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# BRIEFING

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## EDUCATION ACT 2002

### Introduction

The Education Act 2002 ('the Act') received Royal Assent on 24<sup>th</sup> July 2002 after much 'to-ing and fro-ing' between the House of Lords and the Commons. The Act implements proposals set out by the Government in the White Paper "Schools – Achieving Success" published in September 2001.

This briefing note seeks to highlight the main changes brought about by the Act. However, a feature of the Act is the ability for the Secretary of State to publish regulations, not only bringing these provisions into force but also giving detail to the main provisions.

Consultation has already taken place on matters such as admissions and exclusions and it is expected that extensive consultation will take place in the autumn.

Some provisions came into force on the passing of the Act, particularly in relation to the making of regulations. The majority of provisions will come into force on the passing of commencement orders by the Secretary of State. Those that will come into force on 2 September 2002 are specifically referred to.

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**Sections 1 – 5:  
Powers to facilitate innovation**

Schools and LEAs will be free to apply to the Secretary of State for variation of legislation for innovative or pilot projects from October 2002. Innovative projects must, in the opinion of the Secretary of State, contribute to the raising of the educational standards achieved by children. The Secretary of State will have regard to the need for the curriculum for any school affected by the project to be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of children and of society and consider the likely effect of the project on all the children who may be effected by it. The Secretary of State has the power to suspend legislative requirements and if necessary modify legislation or confer new powers.

However the power is limited to modification of legislation relating to education and the lifetime of the power is limited to 4 years beginning with the commencement date of the Act.

In addition the duration of any particular suspension or modification of legislation is restricted to 3 years in the first instance. This provides time for most innovative practices to be implemented and evaluated, while ensuring that pilots remain time limited. If any experiment under this power proves worthwhile and the Government is of the view that it should be made permanent, then it would need to consider amending the relevant statutory provisions.

Guidance on the application process for schools and LEAs will be available from October 2002 and before maintained schools make applications they are expected to consult with their LEA. (Given that the Secretary of State will take account of the views of the LEA, consideration should be given to co-ordinating responses at a senior level.)

An addition to the Act during the bill stage is that the Secretary of State must prepare a report on all the orders made by him under the power to facilitate innovation during the academic year and a copy of the report must be laid before each house of parliament.

**Sections 6 – 10:  
Exemptions related to school performance**

These sections enable any community, foundation, voluntary or special school that is of a prescribed prescription and satisfies prescribed criteria to apply for exemption from certain aspects of legislation covering the national curriculum and teachers pay and conditions.

A qualifying school will have to satisfy prescribed criteria relating to the performance of the school, the quality of the leadership in the school, and/or the quality of the management of the school. An application will be to the Secretary of State for an order to confirm the exemption.

Regulations may designate any curriculum provision or pay and conditions provision as attracting exemption as of right or as attracting discretionary exemption. The

governing body of a qualifying school will need to consult with appropriate parties, including staff within the school and parents, on whether and how to apply.

Draft regulations on these powers are expected for consultation during the autumn.

### **Sections 11 – 13: Powers to form companies etc**

These sections provide new enabling powers so that the governing body of a school can form, or take part in forming, companies to provide services. Such a company could provide, or help with the provision of, facilities or services for schools. These powers are expected to come into effect from October 2002.

However the governing body of a maintained school may not exercise the power without the consent of the local education authority and only at a time when the school has a delegated budget.

The power is also limited to the extent that it may not be exercised except in relation to a company unless it satisfies particular requirements (which will be detailed in regulations) relating to membership, the constitution of the company and any other matter connected with the company's affairs.

Regulations and statutory guidance are expected on this area and will put in place arrangements for the financial monitoring of companies and powers to address any financial mismanagement of the company. The governing body of a maintained school will be required to have

regard to any guidance published by the Secretary of State.

### **Sections 14 – 18: Financial assistance for education and child care**

These sections repeal specific grant making powers and allow for a more general power for the Secretary of State to give financial assistance for purposes related to education or child care.

The purposes are broadly defined and include, amongst many other objects, child care, the use of educational buildings for different purposes and the support of teachers. Funds may be directed to schools, LEAs, individuals and companies. Education will include pre-school, school and further education, but not higher education (apart from teacher training).

The power allows the Secretary of State to attach conditions to the provision of assistance and also allows financial assistance to be provided by a third party, for example to LEAs, on condition that the LEA passes the grant on to its schools.

### **Sections 19 – 39: Government of maintained schools**

This part of the Act implements the Government's consultation paper on school governance; 'The Way Forward – a Modernised Framework for School Governance'. Provisions in relation to governing bodies formerly in the SSFA 1998 are now covered by this part of the Act and much of the detail will follow in

regulations. Consultation dealing with school constitution was launched on 9 August 2002.

The draft regulations set proportions for membership to be drawn from certain stakeholder categories rather than absolute numbers as prescribed at present. The regulations will also establish a single staff governor category to replace separate teacher and non-teacher staff categories. Provision is made for 'associate members' who may be appointed to committees of a governing body with restricted voting rights.

All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006.

Transitional provisions have been brought in for new schools so that they may operate under temporary governing bodies until September 2003 to avoid re-constitution.

Section 21 provides that general responsibility for the conduct of a school shall remain with the school's governing body as currently provided in section 38 of the SSFA 1998. However the section provides a power for regulations to define the respective roles and responsibilities of the governing body and head teacher, to include the roles and responsibilities of LEAs.

Draft regulations relating to governing body procedures are not expected until December 2002.

### **Federate Schools**

Section 24 gives effect to the proposal that two or more schools may federate under a single governing body and that the decision to federate should rest with the

governing bodies concerned once they have complied with certain conditions and procedures. Draft regulations relating to collaboration between governing bodies are expected in December 2002.

Where any schools are federated by virtue of section 24 they will have a single governing body constituted under a single instrument of government and in prescribed cases they will be treated as a single school. However they will not be treated as a single school for the purposes of statutory proposals and school admissions.

Regulations will make provision as to the transition from one governing body to another, the dissolution of governing bodies on the formation of a federation and the circumstances and the manner in which a federation may be dissolved. Regulations will also make provision as to the transfer of property, rights and liabilities between governing bodies or between LEAs and governing bodies.

### **Power to provide community facilities**

Sections 27 and 28, schedules 1 and 3 refer to the power and limits of a governing body to provide community facilities. The governing body of a maintained school shall have power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of pupils at the school or their families or people who live or work in the locality in which the school is situated.

These provisions come into effect on 2 September 2002.

A governing body may charge for any services or facilities provided under this section but the power does not enable a governing body to do anything which they are unable to do by virtue of any restriction contained in the school's instrument of government or within LEAs' financial delegations.

The limitations ensure that governors cannot exercise the power to provide community facilities if it interferes with the duties they are required to carry out under the Education Acts generally and contain a power to make regulations to prohibit certain specific types of service.

In exercising the power a governing body must have regard to statutory guidance published by the Secretary of State and to any guidance given to them by the LEA. Guidance has already been issued to LEAs regarding revisions to the Fair Funding Scheme to take account of this power.

### **Staffing**

Sections 35 and 36 relating to staffing of schools now provide that provisions previously contained in the SSFA 1998 will be set out in regulations. Schedule 2 of the Act will come into effect at any time when the LEA suspends a school's delegated budget so that arrangements for staffing at maintained schools shall be determined by the LEA.

Section 37, payments made in respect of dismissal, re-enacts the provisions of section 57 of the SSFA 1998. The new section only differs from the SSFA 1998 provisions in so far as it includes an additional

provision related to payments in respect of dismissal of staff employed for community purposes.

The LEA is required to recover from the governing body any costs the authority has incurred arising from the dismissal of such staff although the requirement may be waived by written agreement between the parties. Where the governing body is required to pay such costs they may not do so out of the school's budget share.

Where a member of staff is employed partly for the purpose of the school and partly for community purposes, the cost must be apportioned between the schools budget share and the funds the school holds for expenditure on community purposes.

### **Communications**

The published Act now provides for a new section 38 entitled Communication with Schools. This section did not appear in the original draft of the Bill and requires the Secretary of State to have regard to the desirability of providing information about good educational practice and the benefits that are expected to result from the issue of the guidance, but in particular the desirability of avoiding the sending of excessive material to governing bodies or head teachers and the imposition of excessive administrative burdens on them.

The section requires the Secretary of State to prepare a report listing documents sent by him during the year to all governing bodies and head teachers of maintained schools and to lay a copy of the report before Parliament. The report is

expected to include comparative statistics in respect of each of the two preceding academic years in relation to such documents.

### **Sections 41 – 45: Financing of maintained schools**

Sections 41 to 43 relate to the introduction of a new system of funding LEA schools in England.

Much of this will be accomplished under existing local government finance legislation, the Local Government Finance Act 1992 (as amended). The new system will involve separate financial assessments for expenditure on school pupils and expenditure on the central functions of LEAs. These sections amend education finance legislation to bring it into line with the new system.

Section 41 introduces new definitions of the LEA budget for central functions and the schools budget for expenditure on pupils. Details will be set out in regulations to be issued for consultation in the autumn.

### **Schools Forum**

Section 43 requires LEAs to establish a schools forum, to represent the views of schools on the Authority's schools budget.

The functions of a forum are set out in one of the earliest publications of regulations to emanate from the Act, the Schools Forum's (England) Regulations 2002 which come into effect on 2 September 2002. Non statutory guidance has also been published.

The latest date by which forums must be constituted is 15 January 2003 but an LEA may constitute its forum at any time between 2 September 2002 and 15 January 2003 if it wishes.

Amendments have been made to the proposed provisions to enable Authorities to use existing consultative groups, such as the Admissions Forum as the Schools Forum. The group may be known locally by an alternative title provided it is constituted in accordance with the regulations and carries out the functions of a Schools Forum.

Sections 44 and 45 relate to accounts and financial statements of maintained schools. Requirements may be imposed as to the way maintained schools keep accounts and report information based upon those accounts. The Consistent Financial Reporting (CFR) initiative for schools will provide a consistent minimum standard for school financial reporting and enable all schools to compare their expenditure with that of similar schools.

The Secretary of State will publish information reported by schools so as to facilitate financial benchmarking. The main provision also provides for regulations that will require the governing body of a maintained school to comply with prescribed conditions with respect to audit and to send copies of accounts together with financial statements and reports to the LEA. The provisions extend to both public funds and to private funds controlled by the governing body.

Draft regulations relating to the CFR initiative are expected in the autumn.

### **Sections 46 – 53: Admission, exclusion and attendance**

Section 46 amends the SSFA 1998 by inserting a new Section 85A to require LEAs through regulations, to establish admission forums.

Section 47 removes the requirement for a school to have a standard number relating to the number of pupils in an age group in which pupils are normally admitted to the school who are to be admitted in any particular school year.

The admission arrangements for an admission authority shall include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.

When setting admission numbers, admission authorities will have to consider amongst other factors, the current capacity of the school as determined under a new formula for assessing capacity that is being introduced.

Section 48 amends the SSFA 1998 by providing for regulations which may require LEA's to co-ordinate school admission arrangements as between themselves and those maintained schools in their area which are responsible for their own admissions. LEA's must attempt to negotiate agreement between all maintained schools in their area for co-ordinated application process for local parents.

Regulations may also provide that each LEA shall secure that decisions in relation to the admission of a child to a school shall be communicated to a parent of a child on a single day designated by the LEA in each year.

Section 49 repeals Section 91 of the SSFA 1998 the power to make certain special arrangements for preserving the religious character of a foundation or voluntary aided school. This is a further addition to the originally published Education Bill.

Section 50 provides that provision in relation to admission appeals and appeal panels will now be dealt with through regulations. Schedule 4 to the Act makes minor amendments to provisions relating to admission arrangements.

Regulations and guidance in relation to admission forums, co-ordinated admission arrangements, and the determination of admission arrangements are expected in the autumn.

### **Exclusion**

Section 52 relates to the exclusion of pupils. The power of a head teacher to exclude a pupil from the school for a fixed period or permanently is repeated but also extended to the teacher in charge of a pupil referral unit (PRU).

The Act adds nursery schools to the schools regime and gives a right of appeal to parents of pupils excluded from PRU's. The right is given retrospectively to the 1 September 1994, the date when PRU's were first recognised in statute. This is due to a perceived conflict with the Human

Rights Act 1998. Otherwise the detail relating to exclusions is also to be found in regulations upon which consultation has already been carried out.

Section 53 relates to attendance targets. Whereas previously the targets only applied to unauthorised absences the provisions in this Section now widen the power to include authorised absence and will therefore enable the Secretary of State to require specified schools to set targets to reduce their overall level of absence.

Regulations relating to this area are not expected to be published for consultation until June –August 2003.

#### **Sections 54 – 64: Powers of intervention**

These sections extend the powers through which the Secretary of State and LEA's may intervene in schools with serious weaknesses or requiring special measures. It introduces a new power to appoint an interim executive board and a power for the Secretary of State to involve an external partner in turning around a school in special measures or having serious weaknesses.

These provisions come into force on 2 September 2002.

The SSFA 1998, which currently prescribes the intervention powers of LEAs, is amended so as to enable LEAs to provide for a governing body to consist of interim executive members. Before exercising the power the LEA must consult the governing body of the School or the Diocesan Authority if appropriate.

Schedule 6 to the Act is inserted in the SSFA 1998 as Schedule 1A and gives detailed provisions in relation to interim executive boards and interim executive members. It also provides for the resumption of school government by a normally constituted governing body and the time when interim executing members cease to hold office. Whilst temporarily constituted with interim executive members, the Board will run the school as the governing body and will have the responsibilities of a governing body.

An Interim Executive Board will not have power to publish proposals to close a school if it concludes that a school cannot be turned around, however it will be able to report recommending that a school be closed to the LEA and the Secretary of State.

Section 60 provides powers for the Secretary of State to secure the proper performance of a LEA's functions. This amends the existing Section 497 of the Education Act 1996 and enables the Secretary of State to give directions in relation to all education functions, including for example those relating to early years education, rather than at present only those relating to compulsory age education.

Section 60 of the Act came into force on 26 July 2002.

#### **Advisory Services**

Section 63 gives the power to the Secretary of State to require an LEA to obtain advisory services if it appears to the Secretary of State that the LEA have not been effective or are unlikely to be effective in eliminating deficiencies in the

conduct of a school with serious weaknesses or a school requiring special measures.

The Secretary of State may direct the LEA to enter into a contract with external partners. Such partners could be successful schools, successful LEAs, further education or higher education institutions or from the public, voluntary or private sectors. Partners will provide advice to the LEA, and/or governors of a school. The section allows the Secretary of State to require the contract or other arrangement to contain specified terms and conditions.

Section 64 requires the Authority to give all assistance in connection with the provision of the Advisory Services, however it is not clear what penalties there are for LEAs who fail to do so.

## **Section 65 – 75: School Organisation**

### **Academies**

The Learning and Skills Act 2000 enabled the Secretary of State to fund City Technology Colleges, City Colleges for the Technology of the Arts and City Academies in consideration of certain undertakings on the part of the promoters.

Sections 67 and 68, which specifically provide that City Academies and City Colleges will now be known as Academies, came into force on 26 July 2002.

Whilst the previous establishments could only be in urban areas, Academies may be established in any part of England and may provide

Primary or Secondary education. Each Academy shall have an emphasis on a particular subject area as specified in its funding agreement with the Secretary of State. The school must also provide education for pupils of different abilities who are wholly or mainly drawn from the area in which the school is situated.

These Academies do not charge fees in respect of admission to the school or in respect of education provided at the school. Section 66 of the 2002 Act provides that Regulations may authorise or require an Admission Forum to give advice to the governing body of any Academy on any matter corresponding to admission arrangements. There is a corresponding duty on the governing body of an Academy to have regard to any relevant advice given to them by an Admission Forum.

### **Statutory Proposals**

Sections 70 – 75 refer to statutory proposals to establish, alter or discontinue schools. The changes made by these sections encourage a wider range of promoters to bring forward to meet the need for new schools.

If the LEA considers that an additional maintained secondary school is required, they must seek approval from the Secretary of State for the publication of the notice for a new school. The LEA must then publish a notice inviting proposals for the establishment of an additional maintained secondary school or academy and identifying a possible site for the school.

Section 73 allows proposals by governing bodies of community

schools, when previously only the LEA could publish proposals in respect of community schools.

It is intended that regulations will prescribe that community schools may make proposals to enlarge the premises of the school, to increase by 27 or more pupils, the number in a relevant age group to be admitted to the school and to add a sixth form or extend a one-year sixth form to two years.

Consultation on draft regulations on this area is expected in the autumn.

### **Section 76 – 96: Curriculum in England**

These sections make separate provisions for the curriculum in England extending the requirement to nursery education. (Sections 97 to 118 make provision for the curriculum in Wales.)

This part introduces and provides for the areas of learning within the foundation stage. It also separates the first, second and third key stages in England from the fourth key stage and sets out that the National Curriculum shall comprise the attainment targets, programmes of study and assessment arrangements in relation to each key stage.

It provides that in relation to the fourth key stage, the Secretary of State may amend the subjects or abolish the key stage by order, and re-enact the special cases provisions of the Education Act 1996.

Consultation on draft regulations and guidance on this area is expected during the autumn.

### **Nursery Education**

Section 77 defines nursery education as full time or part time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere). Funded nursery education is defined as that provided by maintained schools, maintained nursery schools or by other providers who are receiving public funding to provide early year's education.

Section 80 extends the basic curriculum requirement for all registered pupils at a school to those who have attained the age of 3, but are not over compulsory school age, thereby providing for the inclusion of the foundation stage in the National Curriculum.

Section 83 details the curriculum requirements for the foundation stage as being personal, social and emotional development, communication, language and literacy, mathematical development, knowledge and understanding of the world, physical development and creative development.

### **Sections 119 - 130: Teachers' Pay and Conditions.**

By Section 130 the School Teachers' Pay and Conditions Act 1991 is repealed. Most of the provisions are re-enacted in the new legislation, with minor modifications where necessary.

The School Teachers' Review Body set up under the School Teachers' Pay and Conditions Act is continued section 119. Schedule 11 to the Act makes provision for membership and arrangements for appointment of a

Chairman etc to the School Teachers' Review Body.

Section 121 requires the School Teachers' Review Body to consult with relevant bodies, ie LEA associations, LEAs, organisations representing governors of maintained schools and bodies representing school teachers with regard to matters referred to them.

Section 122 continues the power of the Secretary of State to prescribe pay and conditions by Order. It also defines a school teacher for the purposes of pay and conditions as being a qualified teacher, providing primary or secondary education under a contract of employment or for services, where the other party to the contract is the governing body of the maintained school or an LEA.

This includes teachers who are self employed, but excludes those who are employed by an agency such as a teacher supply agency. A school teacher will either be a qualified teacher, as defined elsewhere under regulation; or unqualified, as prescribed by Order. The latter category will encompass overseas trained teachers, instructors, and those following the graduate or registered teacher programme routes. Those employed by local authorities for Social Services purposes are excluded from the definition.

Section 125 allows the Secretary of State to make an Order relating to subsidiary issues. This allows the Secretary of State to make an Order without referral to the School Teachers' Review Body.

'Subsidiary' covers the standards which the Secretary of State may set

for different classes of teachers – for example, advanced skills teachers – and criteria for progression from one pay scale to another – this would cover movement from the main pay scale to the upper pay scale following threshold assessment.

Minor but necessary amendments could in future also be made to pay Orders without reference back to the School Teachers' Review Body in order to cover issues arising from the implementation of their recommendations. This could include ensuring that groups of teachers are not disadvantaged by the recommendations.

### **Sections 131 – 135: School Teachers' Appraisal and Qualifications.**

Section 131 updates the existing powers contained in the Education Act 1986 under which the Secretary of State may make regulations requiring appraisal of the performance of school teachers employed under National Pay and Conditions.

The regulations may impose duties on specified groups of people in relation to the appraisal of teachers' performance; that the appraisal process may involve the exercise of a discretion conferred on persons identified in the regulations, for example, head teachers, governors and those teachers appointed by the head teacher to review performance; and that teachers may use appraisal data in pay decisions.

### **Qualified Teacher Status**

Section 133 gives the Secretary of State the power to set out in

regulations the work that may be carried out in a school only by a qualified teacher, and the work that may be carried out by support staff and unqualified teachers. This Section could enable an unqualified teacher to teach in circumstances approved by a qualified teacher.

Section 134 enables the Secretary of State to make regulations providing that a specified activity may be carried out in a maintained school or a maintained special school by a qualified teacher only where that teacher is registered with full registration with the General Teaching Council.

It also provides that a trainee teacher may undertake a specified course of training leading to qualified teacher status only where that teacher is registered with provisional registration with the GTC for England. In addition provisional registration may be required for unqualified teachers undertaking specified work in schools.

Section 135 enables the Secretary of State to publish regulations to make it compulsory for persons serving as head teachers to be qualified teachers. The regulations may also make it compulsory for head teachers to hold a specified qualification if they are appointed on or after a date when the regulations come into force.

However, the regulations would not prevent a person from carrying out the functions of head teacher of a school pending the appointment of or in the absence of, the head teacher.

Draft regulations are expected in the autumn.

## **Misconduct**

The Secretary of State continues to have power to make directions prohibiting a person from carrying out work, in education or in relation to schools, that brings the person regularly into contact with children aged under 18 years old. (The current provision refers to persons aged under 19.)

The section also provides the Secretary of State with the power to prevent a person from working for a company exercising functions on behalf of a LEA and prevent a person from taking part in the management of an independent school.

Under the current law, the Secretary of State can prohibit or restrict someone's employment on grounds of misconduct; that he is unsuitable to work with children; that he is included permanently on the list of people considered unsuitable to work with children that is kept by the Secretary of State for Health under the Protection of Children Act 1999, or on medical grounds.

The Secretary of State also has the power to direct that a person may not take part in the management of an independent school on the grounds of that person's professional incompetence. The power to make directions on educational grounds is repealed and provision is made for the procedure for making directions to be set out in regulations.

Consultation on draft regulations relating to misconduct, strengthening the ability to direct that a person will be prohibited from teaching in cases of misconduct, is expected during the autumn.

Section 144 provides for appeals against a decision to make a direction or not to revoke or vary a direction to be heard by a Tribunal established under Section 9 of the Protection of Children Act 1999. The Secretary of State has the power to make regulations preventing an appeal being made on the grounds that the person did not commit an offence of which he has been convicted.

### **General Teaching Council (GTC)**

Sections 148 and schedule 12 amend the Teaching and Higher Education Act 1998 by extending the existing advisory functions of the GTC. Registration of teachers is amended to take account of full and provisional registration for qualified teachers and trainees/overseas teachers respectively. The GTC is given power to judge a person suitable as a teacher and therefore eligible for registration.

The GTC will now have access to criminal records and suitability will be judged at the point of application for registration. A right of appeal against the decision exists. Further detail will be found in regulations expected for consultation in the autumn.

### **Section 149 – 156: Child Care and Nursery Education.**

Early Years Development Partnerships were established by the SSFA 1998 to plan and co-ordinate early years education in each LEA area.

Section 149 inserts into the SSFA 1998 a new Section 118A which places a duty on LEAs to carry out annual reviews of child care provision in their area and establish and maintain an information service on child care and other related services.

LEAs must have regard to any guidance issued by the Secretary of State in carrying out these duties. Section 150 makes minor amendments to the SSFA 1998 in relation to the extension of the LEA's duties and associated amendments to the requirements for the functions of Early Years Development Partnerships and Early Years Development Plans. The Early Years Development Partnerships are renamed Early Years Development and Child Care Partnerships and Early Years Development Plans are renamed Early Years Development and Child Care Plans.

The amendments made by these provisions ensure that Early Years Development Child Care Partnerships must work with LEAs to review the sufficiency of child care provision in the area and to prepare and publish a plan, for approval by the Secretary of State in respect of both nursery and child care provision. LEAs currently undertake this work on a statutory basis for early years provision and on a non-statutory basis for child care provision.

Section 152 of the Act transfers the function of regulating persons who act as childminders or who provide day care from local authorities to HM Chief Inspector of Schools in England and comes into effect on 2 September 2002.

Sections 153-156 deal with nursery education. The definition of nursery school and primary education in the Education Act 1996 are amended so 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. The widening of the definition to include part-time education recognises the prevalence of part-time education at the nursery stage.

### **Independent Schools**

Sections 157-174 relate to independent schools and their regulation. Of note is that independent schools are now added to the list of establishments to which LEAs have a right of access in order to monitor provision made for children with special educational needs.

The final part of the Act covering Sections 175-217 is described as the **miscellaneous and general sections**.

### **Welfare of Children and Consultation with pupils**

By Section 175 a LEA must make arrangements for ensuring that the functions conferred on them in their capacity as LEA are exercised with a view to safeguarding and promoting the welfare of children. Similarly the governing body of a maintained school shall make arrangements for

ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.

Section 176 confers a duty upon the LEA and governing bodies to have regard to any guidance published from time to time by the Secretary of State about consultation with pupils in connection with the taking of decisions affecting them. Any guidance published under this Section will provide for a pupil's views to be considered in the light of his age and understanding. The duty to consult does not include nursery schools or a child who has been provided with nursery education.

Neither of these provisions appeared in the original draft of the Education Bill and draft guidance relating to the welfare of children and pupil participation is expected during the autumn.

### **Definition of Secondary Education extended**

Section 177 extends the definition of secondary education to include education received partly at a school and partly at another institution. This Section reflects the fact that education is increasingly being delivered in more than one setting, partly in respect of vocational training in the workplace. The Section also amends the definition of secondary education so as to make it clear that it includes vocational, social, physical and recreational training. In this respect the definition of secondary education is brought in line with the definition of further education.

Section 5 of the Learning and Skills Act 2000 enables the Learning and Skills Council to fund educational training at a further education sector college for pupils in the final two years of compulsory schooling. Section 178 extends that to enable the Learning and Skills Council to fund educational training for such students provided at the premises of an employer.

The age range for Ofsted/Adult Learning Inspectorate Area Inspections is extended in age range from 16-19 to 14-19. Additionally the right of entry for school inspectors, which is at present limited to the premises of schools, is extended to include other premises where schools have arranged for educational provision to be made for pupils aged 14-16.

### **Extension of right of entry for Ofsted**

Section 180 makes provision about the rights of entry of inspectors carrying out inspections of LEAs under Section 38 of the Education Act 1997 and their rights to inspect documents.

The existing legislation limits the right of entry to premises of the LEA being inspected and schools maintained by that authority. The new Section provides for that right of entry to be extended to other premises on which education is being provided under arrangements made by the LEA (other than private houses).

The right of entry is accompanied by rights to inspect and copy records and documents including, computer records. These powers are backed up by an offence to wilfully obstruct

the inspector or any person assisting him in the exercise of his functions in relation to the inspection.

A person guilty of such an offence shall be liable on summary conviction to a fine.

### **Maintenance Allowances**

Under sections 181-185 the Secretary of State may make regulations which would enable people to receive a regular maintenance allowance if they are taking part in secondary education, FE or training. Payments of this type would be similar to the system of Education Maintenance Allowances currently being piloted.

Regulations may provide for the size of payments, income tests to determine eligibility, how long payments can be made for and the establishment of appeals mechanisms.

Section 182 defines learning agreements as a document which sets out certain conditions relating to attendance at a school, college or training centre, good conduct, and production of assignments.

The Regulations may make it necessary that a student should have signed a learning agreement in order to be able to receive a regular maintenance allowance. The Regulations could also require that maintenance payments be stopped if a student fails to comply with the terms of the agreement.

The current education maintenance allowance scheme is administered by the LEA however Section 183 enables the Secretary of State to transfer any functions arising from

Regulations to the Learning and Skills Council or to a LEA.

### **Student Loans**

Section 186 provides the basis for the Secretary of State to implement plans to pay off loans for newly qualified teachers in shortage subjects in maintained schools or the FE sector by putting in place arrangements to pay off over time the student loans of any person who meets eligibility requirements to be specified in Regulations. The Section gives the power to write off or repay any loans made to English or Welsh students but also including loans entered into outside England and Wales in order to bring the provisions in line with EU law.

### **Education Action Zones (EAZs)**

Section 187 and Schedule 15 amend provisions of the SSFA 1998 relating to EAZs. It adds to the schools that are eligible to participate in education action zones to include nursery schools, PRUs and independent schools. However, these additional types of schools can only participate with the consent of the Secretary of State.

Education Action Forums are given the power to amend their governing Instrument with the consent of the Secretary of State.

A Forum will also be able to add or remove a school from the EAZ subject to the consent of both the Secretary of State and the governing body of that school.

The functions of a Forum are expanded to add broader educational objects to allow other educational

activities to be carried out subject to the consent of the Secretary of State.

These are described as any other activities which a Forum considers will promote the provision of, or access to, education whether in a participating school or otherwise. This allows EAZs to link closely to other programmes such as those designed to improve nursery education or to improve access to higher education.

### **School Inspections**

Section 188 and Schedule 16 make amendments to the School Inspections Act 1996.

The duty of a Chief Inspector to advise about the efficiency of financial management is amended to create a wider duty relating to the quality of the leadership in and management of those schools, including whether the financial resources made available to those schools are managed efficiently. Similar amendment is made in the duty placed upon the registered inspector in respect of reports.

The ability of the Chief Inspector to use members of the Inspectorate rather than a registered inspector to carry out an inspection under Section 10 is extended. This provision is expected to reduce the number of separate visits by inspectors to schools. Working further to reduce the burden on schools is the provision to enable members of the Inspectorate to act as team members assisting registered inspectors in school inspections.

Schools post-inspection action plans will now only be required by the Chief Inspectors in respect of schools for which the inspection report stated that special measures are required or that the school has serious weaknesses in an attempt to further remove the administrative burden from schools.

Section 190 clarifies the legal position of LEAs that engage in the award or authentication of educational qualifications. It ensures that LEAs are able to develop, deliver and award qualifications and may charge a fee in respect of those services. The Section also enables the LEA to make arrangements with other persons and form, participate in or be members of a body corporate in order to exercise these powers.

### **Provision of Services – Transport**

Section 199 and Schedule 19 are intended to give effect to improved planning, coherence and publicity of local transport policies for pupils of Sixth Form age.

The amendments give LEAs a co-ordinating role in developing policies with key partners to provide effective and efficient transport arrangements for post 16 students.

The Education Act 1996 is amended so as to include a new duty upon an LEA to prepare a transport policy statement for each academic year specifying the arrangements for the provision of transport that the authority consider necessary for facilitating the attendance of persons of Sixth Form age.

The statement must specify the arrangements to be made by

governing bodies of schools maintained by the authority and institutions within the FE sector in the authority's area for the provision of transport for facilitating the attendance of such persons.

The amendment also requires governing bodies to co-operate in giving the LEA any information and other assistance that is reasonably required for the performance of these functions.

The statement should be published on or before the 31 May in the year in which the academic year in question begins. The statement must also include the arrangements for facilitating the attendance of disabled persons and persons with learning difficulties.

LEAs can make transport arrangements over and above those set out in the policy statement allowing the LEA and its partners flexibility to respond to changing or unforeseen circumstances where particular cases occur that are not contained in their policy statement.

### **Provision of Meals**

Section 201 replaces the existing provisions relating to school meals and milk in the Education Act 1996 by substituting for Section 512 three new sections. The new Section 512 sets out the LEAs functions in relation to the provision of meals, milk and other refreshments.

The legislation extends entitlement for free school meals to eligible children of nursery age who attend settings outside of the maintained sector, who are in receipt of government funded nursery education. The legislation also applies to maintained schools and

maintained nursery schools, and children in funded nursery education.

The new Section 512ZB also makes the provision of free lunches conditional on a request for free lunches being made by or on behalf of a child. This brings the law into line with current practice and ensures that LEAs have legislative backing to resist requests for monetary compensation for the loss of free meals where no application has been made.

### **Base Line Assessments**

Section 204, which removes the statutory requirement on schools to carry out base line assessments of children, comes into effect on 2 September 2002. Statutory base line assessment will be replaced by the foundation stage profile which will be completed at the end of the foundation stage for all children in government funded early year settings.

### **Nuisance or Disturbance on Educational Premises**

Section 206 and Schedule 20 amend Section 547 of the Education Act 1996 to extend its provisions to non-maintained special schools, independent schools and LEA maintained facilities providing instruction or leadership in sporting, recreational or outdoor activities such as LEA outdoor education centres.

The scope of the existing provision is extended and there is a consequential extension of the powers of the Police and persons authorised by the relevant bodies responsible for these educational institutions to remove trespassers

believed to be committing the offence and to bring forward proceedings against them.

### **Recoupment**

Sections 207 and 208 refer to inter authority recoupment and the adjustment between LEAs. Inter authority recoupment occurs when a child is educated outside the LEA in which he or she lives. In these circumstances, the LEA providing the education is entitled to recoup the additional costs it faces, in making that provision, from the home LEA.

The Sections remove the Secretary of State's current role in settling disputes between LEAs in England about the amounts to be paid. It also makes provision for recoupment as between LEAs in England, Wales and Scotland.

### **August 2003**

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