

*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 9 – Childcare and Nursery Education

Childcare

Sections 149 to 152

Sections 149 and 150: Duties of LEA in respect of childcare; Early years development partnerships and plans

300. Early Years Development Partnerships were established by section 119 of the SSFA to plan and co-ordinate Early Years Education in each LEA area. In May 1998, on a non-statutory basis, Partnerships took on the additional role of planning and co-ordinating childcare and the newly formed Early Years Development and Childcare Partnerships (EYDCPs) commenced operation in April 1999.
301. *Section 149* inserts into the SSFA a new section 118A which places a duty on LEAs to carry out annual reviews of childcare provision in their area and establish and maintain an information service on childcare and other related services.
302. Section 19 of the CA requires local authorities to review the provision of day care and childminding within their area. Section 149 now incorporates these requirements and therefore section 19 is to be repealed with respect to England and Wales only.
303. The amendments made by section 150 confer duties relating to childcare on LEAs in addition to those set out in the SSFA with respect to Nursery Education. Section 150 (2) ensures that childcare will now be included in LEAs' Plans and together with 150 (1) and 150 (4) will ensure that the Plans take into account the review of childcare which LEAs are required to undertake in Section 149. As the Plans will now include childcare, section 150 (5) renames Early Years Development Partnerships (EYDPs) as Early Years Development and Childcare Partnerships (EYDCPs). This name is already in use by the LEA and the Partnerships. Section 150 (4) sets out the approval requirements by the Secretary of State or the NAW and the publication arrangements.

Section 151: Childcare functions of HMCI and National Assembly for Wales

304. The Tax Credits Act 2002 includes provision which will enable certain costs incurred on childcare to be taken into account in calculating an individual's entitlement to certain tax credits. That Act makes provision for the relevant childcare costs to be identified. The providers of the childcare will have to be approved in accordance with a scheme set out in the regulations.
305. This section allows the Secretary of State, by order, to confer on HMCI whatever functions are necessary or expedient to allow HMCI to be able to operate a childcare scheme set out in regulations made under the Tax Credits Act 2002. Functions are conferred on HMCI by Part 10A of the CA with regard to regulation and inspection

of childcare in England. These may not extend to all functions that may be needed to operate a childcare scheme. This provision enables additional functions to be conferred for that purpose.

306. It also allows the NAW to have additional functions specified in an order made by the NAW which are necessary or expedient to allow the NAW to operate a childcare scheme under the Tax Credits Act 2002. Such an order may only specify functions corresponding to those conferred by the Secretary of State on HMCI under the preceding subsection.

Section 152 and Schedule 13: Regulation of child minding and day care

307. **Schedule 13** amends Part 10A of and Schedule 9A to the CA. Part 10A of the CA was inserted by section 79 of the Care Standards Act 2000 and transferred the function of regulating persons who act as child minders or who provide day care from local authorities to HMCI in England and the NAW in Wales. The amendments proposed include:

- **Consent to checks on suitability:** The registration authority (HMCI in England and the NAW in Wales) is required under the CA to determine whether a person is qualified for registration as a child minder or a provider of day care. A person is so qualified if he is suitable to look after children under the age of eight and if his “associates” are suitable to look after or (as the case may be) to be in regular contact with children under the age of eight. “Associates” in this context means persons who look after children on premises on which child minding or day care takes place, persons who live or are employed on the premises (in the case of child minding) or who live and work on the premises (in the case of day care). As part of this assessment of a person’s suitability, the registration authority will need to carry out certain checks (eg criminal record checks) on individuals. This provision permits the registration authority to treat failure by a person or his associates to give consent to a check as a ground on which it may conclude that the person in question is not suitable and consequently that a person is not qualified for registration.
- **Suspension of registration:** An amendment to section 79H of the CA will ensure that a person whose registration is suspended under regulations made by virtue of that section, but who continues to operate as a childminder or day care provider, will, in the absence of reasonable excuse, be committing an offence in the same way as a person who acts as a childminder or provides day care without being registered.
- **Rights of appeal in relation to registration:** An amendment to section 79M of the CA permits the matters which may be brought before the tribunal established under section 9 of the POCA (the Care Standards Tribunal (CST)) to be extended. This provision gives the Secretary of State and the NAW the power to prescribe in regulations additional decisions arising under Part 10A which may be appealed to the CST. For example, decisions on the issue of certificates of suitability for persons working with children over the age of seven under section 79W of the CA cannot be appealed to the CST at present, but would be able to be included through regulations made under the proposed provision.
- **Inspections by HMCI:** An amendment to section 79Q of the CA allows the inspections to be carried out either by the Chief Inspector (ie Ofsted) directly as well as by registered inspectors (as allowed for in the powers of delegation available to the Chief Inspector in the SIA). The amendment is needed because many inspectors are now employees of Ofsted rather than independent contractors. This provision applies to England only.
- **Rights of entry:** An amendment to section 79U of the CA will ensure that an inspector is authorised by the registration authority before he or she has the right of entry. Existing legislation gives right of entry to inspectors by virtue of being registered alone.

- **Disqualification for registration:** An amendment to Schedule 9A of the CA will introduce a power for regulations to be made permitting the registration authority to waive disqualification for registration where a person has disclosed to the registration authority a matter (eg criminal conviction) which would under existing regulations lead to that person's disqualification. If the registration authority withdraws its consent to registration, a person will once more be disqualified. It is intended that the registration authority will give consent where it considers the reason for disqualification irrelevant to registration. This power was previously available to local authorities when they were responsible for registration and inspection.
- The Schedule also includes amendments to sections 113 and 115 of the Police Act 1997 which provide, respectively, for the issue of criminal record certificates and enhanced criminal record certificates. These amendments make three main changes to existing legislation.
- First, they ensure that when a criminal record certificate is applied for under section 113 as part of the registration authority's assessment of a person's suitability certain additional matters specific to a person's suitability to work with children (such as whether a person is included in the list kept under section 1 of the POCA) can be obtained not only in relation to persons applying to be registered, or already registered, but also in relation to their "associates" (as defined in the first bullet of this paragraph above). At present the legislation only permits this in relation to the former categories.
- Second, the amendments provide that the enhanced criminal record certificate (under section 115), as well as the criminal record certificate (under section 113), can contain the additional matters specific to a person's suitability to work with children, where such a certificate is applied for in connection with registration under Part 10A.
- Third, the amendments provide that a criminal record certificate and an enhanced criminal record certificate (including the additional matters referred to above) can be obtained in relation to an applicant for, or a holder of, a certificate under section 79W and his associates. Section 79W applies, broadly, to a person who looks after or provides care to children over the age of seven and under the age of 15 or, in the case of disabled children, 17.

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.

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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.