
WELSH STATUTORY INSTRUMENTS

2002 No. 3185 (W.301) (C.107)

EDUCATION, WALES

The Education Act 2002 (Commencement
No. 1) (Wales) Order 2002

Made - - - - 18th December 2002

The National Assembly for Wales, in exercise of the power conferred upon it by section 216(3), (4) (b), (5) of the Education Act 2002⁽¹⁾, hereby makes the following Order:

Name, Application and Interpretation

1. This Order is called Education Act 2002 (Commencement No. 1) (Wales) Order 2002.
2. This Order applies only in relation to Wales except in relation to—
Part 7,
sections 191 to 196 and Schedule 18,
paragraphs 5(1) to (4), (6) and 6 to 8 of Schedule 17 and section 189 so far as relating to those paragraphs,
Part 2 of Schedule 22 and section 215(2) so far as relating to that Part.
3. In this Order, unless otherwise stated, references to Parts, sections and Schedules are references to Parts and sections of and Schedules to the Education Act 2002.

Appointed days

4. The day appointed for the coming into force of the provisions specified in Part I of the Schedule to this Order is 19th December 2002.
5. The day appointed for the coming into force of the provisions specified in Part II of the Schedule to this Order is 31st March 2003.
6. The day appointed for the coming into force of the provisions specified in Part III of the Schedule to this Order is 1st September 2003.

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Transitional provisions and savings

7. Despite the coming into force of section 49, and without prejudice to section 16(1) (c) of the Interpretation Act 1978⁽²⁾, sections 86(3) (b) and 91 of the School Standards and Framework Act 1998⁽³⁾ (special arrangements to preserve religious character of foundation or voluntary aided school) are to continue to have effect in relation to a maintained school's admission arrangements for any school year earlier than 2004 to 2005.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁴⁾.

18th December 2002

D. Elis-Thomas
The Presiding Officer of the Assembly

(2) 1978 c. 30.
(3) 1998 c. 31.
(4) 1998 c. 38.

SCHEDULE

Articles 4, 5 and 6

PART 1**PROVISIONS COMING INTO FORCE ON 19th DECEMBER 2002**

PROVISION	SUBJECT MATTER
Section 49	Repeal of power to make certain special arrangements for preserving religious character
Sections 54, 55, 56	Schools causing concern
Section 75 in so far as it relates to provisions of Schedule 10 below	Establishment etc of schools: changes to existing procedures
Sections 97, 98, 99(1), 100 except subsections (1)(b), (2)(b) and (5), 101 except subsection (3)(b), 103, 105 to 107, 108 except subsections (1)(a), (2) and (6), 109, 111 to 118	The Curriculum in Wales
Section 131	Appraisal of school teachers
Sections 132, 133, 134 (1), (4) and (5), 135	School teachers' qualifications
Section 141	Teachers — health and fitness
Section 145	Teachers' qualifications — general
Section 148 in so far as it relates to provisions of Schedule 12 below	General Teaching Council for Wales
Section 151(2)	Childcare functions of National Assembly for Wales
Section 152 in so far as it relates to provisions of Schedule 13 below	Regulation of childminding and day care
Section 179(1), (4), (5) and (6)	Rights of entry in relation to inspections
Section 180	Inspections of LEAs: rights of entry, etc
Section 188 in so far as it relates to provisions of Schedule 16 below	School inspections
Section 189 in so far as it relates to provisions of Schedule 17 below	Amendments of Part 5 of Education Act 1997
Sections 191 to 194	Regional provision of education for children with special educational needs
Section 196	Publication and provision of material
Section 215(1) in so far as it relates to provisions of Schedule 21 below	Minor and consequential amendments
Section 215(2) in so far as it relates to provisions of Schedule 22 below	Repeals
Schedule 5	Schools causing concern

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PROVISION	SUBJECT MATTER
Schedule 10, Paragraphs 1, 6, 11 and 15	Establishment etc of schools: procedural changes
Schedule 12, Paragraphs 1, 2, 4(1) and (3), 6 and 7	General Teaching Council for Wales
Schedule 13, Paragraphs 1 to 3, 5, 6, 7(1), (3), 8	Regulation of childminding and day care
Schedule 16, Paragraphs 4 to 9	School inspections
Schedule 17, Paragraphs 5 (1) — (4), (6), 6 to 8 Wales	Qualifications, Curriculum and Assessment Authority for
Schedule 21, amendments	Minor and Consequential
Paragraph 8, Paragraph 11, Paragraph 13, Paragraph 16, Paragraph 19, Paragraphs 20 and 21, Paragraphs 31, 32 and 33, Paragraph 45, Paragraph 46 (except sub-paragraph (6)), Paragraph 47 (except sub-paragraph (3)), Paragraph 48, Paragraph 51, Paragraph 53, Paragraph 57 (except sub-paragraph (a)), Paragraph 59 (except sub-paragraph (a)) , Paragraph 66, Paragraph 70, Paragraph 74, Paragraph 76 (except sub-paragraph (b)), Paragraph 78, Paragraph 81, Paragraph 85 (except sub-paragraph (b)),	

PROVISION	SUBJECT MATTER
Paragraphs 87 and 88, Paragraphs 95 and 96, Paragraph 98(1) and (2) (except sub-paragraphs (b) and (c)), Paragraph 99(1) and (3) (except sub-paragraph (a)), Paragraphs 104 and 105, Paragraphs 108 and 109, Paragraph 113 (except sub-paragraphs (a) to (d), (f) and (g)), Paragraph 114, Paragraph 117, Paragraph 118(1), (2), (3) (except sub-paragraph (b)), (4) (except sub-paragraph (a) (ii)) and (5), Paragraph 126(1), (2) in so far as it relates to the amendments of paragraphs 21 and 29 of Schedule 7 to the Learning and Skills Act 2000 ⁽⁵⁾ and (3) in so far as it relates to the amendment of paragraph 39 of Schedule 7 to the Learning and Skills Act 2000.	
<i>In Schedule 22, Part 2, the repeal of—</i> Education Act 1997 ⁽⁶⁾ , in section 29, in subsection (2), paragraph (f) and the word “and” immediately preceding it, in section 32(3), the words “or approved” and the words “and subject to such conditions”;	Repeals
<i>In Schedule 22, Part 3, the repeal of—</i> Education (No. 2) Act 1986 ⁽⁷⁾ , section 49; Children Act 1989 ⁽⁸⁾ , in section 79M(1), the word “or” at the end of paragraph (a), in section 79U, subsection (5) and in subsection (9), the definition of “authorised inspector” ; Further and Higher Education Act 1992 ⁽⁹⁾ , in section 23(4), paragraph (b) and the word “and” immediately preceding it, sections 39 to 42, section 60;	

(5) 2000 c. 21.
(6) 1997 c. 44.
(7) 1986 c. 61.
(8) 1989 c. 41.
(9) 1992 c. 13.

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PROVISION	SUBJECT MATTER
Education Act 1996(10), sections 350 to 369, section 408(4)(a), in section 409(1), the words “with the approval of the Secretary of State and”;	
School Inspections Act 1996(11), in section 6(3) the word “and” at the end of paragraph (a), in section 16(3) the word “and” preceding paragraph (d);	
Teaching and Higher Education Act 1998(12), section 1(8), in section 3 the words “within the meaning of section 218(2) of the Education Reform Act 1988”;	
School Standards and Framework Act 1998(13), section 16(4) and (13), in section 22(1), in paragraph (b) the words “under section 28 or 31” and in paragraph (c) the words “under section 28”, sections 86(3)(b) and 91, in Schedule 6, in paragraph 10(6), the words “or (5)”, in Schedule 28, paragraph 4(1);	
Learning and Skills Act 2000(14), sections 130 to 132 and 148(2), in Schedule 9, paragraphs 26, 30, 35, 59(6)(b).	

PART II

PROVISIONS COMING INTO FORCE ON 31ST MARCH 2003

PROVISION	SUBJECT MATTER
Sections 14 to 17 and 18(2)	Financial assistance for education and childcare
Sections 142 to 144	Teachers — misconduct
Section 146 in so far as it relates to the repeal of sections 218(2B), (6), (6ZA), (6A), (6B), (7) and 218A of the Education Reform Act 1988(15)	Repeal of sections 218 and 218A of Education Reform Act 1988
Section 148 in so far as it relates to provisions of Schedule 12 below	General Teaching Council for Wales
Section 149	Duties of LEA in respect of childcare
Section 150	Early years development and childcare partnerships and plans

- (10) 1996 c. 56.
 (11) 1996 c. 57.
 (12) 1998 c. 30.
 (13) 1998 c. 31.
 (14) 2000 c. 21.
 (15) 1988 c. 40.

PROVISION	SUBJECT MATTER
Section 195 in so far as it relates to provisions of Schedule 18 below	Special Educational Needs Tribunals for Wales
Section 200	Remission of charges relating to residential trips
Section 201(1) except in so far as it relates to subsection (1)(c) of the new section 512 of the Education Act 1996, (2) and (3)	LEA functions concerning school lunches, milk, etc.
Section 215(1) in so far as it relates to provisions of Schedule 21 below	Minor and consequential amendments
Section 215(2) in so far as it relates to provisions of Schedule 22 below	Repeals
Schedule 12,	General Teaching Council for Wales
Paragraph 12(1) and (2)	
Schedule 18,	Special Educational Needs Tribunal for Wales
Paragraphs 1, 4, 5 and 7, Paragraph 8 in so far as it inserts a new subsection (2) of section 28H of the Disability Discrimination Act 1995, Paragraphs 13 to 15	
Schedule 21,	Minor and consequential amendments
Paragraph 9,	
Paragraph 49,	
Paragraph 54,	
Paragraph 71 in so far as it relates to section 49(2) and (3) of the Education Act 1997,	
Paragraph 72,	
Paragraph 73,	
Paragraph 75,	
Paragraph 76 in so far as not already in force,	
Paragraph 77,	
Paragraph 83,	
Paragraph 85 in so far as not already in force,	
Paragraph 86,	
Paragraph 120,	
Paragraph 121,	
Paragraph 122 except sub-paragraph (b),	
Paragraph 123,	

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PROVISION	SUBJECT MATTER
Paragraph 128.	
<i>In Schedule 22, Part 3, the repeal of—</i>	Repeals
Education Reform Act 1988 (16) , sections 218 (2B), (6), (6ZA), (6A), (6B), (7) and 218A;	
Children Act 1989 (17) , in section 19, subsections (1) and (2) and in subsection (4) the words “the two authorities, or in Scotland,”;	
Education Act 1997 (18) , section 49(2) and (3);	
Police Act 1997 (19) , in section 113, in subsection (3A), paragraph (a)(ii) and (iii) and in subsection (3B), paragraph (c) and the words from “and the reference” to the end, section 115 (6A)(a) (ii) and (iii);	
Teaching and Higher Education Act 1998, in Schedule 2, paragraph 1(5);	
School Standards and Framework Act 1998, section 115, in section 119(5), the word “and” at the end of paragraph (a), in section 120(2) (a) the words “of proposals” and “and” in section 121, in subsection (1), the words “the authority’s statement of proposals” and in subsection (9) the words “early years development”;	
Protection of Children Act 1999 (20) , section 5, in section 7, subsection (1) (a) (ii) and (iii), the word “and” immediately preceding subsection (2)(c) and subsection (4), in section 9(2), the word “or” at the end of paragraph (d), in section 12(2) the definition of “the 1988 Act”;	
Immigration and Asylum Act 1999 (21) , in Schedule 14, paragraph 117;	
Criminal Justice and Court Services Act 2000 (22) , section 35(5), in Schedule 7, paragraph 83.	

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- (16) 1988 c. 40.
 - (17) 1989 c. 41.
 - (18) 1997 c. 44.
 - (19) 1997 c. 50.
 - (20) 1999 c. 14.
 - (21) 1999 c. 33.
 - (22) 2000 c. 43.

PART III

PROVISIONS COMING INTO FORCE ON 1ST SEPTEMBER 2003

PROVISION	SUBJECT MATTER
Section 195 in so far as it relates to provisions of Schedule 18 below	Special Educational Needs Tribunal for Wales
Section 215(2) in so far as it relates to provisions of Schedule 22 below	Repeals
Schedule 18, Paragraphs 2, 3, 6, 8 (in so far as not already in force), 9 to 12 and 16 to 18	Special Educational Needs Tribunal for Wales
<i>In Schedule 22, Part 2, the repeal of—</i>	Repeals
Disability Discrimination Act 1995(23), section 28J(4);	
Special Educational Needs and Disability Act 2001 (24), Section 42(2), in Schedule 8, paragraph 2.	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force in Wales on 19 December 2002 those provisions of the Education Act 2002 specified in Part I of the Schedule to this Order. It also brings into force on 31st March 2003 those provisions specified in Part II of the Schedule, and on 1st September 2003 those provisions specified in Part III of the Schedule. The Order also makes transitional provisions in relation to admission arrangements.

The effect of the provisions specified in Part I of the Schedule is as follows—

Section 49 repeals section 91 of the School Standards and Framework Act 1998 which allows a foundation or voluntary aided school which has a religious character to make special arrangements in its admission arrangements to preserve its religious character.

Sections 54 to 56 and Schedule 5 make provision in relation to schools causing concern. Section 54 inserts a new section 16A of the School Inspections Act 1996 which requires the Chief Inspector of Education and Training in Wales to notify the National Assembly for Wales (“the National Assembly”) where an inspector is of the opinion that a school has serious weaknesses or requires special measures. Section 55 amends section 15 of the School Standards and Framework Act 1998 (“the 1998 Act”) which sets out the cases where an LEA may use their powers of intervention. The amendments provide that section 15 of the 1998 Act applies to schools having serious weaknesses or requiring special measures when the National Assembly has been given notice under section 16A of the School Inspections Act 1996. Section 56 amends sections 18 and 19 of the 1998 Act so as to

(23) 1995 c. 50

(24) 2001 c. 10.

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provide that the National Assembly's powers to appoint additional governors and to direct an LEA to discontinue a school apply to schools having serious weaknesses as well as those requiring special measures. Schedule 5 makes amendments to the 1998 Act consequential on sections 55 and 56.

Section 75 and Schedule 10, paragraphs 1, 6, 11 and 15 amend Schedule 6 to the 1998 Act and Schedule 7 to the Learning and Skills Act 2000, so as to provide that proposals to establish, alter or discontinue schools, or proposals relating to inadequate sixth forms, which are approved conditionally by the National Assembly are not to be treated as rejected if the condition is not met, but are to be considered afresh.

Sections 97, 98, 99(1), 100 (except sub-sections (1)(b), (2)(b) and (5)), 101 (except sub-section (3)(b)), 103, 105 to 107, 108 (except sub-sections (1)(a), (2) and (6)), 109, 111 to 118 re-enact provisions in the Education Act 1996 relating to the National Curriculum, making provision for a separate National Curriculum for Wales. The provisions are brought into force save in relation to the new foundation stage and maintained nursery schools.

Section 131 re-enacts and updates section 49 of the Education (No. 2) Act 1986, and enables the National Assembly to make regulations requiring the appraisal of the performance of teachers.

Sections 132, 133, 134(1), (4) and (5), 135, 141 and 145 relate to teachers' qualifications. Section 132 enables the National Assembly to make regulations determining who is a qualified teacher and requires consultation with the General Teaching Council for Wales ("the Council"). Section 133 enables the National Assembly to set out in regulations the work which only qualified teachers or other specified persons can carry out. Section 134(1), (4) and (5) enables the National Assembly to make regulations requiring qualified teachers to be registered with the Council before carrying out specified work. Section 135 enables the National Assembly to make regulations requiring head teachers to be qualified teachers and requiring head teachers appointed after the date of commencement to hold a specified qualification. Section 141 enables the National Assembly to make regulations requiring teachers to satisfy conditions in relation to their health and physical capacity. Section 145 makes general provision in relation to the specification of qualifications or courses.

Section 148 and Schedule 12, paragraphs 2, 4(1), (3), 6 and 7 amend the Teaching and Higher Education Act 1998 in relation to the Council. The amendments provide for—

- the Council's advisory functions to be extended;
- the Council to have regard to its expenditure on all its functions when setting the level of its fees; and
- the Council to be able to undertake activities to promote the standing of the teaching profession.

Section 151(2) allows the National Assembly to make an order specifying additional functions required to enable it to operate a childcare scheme under the Tax Credits Act 2002.

Section 152 and Schedule 13, paragraphs 1 to 3, 5, 6, 7(1), (3) and 8 amend the Children Act 1989, Part 10A and Schedule 9A, which make provision in relation to child minding and day care. The amendments relate to the consequences of a failure to consent to a check on a person's suitability; the effect of suspension of registration; the power to prescribe additional determinations that can be the subject of an appeal; rights of entry for authorised inspectors; the power to make regulations waiving disqualification for registration. Consequential amendments are also made to the Police Act 1997 in relation to criminal record certificates and enhanced criminal record certificates.

Section 179(1), (4), (5) and (6) amends the School Inspections Act 1996 to extend an inspector's right of entry to any premises where a school has arranged for education to be provided for pupils aged 14—16.

Section 180 amends the Education Act 1997 so as to extend the rights of entry of an inspector carrying out inspections under section 38 of that Act, to premises where education is being provided in accordance with an LEA's arrangements for educating children otherwise than at school.

Section 188 and Schedule 16, paragraphs 4 to 9 amend the School Inspections Act 1996 so as

- to enable the Chief Inspector to use a member of the Inspectorate rather than a registered inspector to carry out an inspection under section 10 of that Act, if she considers it expedient to do so;
- to enable members of the Inspectorate to act as members of the teams assisting registered inspectors in school inspections;
- enable regulations to specify additional persons to whom copies of school inspection reports must be sent;
- require a copy of a school’s action plan to be sent to the Chief Inspector only where the school requires special measures or has serious weaknesses.

Section 189 and Schedule 17, paragraphs 5(1) — (4), (6) and 6 to 8 amend Part 5 of the Education Act 1997 so as to

- extend the functions of the Qualifications, Curriculum and Assessment Authority for Wales (“ACCAC”) in relation to curriculum and assessment to children below compulsory school age;
- enable ACCAC to take into account the need to ensure that the number of accredited qualifications in similar subject areas or serving similar functions is not excessive;
- enable ACCAC to impose conditions after it accredits qualifications;
- extend ACCAC’s rights of entry and inspection in connection with its power to limit the amount of fees that can be charged by awarding bodies;
- give ACCAC a power to direct awarding bodies that have failed, or are likely to fail, to comply with conditions of accreditation.

Sections 191 to 194 make provision in connection with regional provision for special educational needs. Section 191 enables the National Assembly to direct LEAs to consider whether they could make special educational needs provision more effectively by regional provision. Section 192 enables the National Assembly to direct an LEA or governing body to make proposals in connection with the establishment of a regional school providing for children with special educational needs, or with the arrangements for the provision of education or goods and services on a regional basis. Section 193 enables the National Assembly to make proposals to secure regional provision. Section 194 makes consequential amendments to the Education Act 1996.

Section 196 requires an LEA to publish information provided to it by the National Assembly, or to provide such information to specified persons.

Section 215 and Schedules 21 and 22 make minor and consequential amendments and repeals.

The effect of the provisions specified in Part II of the Schedule is as follows:—

Sections 14 to 17 and 18(2) enable the National Assembly to give financial assistance to any person for educational purposes, education related purposes and for purposes related to childcare.

Sections 142 to 144 and 146 make provision in relation to misconduct. Section 142 enables the National Assembly, concurrently with the Secretary of State, to make directions prohibiting a person from working in schools, further education institutions or local education authorities on the grounds of misconduct, health, unsuitability to work with children, or in relation to independent schools, on the grounds of professional incompetence. Section 143 imposes duties on organisations, such as supply agencies, not to arrange for a person subject to a direction to carry out work which would contravene it. Section 144 provides for rights of appeal against the making of directions. Section 146 is commenced only so as to repeal provisions of sections 218 and 218A of the Education Reform Act 1988 relating to misconduct.

Section 148 and Schedule 12, paragraph 12(1) and (2) amend the Teaching and Higher Education Act 1998 so as to enable the Council to attach conditions to suspension orders it makes in disciplinary proceedings.

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Sections 149 and 150 amend sections 118 to 121 of the 1998 Act so as to require LEAs to carry out annual reviews of childcare provision, to establish a childcare information service, and so as to include childcare in the early years development plans and partnerships.

Section 195 and Schedule 18, paragraphs 1, 4, 5, 7, 8, 13 to 15 amend the Education Act 1996 so as to provide for a separate Special Educational Needs Tribunal for Wales. These provisions are commenced in April 2003 only for the purposes of establishing the new Tribunal, but not so as to confer any functions on the Tribunal.

Section 200 amends section 457 of the Education Act 1996 so as to enable the National Assembly to prescribe benefits or tax credits in connection with the remission of charges relating to residential trips.

Section 201 makes provision in relation to school lunches. It substitutes new sections 512, 512ZA and 512ZB of the Education Act 1996 and makes other consequential amendments. The new provisions set out LEAs' powers to provide meals, milk and other refreshments at schools, introduce a new power for the National Assembly to specify requirements to be met before an LEA is required to provide school lunches and require an LEA to charge for meals, milk and refreshments save where a person is eligible for free meals.

Section 215 and Schedules 21 and 22 make minor and consequential amendments and repeals.

The effect of the provisions specified in Part III of the Schedule is as follows—

Section 195 and Schedule 18, paragraphs 2, 3, 6, 8, 9 to 12 and 16 to 18 provide for the establishment of a separate Special Educational Needs Tribunal for Wales, so that it will hear special educational needs appeals from September 2003. The Tribunal will also hear disability discrimination claims.

Section 215(2) and Schedule 22 provide for repeals.