

*These notes refer to the Education Act 2005 (c.18)  
which received Royal Assent on 7 April 2005*

# EDUCATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 4: Miscellaneous

#### Information

#### *Section 108: supply of information: education maintenance allowances*

215. *Section 108* enables the lawful sharing of certain income-related and identity-based information relating to those applying for an education maintenance allowance and those who live in the same household as the applicant and support the education maintenance allowance applicant financially.
216. The purpose of sharing this information is to enable those administering education maintenance allowances to determine the applicant's eligibility for this means-tested allowance by verifying income-related information that has been supplied in support of the application. The intention is to prevent fraud and loss of public monies.
217. The type of information which might be shared is specified in *subsection (1)* as information held by the Inland Revenue for tax or tax credit purposes and information held by the Department for Work and Pensions and its Northern Irish equivalent, the Department for Social Development, for social security purposes. This information may be supplied directly to the persons specified within *subsection (3)* for purposes relating to eligibility for education maintenance allowances.
218. *Subsection (4)* allows persons specified in subsection (3) to supply information received under this section from the Inland Revenue, the Department for Work and Pensions or the Department for Social Development in Northern Ireland to any of the persons specified in *subsection (5)* for purposes relating to eligibility for education maintenance allowances. It also allows those who have received this information to pass it on to those who are actually administering education maintenance allowance schemes. The intention is for the section to facilitate a single information sharing scheme, enabling the Secretary of State, or any other person specified in subsection (3), to receive information on specific applicants directly from the Inland Revenue and the Department for Work and Pensions on behalf of the other administrations and to pass it on to them so that they in turn can pass it on to those administering their education maintenance allowance schemes. The inclusion of *subsection (5)(d), (e) and (f)* enables information to be passed to any person administering an education maintenance allowance scheme on behalf of the Secretary of State, the Assembly or a Northern Ireland department.
219. *Subsection (6)* lists the type of information that may be supplied by those specified in subsection (3) or (5) as part of a request for information. The intention is to allow the administrator of an education maintenance allowance scheme to pass sufficient information about an applicant to those holding the relevant income-related information in order to allow that applicant to be identified and the correct information returned.

220. This section does not make provision for the Scottish Ministers or any person providing services to the Scottish Ministers to supply information specified under subsections (4) or (6) to any other person. The supply of information by the Scottish Ministers is a devolved matter and would need to be provided for in an Act of the Scottish Parliament.

***Section 109: Unauthorised disclosure of information received under section 108***

221. **Section 109** creates an offence for the unlawful disclosure of information received under section 108. It also sets out those circumstances where the information may be disclosed lawfully. These provisions are similar to those in section 182 of the Finance Act 1989 and section 123 of the Social Security Administration Act 1992, which impose criminal sanctions for the unauthorised disclosure of information held by the Inland Revenue or the Department for Work and Pensions.
222. *Subsections (3) and (4)* set out the penalties in England, Wales, Northern Ireland and Scotland for unlawful disclosure of information.

***Section 110: Supply of information: free school lunches etc.***

223. This section allows information held by the Inland Revenue and the Department for Work and Pensions to be passed to the Department for Education and Skills and the Assembly, and ultimately to local education authorities in England and Wales, for use in determining eligibility of claimants for free school lunches and milk.
224. Under sections 512, 512ZA, 512ZB and 512A of the Education Act 1996 (as amended by SSFA 1998 and the Education Act 2002), a pupil is entitled to free school lunches or milk if he or she, or his or her parent, is in receipt of:
- i) income support;
  - ii) income-based jobseekers allowance;
  - iii) support provided under Part 6 of the Immigration and Asylum Act 1999; or
  - iv) Child Tax Credit, provided that they do not also receive Working Tax Credit and that their annual income (as assessed by the Inland Revenue) does not exceed £13,480 (this is the figure for 2004/05, and is re-assessed annually by Inland Revenue).
225. Before receiving free school lunches or free milk, a pupil/parent must apply and have eligibility verified. The sharing of data allowed under this section will allow easier checking of eligibility for free school lunches or milk.
226. *Subsection (3)* will allow data to be passed from the Inland Revenue and the Department for Work and Pensions to the Department for Education and Skills and the Assembly. *Subsection (4)* will also allow data to be passed directly from the Department for Work and Pensions to local education authorities.
227. *Subsection (5)* restricts the onward disclosure of data once it has been supplied by Department for Work and Pensions or Inland Revenue, so that data can only be passed on to local education authorities, or by the Secretary of State to the Assembly (and vice versa), for use in determining eligibility for free school lunches or milk. *Subsection (6)* allows the data to be passed to a contractor carrying out this function on behalf of a local education authority.
228. *Subsection (7)* defines eligibility for free school lunches or milk, including in relation to pupils at non-maintained special schools and Academies. Non-maintained special schools and Academies are required to give free school lunches to those eligible, in accordance with the same eligibility criteria as set out above, as a condition of approval (for a non-maintained special school) or of the funding agreement (for Academies).

***Section 111: Unauthorised disclosure of information received under section 110***

229. This section makes it a criminal offence to disclose data otherwise than as authorised under section 110. As with section 109, the section sets out certain circumstances in which data may lawfully be disclosed.

***Section 112: Power to provide that function of determining eligibility remains with LEA***

230. This section amends an existing power to make an order, so that local education authorities will be legally responsible for determining eligibility for free school lunches, etc. The current Education (Transfer of Functions Concerning School Lunches etc) (England) (No 2) Order 1999 transfers certain duties to schools which have had their budgets delegated. These transferred duties include provision of school lunches and the provision of free school lunches and milk to pupils who are eligible. The corresponding orders for Wales are: the [Education \(Transfer of Functions Concerning School Lunches\) \(Wales\) Order 1999 \(SI 1999/610\)](#); and the [Education \(Transfer of Functions Concerning School Lunches\) \(Wales\) \(No 2\) Order 1999 \(SI 1999/1779\)](#). However in Wales these orders only relate to school meals. Any order made under section 112 would place the responsibility for checking back on the local education authority, even for schools with delegated budgets.

***Section 114: Supply of information about school workforce***

231. This section enables regulations to require or authorise the proprietor of a school, a children's services authority in England or Wales or any person prescribed in regulations to supply information (of a kind prescribed by regulations) to the Secretary of State, the Assembly or prescribed persons. The information will primarily be used for statistical analysis and research, but will also be shared between organisations which have an independent legal right to the information. Details of the categories of information and the format in which it will be expected to be supplied will be available in guidance to be placed on the internet. Examples of the type of data to be supplied are date of birth, ethnicity and pay details.
232. *Subsections (1), (2) and (3)* give the Secretary of State or the Assembly the power to make regulations that will allow or require certain data to be supplied to specified persons for a particular purpose or purposes. Subsection (2) sets out the persons to whom the data may be supplied. The persons about whom information may be collected are defined in detail in section 113.
233. *Subsection (4)* sets out the type of person who can be prescribed under subsections (1), (2) and (3). A person can only be required or authorised to supply data under subsection (1)(c) if he is carrying out functions of a public nature and he may only receive data under subsection (1) if he is carrying out such functions. In order for a third party to be prescribed under subsection (3) as a person to whom the Secretary of State or the Assembly can supply information, that third party must be carrying out functions of a public nature or carrying out research that is expected to be for the public benefit.
234. *Subsection (5)* describes the circumstances in which data will be shared and for what purpose. The effect of subsection (5) is that a person supplied with data under subsections (1) and (3) may only use the data for evaluation, planning, research or statistical purposes. Additional purposes may also be prescribed in regulations.
235. "Evaluation purposes" is intended to cover those situations where data are used internally by the organisation holding the data in order to formulate policy. For example, in relation to a policy to promote teacher retention in London schools by increasing pay, the database would be used to monitor whether this had been effective.

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236. “Planning purposes” could cover the use of data to inform a teacher supply model, with the aim of ensuring that there are sufficient places available on relevant courses so that there are enough teachers with the right skills in schools.
237. “Research purposes” could cover a situation where researchers are studying the deployment of maths and science teachers in schools. At present researchers have to approach schools directly to find out who is teaching these subjects and what sort of qualifications they hold. The database would provide researchers with this information in advance to inform their research.
238. “Statistical purposes” covers situations where data are analysed and then statistics are produced and published in aggregate form.
239. *Subsection (6)* allows regulations to be made to enable data to be shared between organisations that are already lawfully allowed to hold or be supplied with that data. Examples of the use of subsection (6) are:
- i) where a teacher moves to a new school and the school which the teacher has left should have passed information about that teacher to the new school but does not: the Department will be able to supply that data to the new school;
  - ii) where a teacher moves to teach in a different local education authority, and the new local education authority are missing some data items on that teacher, such as his date of birth: the Department will be able to send the data to the local education authority directly rather than the new authority having to ask the teacher to fill in the missing information; and
  - iii) where partner organisations such as the General Teaching Council for England or Wales and Ofsted have existing powers to hold or be supplied with specified information on the school workforce, the Department will be able to supply that information directly to them.
240. *Subsection (8)* gives the Secretary of State and the Assembly the power to make regulations that will prevent persons from disclosing information with which they are supplied under this section. It also gives the Secretary of State and the Assembly the power to make regulations which will apply the Secretary of State’s general default powers under section 497 of the Education Act 1996 to specific bodies. This will allow the Secretary of State or the Assembly to make a declaration and issue directions when a body is failing to discharge its duty to supply information under subsection (1). *Subsection (9)* provides that this section does not override or limit existing powers to share information.