



Education Act 2002

2002 CHAPTER 32

PART 1

PROVISION FOR NEW LEGAL FRAMEWORKS

PROSPECTIVE

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);
 - “curriculum provision” means—

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- (a) in relation to a maintained school maintained by a [^{F1}local authority] in England, any provision of the National Curriculum for England, and
- (b) in relation to a maintained school maintained by a [^{F1}local authority] in Wales, any [^{F2}provision of the National Curriculum for Wales][^{F2}requirement imposed under or by virtue of Part 2 of the Curriculum and Assessment (Wales) Act 2021];

“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.

Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**
- F2** Words in s. 6(4) substituted (1.9.2022 for specified purposes, 1.9.2023 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 6(3)**

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

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- (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
 - (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.
- ^{F3}(5)

Textual Amendments

- F3** S. 7(5) omitted (30.9.2018) by virtue of [The Welsh Ministers \(Transfer of Functions\) Order 2018](#) (S.I. 2018/644), arts. 1(2), **39(1)**

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 [^{F1}local 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.

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Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

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 [^{F1}local 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.

Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

Modifications etc. (not altering text)

- C1** S. 10(2): functions transferred (30.9.2018) by [The Welsh Ministers \(Transfer of Functions\) Order 2018 \(S.I. 2018/644\)](#), arts. 1(2), **39(2)**

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