children are expected to achieve by the end of the foundation stage. The foundation stage is defined as a stage of the National Curriculum, but not as a key stage.
- ‘Maintained nursery school’, which is a school maintained by the LEA used mainly or wholly for the purpose of providing education for children who have attained the age of two but are under compulsory school age. It does not include a special school.
- ‘Programmes of study’, where the definition has been changed to mean the skills and processes which are required to be taught to pupils by the end of a key stage rather than during a key stage. This removes an implicit barrier in the legislation that pupils should only be taught material from the programme of study for their chronological age, making it clearer that teachers can allow pupils to proceed at a faster pace. Programmes of study are defined only in relation to key stages not the foundation stage.

Section 77: Meaning of ‘nursery education’ and related expressions

217. The inclusion of the foundation stage broadens the definition of the National Curriculum to include children below compulsory school age.

218. This section defines “nursery education” as education suitable for children below compulsory school age and defines “funded nursery education” as that provided by maintained schools, maintained nursery schools or by other providers who are receiving public funding to provide early years education.

General duties in respect of the curriculum

Sections 78 to 80

Sections 78 and 79: General requirements in relation to curriculum and duty to implement general requirements

219. These sections re-enact section 351 of the EA 96 with minor amendments.

Section 80: Basic curriculum for every maintained school in England

220. This section re-enacts section 352 of the EA 96, listing those elements (currently RE and sex education for certain pupils), which must be provided as part of the basic curriculum in addition to the National Curriculum.

221. The section provides for the inclusion of the foundation stage in the National Curriculum. This is done by changing the description of when the National Curriculum applies, so that it applies to children who have attained the age of three but are not over compulsory school age.

222. There is a new order-making power to alter the reference to compulsory school age (currently 16) so this could be amended to make some elements of curriculum provision statutory beyond 16.

223. There is also a new order making power for the Secretary of State to add to the list of further requirements, otherwise than in relation to RE or sex education. The power allows a new way to vary the curriculum requirements without affecting the National Curriculum, which has a distinct framework of key stages, attainment targets, programmes of study and assessment arrangements. This would enable new statutory requirements for 14-16 year olds to be introduced, such as community activities.

The National Curriculum for England

Sections 81 to 89

Section 81 and 82: The foundation stage; The key stages

224. These sections re-enact section 355 of the EA 96 and add the foundation stage to the National Curriculum. They set out the key stages in relation to a pupil, which are defined according to age. For example, key stage 2 begins when the majority of children in a pupil's class reach eight and ends when the majority of pupils in a class reach eleven.

225. The foundation stage is defined as beginning when a child first receives publicly funded education on or after his or her third birthday and ending at the same time as the school year in which the child attains the age of five. Key stage 1 begins at the same time as the school year in which the child attains the age of six.

Section 83: Curriculum requirements for the foundation stage

226. This section sets out the proposed content and structure of the foundation stage of the National Curriculum.

227. The foundation stage comprises: early learning goals, which set out what most children are expected to achieve by the end of the foundation stage; six areas of learning; *Curriculum guidance for the foundation stage*, on which the education programmes of all publicly funded provision must be based; and a foundation stage profile, which assesses attainment at the end of the foundation stage. The foundation stage profile will summarise each child's progress in each area of learning and will provide substantial evaluative information about each child.

228. The section also gives the Secretary of State power to amend the areas of learning.

Sections 84 to 86: The key stages in England and the power to alter or remove requirements for the fourth key stage

229. Sections 84 and 85 re-enact sections 353 and 354 of the EA 96, listing the subjects which are compulsory at each key stage and stating that the National Curriculum is to specify attainment targets, programmes of study and assessment arrangements in relation to each subject for each key stage. Section 86 adds a broad power to alter or remove requirements for the fourth key stage.
230. The requirements of the National Curriculum are now described separately in relation to the Foundation stage, key stages 1 to 3 and key stage 4. This will allow for different provisions to apply at each stage. Separating out key stage 4 from the others allows for new requirements for this age group to be introduced in the future.
231. In reproducing in sections 84 and 85 the lists of foundation subjects from section 354 of the EA 96, the reference to “technology” has been replaced by references to “design and technology” and “information and communication technology” (which are the subjects actually taught).

Section 87: Establishment of the National Curriculum for England by order

232. This re-enacts section 356 of the EA 96 to include the foundation stage. The Secretary of State has order-making powers to specify in relation to each of the foundation stage areas of learning, early learning goals, educational programmes and assessment arrangements as appropriate; and in relation to the key stages the attainment targets, programmes of study and assessment arrangements which she considers appropriate for each subject. The previous prohibition on the subject of science including sexually transmitted diseases and human sexual behaviour has not been re-enacted.
233. It extends order making powers in relation to the foundation stage to include all providers who are currently receiving Government early years education funding.

Section 88: Implementation of the National Curriculum for England in schools

234. This re-enacts section 357 of the EA 96 in its application to England. It places a duty on LEAs, governing bodies and head teachers to ensure that the National Curriculum is implemented in maintained schools. This includes a new duty in respect of primary schools as the National Curriculum now includes the foundation stage.

Section 89: Implementation in respect of nursery schools etc

235. This extends the duty to ensure that the foundation stage of the National Curriculum is implemented to include all providers who are receiving Government early years education funding.

The National Curriculum for England: special cases

Sections 90 to 95

Sections 90 to 95

236. These sections re-enact sections 362-367 of the EA 96 for England, but add maintained nursery schools within the legislation.

Supplementary provisions

Section 96

Section 96: Procedure for making certain orders and regulations

237. This section re-enacts section 368 of the EA 96 in its application to England. It sets out the procedures which must be followed when the Secretary of State proposes to make orders or regulations relating to certain National Curriculum provisions. She must refer her proposal to QCA, which will carry out a consultation on it and report back to the Secretary of State with the results of the consultation and their advice on it. QCA's report must be published, as must the Secretary of State's response. The Secretary of State must then publish and consult on a draft of the proposed order or regulations and a statement explaining her reasons if she is failing to give effect to any of QCA's recommendations. After that consultation period has closed, she may make the order or regulations with or without modifications.