



# Education Act 2002

## 2002 CHAPTER 32

### PART 1

#### PROVISION FOR NEW LEGAL FRAMEWORKS

### CHAPTER 1

#### POWERS TO FACILITATE INNOVATION

## **1 Purpose and interpretation of Chapter 1**

- (1) The purpose of this Chapter is to facilitate the implementation by qualifying bodies of innovative projects that may—
  - (a) in the opinion of the Secretary of State, contribute to the raising of the educational standards achieved by children in England, or
  - (b) in the opinion of the National Assembly for Wales, contribute to the raising of the educational standards achieved by children in Wales.
- (2) In forming an opinion as to whether a project may contribute to the raising of the educational standards achieved by children in England or Wales, the Secretary of State or the National Assembly for Wales shall—
  - (a) 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
  - (b) consider the likely effect of the project on all the children who may be affected by it.
- (3) In this Chapter—
  - “the Chief Inspector” means—
    - (a) in relation to England, Her Majesty’s Chief Inspector of Schools in England, and

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- (b) in relation to Wales, Her Majesty’s Chief Inspector of Education and Training in Wales;
  - “children” means persons under the age of nineteen;
  - “education legislation” means—
    - (a) the Education Acts (as defined by section 578 of the Education Act 1996 (c. 56)),
    - (b) the Learning and Skills Act 2000 (c. 21), and
    - (c) any subordinate legislation made under any of those Acts;
  - “qualifying body” means—
    - (a) a local education authority,
    - (b) an Education Action Forum,
    - (c) the governing body of a qualifying school, or
    - (d) the proprietor of any special school that is not maintained by a local education authority but is for the time being approved by the Secretary of State or the National Assembly for Wales under section 342 of the Education Act 1996;
  - “qualifying school” means—
    - (a) a community, foundation or voluntary school or a community or foundation special school,
    - (b) a maintained nursery school,
    - (c) a city technology college,
    - (d) a city college for the technology of the arts, or
    - (e) an Academy;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## 2 Power to suspend statutory requirements etc.

- (1) On the application of one or more qualifying bodies (“the applicant”), the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may for the purpose of this Chapter by order make provision—
  - (a) conferring on the applicant exemption from any requirement imposed by education legislation;
  - (b) relaxing any such requirement in its application to the applicant;
  - (c) enabling the applicant to exercise any function conferred by education legislation on any other qualifying body (either concurrently with or in place of that other body);
  - (d) making such modifications of any provision of education legislation, in its application to the applicant or any other qualifying body, as are in the opinion of the Secretary of State or the Assembly consequential on any provision made by virtue of any of paragraphs (a) to (c).
- (2) An order under this section shall have effect during a period specified in the order which, subject to section 3(2), must not exceed three years.
- (3) Before making an order under this section, the Secretary of State or the National Assembly shall, if he or it considers it appropriate to do so, consult the Chief Inspector.
- (4) No order under this section which relates to sections 119 to 129 may be made by the National Assembly for Wales without the consent of the Secretary of State.

- (5) The Secretary of State or the National Assembly for Wales shall refuse an application for an order under this section if it appears to the Secretary of State or the Assembly that the proposed order would be likely to have a detrimental effect on the education of children with special educational needs.
- (6) The Secretary of State or the National Assembly for Wales may from time to time give guidance as to the matters which the Secretary of State or the Assembly will take into account in determining whether to grant applications for orders under this section.
- (7) No order under this section, except an amending or revoking order made by virtue of section 3, may be made after the end of the period of four years beginning with the commencement date.
- (8) In subsection (7) “the commencement date” means—
  - (a) in relation to an order made by the Secretary of State, the day on which this section comes into force in relation to England, and
  - (b) in relation to an order made by the National Assembly for Wales, the day on which this section comes into force in relation to Wales.
- (9) The effect of an order under this section is to be disregarded in determining for the purposes of section 1 of the Regulatory Reform Act 2001 (c. 6) (power by order to make provision reforming law which imposes burdens) whether any provision of an Act falls within subsection (4)(b) of that section (provisions amended by subordinate legislation within previous two years).

### **3 Variation or revocation of orders under section 2**

- (1) The power conferred on the Secretary of State and the National Assembly for Wales by section 2 includes—
  - (a) power by a further order made under that section on an application made for the purposes of that section by one or more qualifying bodies, to amend any order previously made under that section so as to extend—
    - (i) the requirements or functions in relation to which the order applies,
    - (ii) the qualifying bodies to which it applies, or
    - (iii) subject to subsection (2), the period during which it has effect, and
  - (b) power by a further order under that section, which may be made without any application from a qualifying body, to revoke any order previously made under that section.
- (2) An order made under section 2 by virtue of subsection (1)(a)(iii) of this section may, on one occasion only, extend the period for which a previous order under that section has effect by a period of not more than three years from the end of the period originally specified in the previous order.

### **4 Applications for orders under section 2**

- (1) An application for the purposes of section 2 must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (2) Before making such an application, the qualifying body shall—

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- (a) in the case of an Education Action Forum, consult each local education authority by whom any participating school, as defined by section 10(6)(b) of the School Standards and Framework Act 1998 (c. 31), is maintained,
  - (b) in the case of the governing body of a school maintained by a local education authority, consult that authority, and
  - (c) in any case, consult such persons (or other persons) as appear to the qualifying body to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (3) The Secretary of State or the National Assembly for Wales may with the consent of the applicant include in an order under section 2 provisions different from those requested in the application.

## 5 Annual report

- (1) Where the Secretary of State has made any order under section 2 in any academic year, he shall—
- (a) prepare a report on all the orders made by him under that section in that academic year, and
  - (b) lay a copy of the report before each House of Parliament.
- (2) Where the National Assembly for Wales has made any order under section 2 in any academic year, the Assembly shall prepare and publish a report on all the orders made by the Assembly under that section in that academic year.
- (3) In this section “academic year” means a period beginning with 1st August and ending with the next 31st July.

## CHAPTER 2

### EXEMPTIONS RELATED TO SCHOOL PERFORMANCE

## 6 Interpretation of Chapter 2

- (1) For the purposes of this Chapter a maintained school is a “qualifying school” at any time if it is a school of a prescribed description which satisfies prescribed criteria relating to one or more of the following—
- (a) the performance of the school,
  - (b) the quality of the leadership in the school, and
  - (c) the quality of the management of the school.
- (2) The criteria prescribed for the purposes of subsection (1) may include criteria referring to the opinion of the Chief Inspector, the Secretary of State or the National Assembly for Wales.
- (3) For the purposes of this Chapter a school teacher is “employed” at a school if he works at the school under a contract falling within paragraphs (b), (c) and (d) of section 122(3).
- (4) In this Chapter—  
“the Chief Inspector” has the meaning given by section 1(3);

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“curriculum provision” means—

(a) in relation to a maintained school maintained by a local education authority in England, any provision of the National Curriculum for England, and

(b) in relation to a maintained school maintained by a local education authority in Wales, any provision of the National Curriculum for Wales;

“maintained school” means a community, foundation or voluntary school or a community or foundation special school;

“pay and conditions provision” means any provision of an order under section 122;

“school teacher” has the same meaning as in section 122.

## **7 Exemptions available to qualifying schools**

(1) Regulations may for the purposes of this section—

(a) designate any curriculum provision or pay and conditions provision as attracting exemption as of right,

(b) designate any curriculum provision or pay and conditions provision as attracting discretionary exemption,

(c) designate modifications of any curriculum provision or pay and conditions provision as being available as of right, and

(d) designate modifications of any curriculum provision or pay and conditions provision as being available on a discretionary basis.

(2) On the application of the governing body of a qualifying school, the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may by order—

(a) provide that any pay and conditions provision which is designated under subsection (1)(a) or (b) and specified in the order is not to apply in relation to school teachers employed at the school,

(b) provide that any pay and conditions provision which is designated under subsection (1)(c) or (d) is to apply in relation to school teachers employed at the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis,

(c) provide that any curriculum provision which is designated under subsection (1)(a) or (b) and specified in the order is not to apply in relation to the school,

(d) provide that any curriculum provision which is designated under subsection (1)(c) or (d) is to apply in relation to the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis, or

(e) revoke or vary any order previously made under this subsection.

(3) Where an application under subsection (2) by a qualifying school—

(a) relates only to exemption from provisions that are designated under subsection (1)(a) as attracting exemption as of right or to modifications that fall within the modifications designated under subsection (1)(c) as being available as of right (or only to such exemption and such modifications), and

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- (b) does not relate to the revocation or variation of an order previously made under subsection (2),
- the Secretary of State or, as the case may be, the National Assembly for Wales shall make the order requested.
- (4) The Secretary of State or the National Assembly for Wales may from time to time give guidance as to the matters which the Secretary of State or the Assembly will take into account in determining whether to grant applications under subsection (2) which relate to—
- (a) provisions which are designated under subsection (1)(b) as attracting discretionary exemption, or
  - (b) modifications which fall within the modifications designated under subsection (1)(d) as being available on a discretionary basis.
- (5) No regulations under subsection (1) which relate to a pay and conditions provision may be made by the National Assembly for Wales without the consent of the Secretary of State.

## **8 Applications for orders under section 7(2)**

- (1) An application for the purposes of section 7(2) must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (2) Before making such an application, the governing body shall—
- (a) consult the local education authority,
  - (b) where the application relates to a curriculum provision, consult the parents of registered pupils at the school,
  - (c) where the application relates to a pay and conditions provision, consult each school teacher employed at the school, and
  - (d) in any case, consult such other persons as appear to them to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales.
- (3) The Secretary of State or the National Assembly for Wales may with the consent of the applicant include in an order under section 7(2) provisions different from those requested in the application.

## **9 Removal of exemptions**

Where—

- (a) the Secretary of State or the National Assembly for Wales has made an order under subsection (2) of section 7 in relation to a school (“the exemption order”), and
- (b) since the making of the exemption order, the school has ceased to be a qualifying school,

the Secretary of State or the Assembly may, without any application by the governing body, make an order under that subsection which revokes the exemption order or varies the exemption order so as to restrict any exemption conferred by it.

## **10 Determination of pay and conditions during and after exemption**

- (1) Where an order under section 7(2) which relates to a pay and conditions provision is in force in relation to a school—
  - (a) the governing body shall determine the remuneration and other conditions of employment of each school teacher employed at the school, to the extent that by virtue of the order the pay and conditions provisions do not apply to him,
  - (b) the local education authority shall do anything necessary to give effect to the governing body's determination under paragraph (a), and
  - (c) pending a determination under paragraph (a), the terms on which a school teacher is employed at the school shall remain unchanged (irrespective of any new order under section 122 except so far as applying to him despite the effect of the order under section 7(2)).
- (2) The Secretary of State may make regulations about the application of section 122(2) where an order under section 7(2) is revoked or the exemption conferred by it is restricted.

## **CHAPTER 3**

### **POWERS TO FORM COMPANIES ETC**

## **11 Powers of governing bodies to form or invest in companies to provide services etc.**

- (1) The governing body of a maintained school may form, or participate in forming, companies—
  - (a) to provide services or facilities for any schools,
  - (b) to exercise relevant local education authority functions, or
  - (c) to make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons.
- (2) The governing body of a maintained school may, with a view to securing or facilitating—
  - (a) the provision by a company of services or facilities for any schools,
  - (b) the exercise by a company of relevant local education authority functions, or
  - (c) the making by any person of arrangements of the kind referred to in subsection (1)(c),invest in the company which is to provide the services or facilities or exercise the functions or by which the arrangements are to be made or facilitated.
- (3) The governing body of a maintained school may form, or participate in forming, companies to purchase services or facilities for that school and other participating schools.
- (4) The governing body of a maintained school may, with a view to securing or facilitating the purchase by a company of services or facilities for that school and other participating schools, become a member of the company.
- (5) The governing body of a maintained school may provide staff to any company in relation to which they have exercised a power conferred by any of subsections (1) to (4).

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- (6) Subsections (1) to (4) have effect subject to section 12.
- (7) In exercising the power conferred by subsection (5) the governing body of a maintained school shall have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.
- (8) This section is without prejudice to any powers of the governing body of a maintained school exercisable otherwise than by virtue of this section.
- (9) In this section and section 12—
- “company” means a company registered under the Companies Act 1985 (c. 6) as a company limited by shares or a company limited by guarantee;
  - “relevant local education authority functions”, in relation to a company, means any such functions of any local education authority as are or may become exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment;
  - “facilities” includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus;
  - “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;
  - “participating school”, in relation to a company, means a school whose governing body is, or is to be, a member of the company.
- (10) References in this section and section 12 to investing in a company include references to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

## **12 Limits on powers conferred by section 11**

- (1) The governing body of a maintained school may not exercise any power conferred by any of subsections (1) to (4) of section 11 except—
- (a) with the consent of the local education authority, and
  - (b) at a time when the school has a delegated budget (within the meaning of Part 2 of the School Standards and Framework Act 1998 (c. 31)).
- (2) A governing body—
- (a) may not exercise any of those powers in relation to a company unless the company satisfies any applicable requirements of regulations under subsection (3), and
  - (b) may not, by virtue of section 11, remain a member of a company at any time when the company fails to satisfy any such requirements.
- (3) Regulations—
- (a) shall provide that, except in such cases as may be prescribed, the company must be prohibited by its constitution from admitting to its membership any person who is not of a prescribed description, and
  - (b) may impose requirements with respect to—
    - (i) the constitution of the company, and
    - (ii) any other matter connected with the company’s affairs.



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- (4) Without prejudice to the generality of paragraph (b) of subsection (3), regulations under that paragraph may require that the company be prohibited by its constitution from borrowing money, except with the consent of a prescribed person.
- (5) Regulations shall—
  - (a) provide that where one or more governing bodies have invested in a company by virtue of section 11, a local education authority shall be designated as the supervising authority for the company,
  - (b) specify the persons by whom and the manner in which the power of designation is, or is in specified circumstances, exercisable,
  - (c) make provision about the duties of a local education authority who are for the time being designated as the supervising authority for a company.
- (6) Regulations may also—
  - (a) require that where a local education authority are for the time being designated as the supervising authority for a company the company shall provide prescribed information relating to its financial affairs to them at such times and in such manner as may be prescribed,
  - (b) provide that in prescribed circumstances a local education authority who are for the time being so designated may direct any participating governing body to cease to be a member of the company or to take any other prescribed action in relation to the company, and
  - (c) prescribe the procedure for making such a direction.
- (7) In subsection (6)(b) “participating governing body”, in relation to a company, means any governing body of a maintained school who are a member of the company.
- (8) Regulations may restrict the circumstances in which a local education authority may refuse to give any consent applied for under subsection (1).

### **13 General powers of Secretary of State in relation to companies**

- (1) The Secretary of State may, if he considers it expedient to do so for purposes connected with any function of his relating to education—
  - (a) form, or participate in forming, companies to carry on any activities which he considers likely to secure or facilitate the achievement of those purposes, or
  - (b) invest in any company which is to carry on such activities.
- (2) In this section “education” includes—
  - (a) vocational training (including the preparation of young people for employment in general), and
  - (b) social and physical training (including the promotion of the development of young children),but does not include higher education.
- (3) In this section “company” means a company within the meaning of the Companies Act 1985 (c. 6).
- (4) The reference in subsection (1) to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

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- (5) This section is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of this section.