

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 9 – Childcare and Nursery Education

Nursery Education

Sections 153 to 156

Section 153: Powers of LEA in respect of funded nursery education

308. This section provides that where, in the exercise of the duty imposed on them by section 118 of SSFA to ensure provision of nursery education in their area, an LEA makes financial assistance available to nursery education providers in the non-maintained sector, they must take account of any guidance which may be issued by the Secretary of State, or in the case of Wales, the NAW.
309. The guidance will be based on existing requirements that already apply to payment of Nursery Education grant and will set out specific conditions and qualitative requirements that providers of nursery education must meet. It will enable LEAs to monitor the quality of provision and to control the terms upon which funding is paid to such providers. It will also help to ensure that the providers meet the conditions attached to the funding. If they fail to meet such conditions, then repayment of any financial assistance made to them by the LEA may be required.

Section 154: Establishment or alteration of maintained nursery schools

310. This section amends section 28(1) of the SSFA to provide that if an LEA wishes to establish a maintained nursery school it must publish proposals to do so. LEAs must already publish proposals if they wish to close a nursery school or establish a community or foundation school.
311. For Wales, the section also amends section 28 of the SSFA to require an LEA to publish proposals to make any prescribed alteration to a maintained nursery school. Alterations to be prescribed as requiring the publication of proposals are likely to include changes in the main language of instruction, relocation to a new site, and significant enlargement.

Section 155 and Schedule 14: Inspection of nursery education

312. This section gives effect to Schedule 14 which amends Schedule 26 to the SSFA. The amendments cover the following:
- **Conduct of inspections by Inspectorate:** Nursery education is currently inspected by registered nursery inspectors, i.e. inspectors of nursery education placed on a register by HMCI in England or Her Majesty’s Chief Inspector of Education and Training in Wales (each referred to here as the “Chief Inspector”). The conditions governing such an inspector’s registration, removal from the register, appeal rights, etc. are contained in Schedule 26 to the SSFA. Ofsted intend that the majority

of nursery education inspection work will, in future, be carried out by suitably qualified childcare inspectors who are Ofsted employees. It is not considered necessary for such employees, whose qualifications and activities are governed by their employment contract with Ofsted, to also be subject to the registration process currently described in Schedule 26 of the SSFA. The amendments make two main changes to the current regime.

- First, paragraph 1 of Schedule 14 makes an amendment to paragraph 6 of Schedule 26 of the SSFA which permits inspection to be carried either by registered nursery inspectors, as now, or by members of the inspectorate, which includes the Chief Inspector and his employees. This means that, for example, in relation to England, HMCI can use Ofsted employees (in particular, suitably qualified child care inspectors) to carry out such inspections without them having also to comply with provisions relating to registration which are inappropriate to an employee's status.
- Second, paragraph 2 of Schedule 14 makes an amendment to paragraph 8 of Schedule 26, which changes the regime applying to registered nursery inspectors in order to give the Chief Inspector more control over who is placed on the register. At present, anyone may apply for registration and has a right to have his application considered and then to be registered if he fulfils statutory criteria.
- **Appeals:** The Registered Nursery Inspector's Tribunal (RNIT) established by Schedule 26 to the SSFA, currently hears any appeal against the removal of a registered nursery inspector from the register, as well as a refusal to renew registration and any imposition or variation in conditions attaching to registration. Under Part 10A of the CA, the Tribunal established by section 9 of the POCA (the CST), when it is set up, will hear any appeal against the removal of early years child care inspectors from the register. This provision will enable registered nursery inspector appeals to be heard in England by the CST rather than the RNIT, giving a single point for appeals from early years child care inspectors and registered nursery inspectors against, among other matters, removal from the two registers.

Section 156: Meaning of "nursery school" and "primary education"

313. This section amends the definitions of "nursery school" and "primary education" in the EA 96.
314. Section 6 of the EA 96 states that a primary school is a nursery school if it is used mainly for the purpose of providing education for children who have attained the age of two but are under compulsory school age. The purpose of the amendment is to clarify that this definition of "nursery school" includes schools which are used wholly for the provision of education for children between the ages of two and compulsory school age.
315. The general definition of primary education currently refers to full-time education suitable to the requirements of junior pupils who have not attained the age of ten years and six months. While this covers pupils below compulsory school age it does not reflect the common practice in nursery schools of offering education for either the morning or the afternoon session - nursery schools may offer education in both morning and afternoon sessions, but often to a different cohort of pupils. Some pupils under compulsory school age do attend a school full-time, for instance in the reception class of a primary school. A widening of the definition to cover part-time nursery education will recognise the prevalence of part-time education at the nursery stage.