



# Education Act 2002

## 2002 CHAPTER 32

### PART 11

#### MISCELLANEOUS AND GENERAL

##### *General duties of LEAs and governing bodies*

VALID FROM 01/06/2004

#### **175 Duties of LEAs and governing bodies in relation to welfare of children**

- (1) A local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.
- (2) 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.
- (3) The governing body of an institution within the further education sector shall make arrangements for ensuring that their functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution.
- (4) An authority or body mentioned in any of subsections (1) to (3) shall, in considering what arrangements are required to be made by them under that subsection, 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.
- (5) In this section—

“child” means a person under the age of eighteen;

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“governing body”, in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);

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

## 176 Consultation with pupils

(1) It shall be the duty—

- (a) of a local education authority, in the exercise of any of their schools functions, and
- (b) of the governing body of a maintained school, in the exercise of any function relating to the conduct of the school,

to have regard to any guidance given from time to time by the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) about consultation with pupils in connection with the taking of decisions affecting them.

(2) Any guidance under this section must provide for a pupil’s views to be considered in the light of his age and understanding.

(3) In this section—

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

“pupil” does not include a child who is being provided with nursery education (whether at a school or elsewhere);

“schools functions”, in relation to a local education authority, means functions relating to—

- (a) maintained schools,
- (b) pupil referral units, or
- (c) the provision of education for children of compulsory school age otherwise than at school.

### Commencement Information

**II** [S. 176](#) in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

## *Education and training outside schools*

## 177 Meaning of “secondary education”

(1) Section 2 of the Education Act 1996 (c. 56) (definition of primary, secondary and further education) is amended as follows.

(2) In subsection (2B) (which extends “secondary education” to include education received partly at a school and partly at another institution)—

- (a) in paragraph (b), after “another institution” there is inserted “ or any other establishment ”, and
- (b) after “other institution” there is inserted “ or establishment ”.

(3) After subsection (6) there is inserted—

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“(6A) In the context of the definitions of secondary education and further education, references in this section to education include vocational, social, physical and recreational training.”

- (4) The Education Acts shall have effect in their application to persons receiving secondary education within section 2(2B) of the Education Act 1996 (c. 56) with such modifications as may be specified in an order under this subsection.
- (5) The power to make an order under subsection (4) is exercisable—
  - (a) in relation to England, by the Secretary of State, and
  - (b) in relation to Wales, by the National Assembly for Wales.

#### Commencement Information

**I2** S. 177 partly in force; s. 177 not in force at Royal Assent, see s. 216; s. 177 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

### 178 Training and education provided in the workplace for 14 to 16 year olds

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 5 (provision of financial resources)—
  - (a) after subsection (1)(e) there is inserted—
    - “(ea) persons providing or proposing to provide, wholly or partly at the premises of an employer, education or training that is suitable to the requirements of pupils who—
      - (i) have attained the age of 15 or will attain that age in the current school year, but
      - (ii) have not ceased to be of compulsory school age;”,
  - and
  - (b) after subsection (3) there is inserted—
    - “(4) For the purposes of subsection (1)(ea) “compulsory school age”, “pupil” and “school year” have the same meaning as in the Education Act 1996.”
- (3) In section 65 (area inspections in England)—
  - (a) in subsection (1)(a) for “16” there is substituted “ 15 ”, and
  - (b) after subsection (9) there is inserted—
    - “(10) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.”
- (4) In section 83 (area inspections in Wales)—
  - (a) in subsection (1)(a) for “16” there is substituted “ 15 ”, and
  - (b) after subsection (10) there is inserted—
    - “(11) In subsection (1)(a) “persons who are aged 15” includes persons for whom education is being provided at a school who will attain that age

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in the current school year; and for this purpose “school” and “school year” have the same meaning as in the Education Act 1996.”

#### Commencement Information

- I3** S. 178 partly in force; s. 178 not in force at Royal Assent, see s. 216; s. 178(1)(2) in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 178(3) in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)
- I4** S. 178(1)(4) in force at 1.8.2003 for W. by S.I. 2003/1718, art. 4, Sch. Pt. I
- I5** S. 178(3) in force at 20.1.2003 except in relation to W. by S.I. 2002/2952, art. 2

### 179 Rights of entry in relation to inspections

(1) The School Inspections Act 1996 (c. 57) is amended as follows.

(2) In section 2 (functions of the Chief Inspector for England)—

(a) after subsection (8) (rights of entry etc.) there is inserted—

“(8A) For the purposes of the exercise of any function conferred by or under this section the Chief Inspector for England shall have at all reasonable times—

(a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in England, any pupils who—

(i) are registered at the school, and

(ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,

are provided with part of their education by any person (“the provider”);

(b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and

(c) a right to inspect and take copies of—

(i) any records kept by the provider relating to the provision of that education, and

(ii) any other documents containing information so relating,

which the Chief Inspector requires for those purposes.”,

and

(b) in subsection (9)(b) (which makes it an offence to obstruct the exercise by the Chief Inspector of his rights of entry), after “subsection (8)” there is inserted “or (8A)”.

(3) In section 3 (power of Chief Inspector for England to arrange for inspections), in subsection (3) (rights of entry etc.)—

(a) after paragraph (a) there is inserted—

“(aa) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who—

(i) are registered at the school, and

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- (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,  
are receiving part of their education from any person (“the provider”);
    - (ab) a right of entry to any premises of the provider used in connection with the provision by him of that education;”,
  - and
  - (b) after paragraph (b) there is inserted “and
    - (c) a right to inspect and take copies of—
      - (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and
      - (ii) any other documents containing information relating to the provision of such education by the provider, which the Inspector considers relevant to the discharge of his functions.”
- (4) In section 5 (functions of the Chief Inspector for Wales)—
  - (a) after subsection (8) (rights of entry etc.) there is inserted—

“(8A) For the purposes of the exercise of any function conferred by or under this section the Chief Inspector for Wales shall have at all reasonable times—

    - (a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in Wales, any pupils who—
      - (i) are registered at the school, and
      - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,  
are provided with part of their education by any person (“the provider”);
    - (b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and
    - (c) a right to inspect and take copies of—
      - (i) any records kept by the provider relating to the provision of that education, and
      - (ii) any other documents containing information so relating,  
which the Chief Inspector requires for those purposes.”,
  - and
  - (b) in subsection (9)(b) (which makes it an offence to obstruct the exercise by the Chief Inspector of his rights of entry), after “subsection (8)” there is inserted “ or (8A) ”.
- (5) In section 6 (power of Chief Inspector for Wales to arrange for inspections), in subsection (3) (rights of entry etc.)—
  - (a) after paragraph (a) there is inserted—

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- “(aa) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who—
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are receiving part of their education from any person (“the provider”);
- (ab) a right of entry to any premises of the provider used in connection with the provision by him of that education;”

and

- (b) after paragraph (b) there is inserted “and
  - (c) a right to inspect and take copies of—
    - (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and
    - (ii) any other documents containing information relating to the provision of such education by the provider,
 which the Inspector considers relevant to the discharge of his functions.”

(6) In Schedule 3 (inspections by registered inspectors under section 10), in paragraph 7 (rights of entry etc.), after sub-paragraph (2) there is inserted—

- “(3) A registered inspector conducting an inspection of a school, and the members of his inspection team, shall also have at all reasonable times—
  - (a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by the school, any pupils who—
    - (i) are registered at the school, and
    - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are receiving part of their education from any person (“the provider”);
  - (b) a right of entry to any premises of the provider used in connection with the provision by him of that education; and
  - (c) a right to inspect and take copies of—
    - (i) any records kept by the provider relating to the provision of that education, and
    - (ii) any other documents containing information so relating, which the inspector or (as the case may be) member of the team requires for the purposes of the inspection.”

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### Commencement Information

- I6** S. 179 partly in force; s. 179 not in force at Royal Assent, see s. 216; s. 179 in force for E. at 1.10.2002 by [S.I. 2002/2439](#), [art. 3](#) (with transitional provisions and savings in [art. 4](#), [Sch.](#)); s. 179(1)(4)(5)(6) in force for W. at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#)

## 180 Inspections of LEAs: rights of entry etc.

For section 40 of the Education Act 1997 (c. 44) (inspector's rights of entry etc.) there is substituted—

### “40 Inspector's rights of entry etc.

- (1) This section applies where a local education authority are inspected under section 38.
- (2) The inspector, and any person assisting him, shall have at all reasonable times a right of entry to—
  - (a) the premises of the local education authority,
  - (b) the premises of any school maintained by the authority, and
  - (c) any other premises at which relevant section 19 education is provided, other than premises which are or form part of a private dwelling house but are not a school.
- (3) The inspector, and any person assisting him, shall also have at all reasonable times a right to inspect and take copies of—
  - (a) any records kept by, and any other documents containing information relating to, the local education authority or any school maintained by the authority, and
  - (b) any records kept by a person who provides relevant section 19 education that relate to the provision of that education, and any other documents containing information that so relates;which he considers relevant to the exercise of his functions.
- (4) Section 42 of the School Inspections Act 1996 (inspection of computer records) shall apply for the purposes of subsection (3) as it applies for the purposes of Part 1 of that Act.
- (5) Without prejudice to subsections (2) and (3), the local education authority and the governing body of any school maintained by the authority—
  - (a) shall give the inspector and any person assisting him, all assistance in connection with the exercise of his functions which they are reasonably able to give, and
  - (b) shall secure that all such assistance is also given by persons who work at the school.
- (6) It shall be an offence wilfully to obstruct the inspector or any person assisting him in the exercise of his functions in relation to the inspection.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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(8) In this section—

“document” and “records” each include information recorded in any form; and

“relevant section 19 education” means education provided to a child by virtue of arrangements made by the local education authority under section 19 of the Education Act 1996 (exceptional provision of education at schools or otherwise).”

#### **Commencement Information**

**I7** S. 180 wholly in force at 19.12.2002; s. 180 not in force at Royal Assent, see s. 216; s. 180 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.); s. 180 in force for W. at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

### *Allowances in respect of education or training*

#### **181 Allowances in respect of education or training**

- (1) Regulations may make provision authorising or requiring the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) to pay an allowance to or in respect of any eligible person who is over compulsory school age, in connection with his undertaking education or training of a prescribed description.
- (2) The relevant education or training must not be higher education.
- (3) Regulations may, in particular, make provision—
  - (a) for determining whether a person is an eligible person in relation to any allowance,
  - (b) prescribing information that must be supplied by or on behalf of any person before any allowance can be paid or continue to be paid to or in respect of him,
  - (c) prescribing the period by reference to which any allowance of a periodic nature is to be paid,
  - (d) prescribing the maximum allowance payable to or in respect of any person in respect of any period,
  - (e) prescribing the maximum period during which an allowance may be payable to or in respect of any person,
  - (f) where the amount of an allowance may vary to any extent according to a person’s circumstances, for determining, or providing for the determination by the Secretary of State or the National Assembly for Wales of, the amount required or authorised to be paid to or in respect of him,
  - (g) specifying whether any allowance in respect of any person is to be paid to him, to a parent of his or to any other person,
  - (h) for any allowance under this section to be made available on such terms and conditions as may be prescribed, or determined under the regulations by the Secretary of State or the National Assembly for Wales, including terms and conditions requiring repayments to be made in circumstances so prescribed or determined,
  - (i) requiring the payment of an allowance to be suspended or terminated in any such circumstances,



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- (j) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of, the procedure to be followed in connection with appeals),
  - (k) imposing obligations on the governing body of any maintained school or institution within the further education sector in relation to cases where the school or institution is providing the education or training referred to in subsection (1).
- (4) In this section and section 182—
- “governing body”—
  - (a) in relation to a pupil referral unit, means the local education authority who maintain the unit, and
  - (b) in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);
- “maintained school” means a community, foundation or voluntary school, a community or foundation special school or a pupil referral unit.

#### Commencement Information

- I8** S. 181 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II
- I9** S. 181 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

## 182 Learning agreements

- (1) For the purposes of this section, a “learning agreement” is a document which—
- (a) specifies conditions which—
    - (i) relate to the attendance or conduct of, or completion of assigned tasks by, a person to whom an allowance is or may become payable (in this section referred to as “the student”), and
    - (ii) are either prescribed by regulations or, if regulations so provide, determined in accordance with any prescribed requirements by the person providing the relevant education or training,
  - (b) contains a declaration by the student relating to compliance with those conditions, and
  - (c) deals with such other matters as may be prescribed.
- (2) Regulations may require a learning agreement—
- (a) to be in the prescribed form, and
  - (b) to be signed by the student and by or on behalf of such other persons as may be prescribed.
- (3) Without prejudice to the generality of section 181(3)(h), regulations may provide—
- (a) that a person is not eligible to receive an allowance unless the person providing the relevant education or training holds a learning agreement signed by him, and
  - (b) that payment of an allowance is conditional on the person providing the relevant education or training from time to time determining that the student has complied with the learning agreement or has done so to a prescribed extent or in prescribed respects.

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- (4) Regulations may—
- (a) enable or require a learning agreement to specify targets relating to the attendance, conduct or attainments of the student, and
  - (b) enable or require the Secretary of State or the National Assembly for Wales, in any case where the person providing the relevant education or training determines that targets have been met, to make additional payments of allowance to or in respect of the student.
- (5) Without prejudice to the generality of section 181(3)(k), regulations may impose obligations relating to learning agreements on—
- (a) the governing body of a maintained school, or
  - (b) the governing body of an institution within the further education sector.
- (6) Regulations may contain provision for determining the person by whom any relevant education or training is to be treated for the purposes of this section as being provided.
- (7) A learning agreement shall not be capable of creating any obligation in respect of whose breach any liability arises in contract or in tort.
- (8) In this section—
- “allowance” means an allowance under section 181;
- “relevant education or training” means the education or training referred to in that section.

#### Commencement Information

**II0** S. 182 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

**III** S. 182 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

### 183 Transfer of functions relating to allowances under section 181

- (1) If the Secretary of State so determines, any function exercisable by him by virtue of regulations made by virtue of section 181 shall, to such extent as is specified in his determination, be exercisable instead by—
- (a) the Learning and Skills Council for England, or
  - (b) local education authority.
- (2) If the National Assembly for Wales so determines, any function exercisable by the Assembly by virtue of regulations made by virtue of section 181 shall, to such extent as is specified in the Assembly’s determination, be exercisable instead by—
- (a) the National Council for Education and Training for Wales, or
  - (b) a local education authority.
- (3) A body by whom any function is for the time being exercisable by virtue of subsection (1) or (2) shall comply with any directions given by the Secretary of State, or as the case may be the National Assembly for Wales, as to the exercise of that function.
- (4) Where any function is so exercisable by a local education authority, the function shall be taken to be a function of that authority—
- (a) for the purposes of section 70 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out of functions of local authorities),

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- (b) for the purposes of Part 2 of the 2000 Act (arrangements with respect to executives etc.), and
- (c) subject to the provisions of section 13 of the 2000 Act, for the purposes of section 101 of the Local Government Act 1972 (c. 70) (arrangements for discharge of functions by local authorities).

(5) In this section “the 2000 Act” means the Local Government Act 2000 (c. 22).

#### Commencement Information

- I12** S. 183 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II
- I13** S. 183 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

### 184 Delegation of functions relating to allowances

- (1) The Secretary of State or the National Assembly for Wales may make arrangements for any person or body specified in the arrangements to exercise on his or its behalf, to such extent as is so specified, any function exercisable by him or the Assembly by virtue of regulations made by virtue of section 181 (including any such function in relation to appeals).
- (2) Any arrangements made under subsection (1) shall not prevent the Secretary of State, or as the case may be the National Assembly for Wales, from exercising the function in question himself or itself.

#### Commencement Information

- I14** S. 184 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4
- I15** S. 184 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

### 185 Supplementary provisions relating to transfer or delegation of functions

- (1) The Secretary of State or the National Assembly for Wales may make provision for enabling appeals—
  - (a) to be made with respect to such matters arising out of the exercise by virtue of section 183(1) or (2) or 184(1) by any person or body of any function of the Secretary of State or the Assembly as he or it may determine, and
  - (b) to be so made to a person or body appointed for the purpose by the Secretary of State or the Assembly.
- (2) The Secretary of State or the National Assembly for Wales may pay to any body or person by whom any function of his, or as the case may be of the Assembly, is exercisable by virtue of section 183(1) or (2) or 184(1)—
  - (a) such amounts as the Secretary of State or the Assembly considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that body or person—
    - (i) in paying allowances under section 181, or
    - (ii) by way of administrative expenses,in, or in connection with, the exercise of that function;

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- (b) in a case where the function is exercisable by virtue of section 184(1), such remuneration as the Secretary of State or the Assembly may determine.
- (3) Any payment under subsection (2)(a) may be made subject to such terms and conditions as the Secretary of State or the National Assembly for Wales may determine; and any such conditions may in particular—
  - (a) require the provision of returns or other information before any such payment is made;
  - (b) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid.
- (4) The Secretary of State or the National Assembly for Wales may pay to any person or body appointed by him or it under subsection (1) such remuneration or administrative expenses (or both) as he or it may determine.
- (5) In relation to any function which, by virtue of section 183(1) or (2) or 184(1) is exercisable to a specified extent, references in section 183(3) and (4) and this section to the exercise of that function are accordingly to its exercise to that extent.

#### **Commencement Information**

**I16** S. 185 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4

**I17** S. 185 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

### *Student loans*

#### **186 Student loans**

- (1) Regulations may make provision for—
  - (a) the repayment by the Secretary of State of amounts payable in respect of loans mentioned in paragraph (a), (b) or (c) of subsection (2);
  - (b) reducing or extinguishing the amounts payable in respect of loans mentioned in paragraph (a) or (b) of subsection (2).
- (2) The loans are—
  - (a) loans received under arrangements made under section 1 of the Education (Student Loans) Act 1990 (c. 6) by eligible persons who fulfil prescribed conditions;
  - (b) loans received under arrangements made under section 22 of the Teaching and Higher Education Act 1998 (c. 30) by eligible persons who fulfil prescribed conditions;
  - (c) loans received for educational purposes under such other arrangements as may be prescribed by the regulations, including arrangements made outside England and Wales, by eligible persons who fulfil prescribed conditions.
- (3) The regulations may, in particular, make provision—
  - (a) for determining whether a person is eligible for the purposes of the regulations;
  - (b) prescribing the circumstances and manner in which, and the times at which, payments are to be made, or amounts are to be reduced or extinguished;

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- (c) allowing retrospective adjustments for the purposes of the regulations, including provision allowing the Secretary of State to require reimbursement of repayments, or to alter the amounts reduced or extinguished;
  - (d) for imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to information to be given to the Secretary of State;
  - (e) for the reimbursement by the Secretary of State of costs incurred by persons or bodies in complying with any such requirements;
  - (f) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of the procedure to be followed in connection with the appeals).
- (4) The Secretary of State may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function exercisable by him by virtue of the regulations (including any such function in relation to appeals).
- (5) Any arrangements made under subsection (4) shall not prevent the Secretary of State from exercising the function in question himself.
- (6) The Secretary of State may pay to any person or body by whom any function is exercisable by virtue of subsection (4) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person or body in, or in connection with, the exercise of that function.
- (7) Any payment under subsection (6) may be made subject to such terms and conditions as the Secretary of State may determine.
- (8) Such conditions may in particular—
- (a) require the provision of returns or other information before any such payment is made;
  - (b) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid.
- (9) In this section—
- “prescribed” means prescribed by regulations;
  - “regulations” means regulations made under this section by the Secretary of State.

### *Education action zones*

## **187 Education action zones**

Schedule 15 (which makes provision in relation to education action zones and Education Action Forums) shall have effect.

### **Commencement Information**

**I18** S. 187 partly in force; s. 187 not in force at Royal Assent, see s. 216; s. 187 in force for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

**I19** S. 187 in force at 1.9.2003 so far as not already in force except in relation to W. by S.I. 2003/1667, art. 4

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### *School inspections*

#### **188 School inspections**

Schedule 16 (which contains amendments of the School Inspections Act 1996 (c. 57)) shall have effect.

##### **Commencement Information**

- I20** S. 188 partly in force; s. 188 not in force at Royal Assent, see s. 216; s. 188 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)
- I21** S. 188 in force at 1.9.2003 for specified purposes except in relation to W. by S.I. 2003/1667, art. 4
- I22** S. 188 in force at 1.12.2003 for specified purposes for W. by S.I. 2003/2961, art. 4, Sch. Pt. I

### *Qualifications*

#### **189 Amendments of Part 5 of Education Act 1997**

Schedule 17 (which contains amendments of Part 5 of the Education Act 1997 (c. 44) relating to the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales) shall have effect.

##### **Commencement Information**

- I23** S. 189 partly in force; s. 189 not in force at Royal Assent, see s. 216; s. 189 in force for certain purposes at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.); s. 189 in force for certain further purposes at 19.12.2002 by S.I. 2002/3185, art. 4, Sch. Pt. I

#### **190 LEA functions: qualifications**

- (1) A local education authority may award or authenticate academic and vocational qualifications, and may in particular—
  - (a) devise and administer a qualification or a course leading to a qualification,
  - (b) register candidates,
  - (c) set, administer and moderate examinations or other assessments, and
  - (d) require the payment of fees in respect of the exercise of the power.
- (2) A local education authority may secure the exercise by any other person of such of the authority's powers under subsection (1) as the authority may specify.
- (3) A local education authority may exercise their powers under this section by forming, or participating in forming, or being a member of, a body corporate.
- (4) The powers under this section shall be regarded as always having been within the powers of a local education authority; and this section is without prejudice to the generality of the powers of a local education authority.

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### *Special educational needs: Wales*

#### **191 Regional provision for special educational needs in Wales**

- (1) When directed to do so by the National Assembly for Wales, the local education authorities in Wales (or such of them as may be specified in the direction) must consider whether they (or any of them) would be able to carry out their special education functions, in respect of children with the special educational needs specified in the direction, more efficiently or effectively if regional provision were made.
- (2) In this section—
  - “regional provision” means—
    - (a) provision of education for children from the areas of different local education authorities in Wales, at a school maintained by one of those authorities, or
    - (b) provision made by two or more local education authorities in Wales for goods or services to be supplied by one of the authorities—
      - (i) to the other or others, or
      - (ii) to one or more governing bodies of schools maintained by the other authority or authorities;
  - “special education functions” means functions under Part 4 of the Education Act 1996 (c. 56) (special educational needs).
- (3) The authorities to whom a direction is given must report their conclusions to the Assembly not later than the time specified in the direction.
- (4) In discharging their duties under this section, local education authorities must have regard to any guidance given from time to time by the Assembly.

#### **192 Directions to bring forward proposals to secure regional provision**

- (1) Where the National Assembly for Wales is of the opinion that two or more local education authorities in Wales (“Welsh authorities”) would be able to carry out their special education functions, in respect of a particular class of children, more effectively or efficiently if regional provision were made, the Assembly may exercise its powers under this section and section 193 with a view to securing that such provision is made.
- (2) The Assembly may, by order, do one or more of the following—
  - (a) direct a Welsh authority to exercise their powers to make proposals for the establishment, alteration or discontinuance of schools;
  - (b) direct the governing body of a foundation, voluntary or foundation special school maintained by a Welsh authority (a “relevant school”) to exercise their powers to make proposals for the alteration of their school;
  - (c) direct two or more Welsh authorities to make proposals for arrangements under which—
    - (i) provision for education is made by one of the authorities in respect of persons from the area (or areas) of the other authority (or authorities), and
    - (ii) provision is made for determining the payments to be made under the arrangements in respect of the provision of that education;
  - (d) direct two or more Welsh authorities to make proposals for arrangements that provide for one of those authorities to make to the other (or others) such

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supplies of goods or services as may be specified in the proposals on such terms (including terms as to payment) as may be so specified;

- (e) direct a Welsh authority and the governing bodies of one or more relevant schools to make proposals for arrangements that provide for the authority to make to the governing bodies such supplies of goods or services as may be specified in the proposals, on such terms (including terms as to payment) as may be so specified;

to secure that regional provision is made in relation to such class of children, from such areas, as may be specified in the order.

- (3) Where an order contains a direction under paragraph (c) of subsection (2) and also a direction under paragraph (a) or (b) of that subsection, the payments to which paragraph (c) refers may include an amount in respect of such costs connected with the establishment, alteration or discontinuance of the school in question as may be specified in the order.
- (4) An order under this section shall—
  - (a) require the proposals to be published not later than such date as is specified in the order, and
  - (b) require the body publishing the proposals to send a copy of the published proposals and such information in connection with those proposals as may be prescribed by the order, to the Assembly.
- (5) Proposals made in pursuance of an order containing a direction under subsection (2)(c) to (e) must contain such information and be published in such manner as is prescribed by regulations.
- (6) Regulations may, in respect of proposals made in pursuance of such an order, make provision for—
  - (a) consultation on the proposals;
  - (b) the making of comments on or objections to the proposals;
  - (c) withdrawal of the proposals;
  - (d) modification of the proposals;
  - (e) approval of the proposals by the Assembly;
  - (f) implementation of the proposals by the body or bodies that made them.
- (7) Without prejudice to the generality of subsection (6), regulations under that subsection may include provision equivalent to that made by or under Part 2 of Schedule 6 to the School Standards and Framework Act 1998 (c. 31) in relation to proposals of the kind mentioned in subsection (2)(a) or (b).
- (8) Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order containing a direction under subsection (2) (b) are approved or, as the case may be, determined to be implemented under that Schedule, then, despite anything in Part 3 of that Schedule, the local education authority shall defray the cost of implementing the proposals.
- (9) In this section—

“powers to make proposals for the establishment, alteration or discontinuance of schools” means all or any of the powers of the local education authority to publish proposals under section 28, 29 or 31 of the School Standards and Framework Act 1998;



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“powers to make proposals for the alteration of their school”, in relation to the governing body of a foundation, voluntary or foundation special school, means their powers to publish proposals under section 28(2)(b) or 31(2)(a) of that Act;

“regional provision” has the same meaning as in section 191;

“special education functions” has the same meaning as in that section.

### **193 Powers of Assembly to make proposals to secure regional provision**

(1) Where—

(a) the National Assembly for Wales has made an order containing directions under section 192(2), and

(b) either—

(i) any proposals have been published in pursuance of the order, or

(ii) the time allowed under the order for the publication of the proposals has expired,

the Assembly may make any such proposals as might have been made, in accordance with any direction contained in the order, by the body or bodies to which it was addressed.

(2) Proposals under this section shall contain such information and be published in such manner as the Assembly thinks fit.

(3) The Assembly shall send a copy of any proposals under this section to—

(a) each local education authority in Wales, and

(b) the governing body of each school to which the proposals relate.

(4) Regulations may make provision about proposals under this section and, in particular, may make provision for—

(a) consultation on the proposals;

(b) the making of comments on or objections to the proposals;

(c) modification of the proposals;

(d) implementation of the proposals by the bodies to which they relate.

(5) Without prejudice to the generality of subsection (4), regulations under that subsection may include provision which applies or reproduces (with or without modification) any provisions of Part 5 or paragraph 17 of Schedule 7 to the School Standards and Framework Act 1998 (c. 31) (procedure for dealing with proposals by the Assembly under that Schedule).

(6) Where proposals made and adopted by the Assembly under this section have effect (by virtue of subsection (5)) as if they were proposals made by the governing body of a foundation, voluntary or foundation special school under their powers to make proposals for the alteration of their school, and approved by the Assembly, then, despite anything in Part 3 of Schedule 6 to that Act, the local education authority shall defray the cost of implementing the proposals.

### **194 Welsh LEAs' powers to make regional provision**

(1) In section 14 of the Education Act 1996 (c. 56) (functions in respect of provision of primary and secondary schools), after subsection (4) there is inserted—

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“(4A) A local education authority for an area in Wales may secure that regional schools for providing—

(a) primary education, and

(b) education that is secondary education by virtue of section 2(2)(a),  
 are available for Wales or any part of Wales that includes the area of the authority.

(4B) For this purpose a “regional school”, in relation to a local education authority, is a school maintained by that authority which provides education to meet both—

(a) the needs of pupils with particular special educational needs in their area, and

(b) the needs of such pupils in the rest, or any other part, of Wales,  
 whether or not the institution also provides education suitable to the requirements of other pupils.”

(2) In section 318 of that Act (provision of goods and services in connection with special educational needs)—

(a) in subsection (3) after “authority” there is inserted “ in England ”, and

(b) after subsection (3A) there is inserted—

“(3B) A local education authority in Wales may supply goods and services to any authority in Wales or other person (other than a governing body within subsection (1)) for the purpose of assisting them in making for a child any special educational provision which any learning difficulty of the child calls for.”

## 195 The Special Educational Needs Tribunal for Wales

Schedule 18 (the Special Educational Needs Tribunal for Wales) shall have effect.

### Commencement Information

**I24** S. 195 partly in force; s. 195 not in force at Royal Assent, see s. 216; s. 195 in force for certain purposes at 31.3.2003 by S.I. 2002/3185, art. 5, **Sch. Pt. II** and for certain further purposes at 1.9.2003 by S.I. 2002/3185, art. 6, **Sch. Pt. III**

**I25** S. 195 in force at 31.3.2003 for specified purposes by S.I. 2002/3185, art. 5, **Sch. Pt. II**

**I26** S. 195 in force at 1.9.2003 for specified purposes by S.I. 2002/3185, art. 6, **Sch. Pt. III**

### *Other provisions relating only to Wales*

## 196 Publication and provision of material

(1) A local education authority in Wales shall publish any qualifying material which the National Assembly for Wales provides to the authority for the purposes of this subsection.

(2) A local education authority in Wales shall provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the authority for the purposes of this subsection.

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- (3) The governing body of any school maintained by a local education authority in Wales shall provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the body for the purposes of this subsection.
- (4) For the purposes of this section, “qualifying material” is material the Assembly considers likely to—
  - (a) assist parents in choosing schools for their children,
  - (b) increase public awareness of the quality of education provided at schools, or a school, and of the educational standards achieved there, or
  - (c) assist in assessing the degree of efficiency with which the financial resources of schools, or a school, are managed.
- (5) No material published or provided under this section may name any individual to whom it relates.
- (6) The publication or provision of material by a local education authority or governing body under this section shall be in such form and manner as may be prescribed.

## **197 Partnership agreements and statements**

- (1) The National Assembly for Wales may by regulations require any local education authority in Wales to enter into a partnership agreement with the governing body of each school maintained by that authority, or each such school of a prescribed class.
- (2) For the purposes of this section, a partnership agreement is an agreement about how a local education authority and the governing body of a school are to discharge their respective functions in relation to the school as regards—
  - (a) such matters as may be prescribed, and
  - (b) such other matters as the authority and the governing body may agree.
- (3) Where a local education authority fail to reach agreement with the governing body of a school for the purposes of subsection (1), the authority may draw up a statement setting out how they and the governing body are to discharge their respective functions in relation to the school as regards the matters prescribed under subsection (2)(a).
- (4) Regulations under this section may—
  - (a) require the parties to a partnership agreement to review the agreement, and
  - (b) require a local education authority that has drawn up a statement under this section and the governing body to which that statement relates to review the statement,at such intervals, or in such circumstances, as may be prescribed.
- (5) Following a review of a partnership agreement, the parties may agree—
  - (a) not to change the agreement,
  - (b) to amend the agreement in such a manner that it remains a partnership agreement, or
  - (c) to replace the agreement with a new partnership agreement,but, where they fail to do so, subsection (3) applies as it applies where a local education authority and governing body fail to reach agreement for the purposes of subsection (1).

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- (6) Following a review of a statement under subsection (3), the local education authority and governing body in question may agree to replace the statement with a partnership agreement, but, where they fail to do so, the authority may amend the statement or draw up a new one (provided the amended or replacement statement is one that could have been drawn up under subsection (3)).
- (7) Regulations under this section may make provision for the time by which a local education authority or governing body must comply with any requirement imposed on them by or under the preceding provisions of this section.
- (8) In the discharge of their functions in relation to a school maintained by a local education authority in Wales—
- (a) the authority, and
  - (b) the governing body and head teacher of the school,
- must have regard to any partnership agreement or statement under this section which for the time being has effect in relation to the school.

#### Commencement Information

**I27** S. 197 in force at 1.9.2003 by S.I. 2003/1718, art. 5, Sch. Pt. II

VALID FROM 31/03/2004

#### **198 Transition from primary to secondary school**

- (1) The National Assembly for Wales may require—
- (a) the governing body of each secondary school maintained by a local education authority in Wales, or of each such secondary school belonging to a class specified in the requirement, and
  - (b) the governing body of each of its feeder primary schools maintained by such an authority,
- jointly, to draw up plans to facilitate the transition from primary school to secondary school of pupils at those primary schools who are admitted to the secondary school.
- (2) In determining whether, for the purposes of this section, a particular school is to be regarded as a feeder primary school, in relation to a particular secondary school, regard is to be had to any guidance given, from time to time, by the Assembly.
- (3) Regulations may—
- (a) provide for the Assembly to determine any disputes as to whether a particular school is a feeder primary school of a particular secondary school for the purposes of this section; and
  - (b) make provision about plans under this section, including provision which specifies the period within which such plans are to be drawn up and provision about the content, review and amendment of such plans.
- (4) In carrying out any functions conferred on them by or under this section, governing bodies must have regard to any guidance given, from time to time, by the Assembly.
- (5) In the discharge of their functions under any enactment, the governing body of a school maintained by a local education authority in Wales, and the head teacher of

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that school, must have regard to any plans drawn up by the governing body under this section which for the time being have effect.

### Provision of services

## 199 Transport for persons over compulsory school age

Schedule 19 (transport for persons over compulsory school age) shall have effect.

### Commencement Information

- I28** S. 199 partly in force; s. 199 not in force at Royal Assent, see s. 216; s. 199 in force for E. at 20.1.2003 by S.I. 2002/2952, art. 2 (with savings and transitional provisions in Sch.)
- I29** S. 199 in force at 20.1.2003 except in relation to W. by S.I. 2002/2952, art. 2
- I30** S. 199 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

## 200 Remission of charges relating to residential trips

In section 457 of the Education Act 1996 (c. 56) (charges and remissions policies), in subsection (4) (entitlement to complete remission of charges in respect of board and lodging on a residential trip), for paragraph (b) there is substituted—

- “(b) the pupil’s parent is—
- (i) in receipt of income support,
  - (ii) in receipt of an income-based jobseeker’s allowance (payable under the Jobseekers Act 1995), or
  - (iii) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed,
- in respect of any period wholly or partly comprised in the time spent on the trip.”

### Commencement Information

- I31** S. 200 partly in force; s. 200 not in force at Royal Assent, see s. 216; s. 200 in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II
- I32** S. 200 in force at 31.3.2003 for W. by S.I. 2002/3185, art. 5, Sch. Pt. II
- I33** S. 200 in force at 6.4.2003 except in relation to W. by S.I. 2003/124, art. 5

## 201 LEA functions concerning school lunches, milk etc.

(1) For section 512 of the Education Act 1996 (provision of meals etc. at schools maintained by local education authorities) there is substituted—

### “512 LEA functions concerning provision of meals, etc.

- (1) A local education authority may provide—
- (a) registered pupils at any school maintained by the authority,

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- (b) other persons who receive education at such a school, and
  - (c) children who receive relevant funded nursery education,  
with milk, meals and other refreshments.
- (2) Where provision is made under subsection (1), it shall be made—
- (a) in a case within paragraph (a) or (b) of that subsection, either on the school premises or at any other place where education is being provided, and
  - (b) in a case within paragraph (c) of that subsection, at any place where education is being provided.
- (3) A local education authority shall exercise their power under subsection (1) to provide school lunches for any person within paragraph (a) or (c) of that subsection if—
- (a) any prescribed requirements are met,
  - (b) a request for the provision of school lunches has been made by or on behalf of that person to the authority, and
  - (c) either—
    - (i) that person is eligible for free lunches (within the meaning of section 512ZB(2)), or
    - (ii) in the case of a person within subsection (1)(a), it would not be unreasonable for the authority to provide the lunches.
- (4) Subject to section 114(2) of the School Standards and Framework Act 1998 (c. 31) (lunches provided by LEAs to meet nutritional standards), any school lunches provided by a local education authority pursuant to subsection (3) may take such form as the authority think fit.
- (5) A local education authority shall provide at any school maintained by them such facilities as they consider appropriate for the consumption of any meals or other refreshment brought to the school by registered pupils.
- (6) In this section—
- “prescribed” means prescribed by the Secretary of State by order;
  - “relevant funded nursery education”, in relation to a local education authority, means education provided by a person other than the governing body of a maintained school (within the meaning of section 20(7) of the School Standards and Framework Act 1998) or a maintained nursery school—
    - (a) under arrangements made with that person by the authority in pursuance of the duty imposed on the authority by section 118 of that Act (duty of LEA to secure sufficient nursery education), and
    - (b) in consideration of financial assistance provided by the authority under those arrangements;
  - “school lunch”—
    - (a) in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, and
    - (b) in relation to a child receiving relevant funded nursery education at an establishment other than a school, means food made

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available for consumption by the child as his midday meal on a day on which he receives that education,

whether involving a set meal or the selection of items by him or otherwise;

and references, in relation to a local education authority, to a school maintained by the authority are to a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit maintained by the authority.

#### **512ZA Duty to charge for meals etc.**

- (1) A local education authority shall charge for anything provided by them under subsection (1) or (3) of section 512.
- (2) A local education authority shall charge every person the same price for the same quantity of the same item.
- (3) This section is subject to section 512ZB.

#### **512ZB Provision of free school lunches and milk**

- (1) Where the local education authority provide a school lunch in accordance with section 512(3) to a person who is eligible for free lunches, the authority shall provide the meal free of charge.
- (2) For this purpose a person is eligible for free lunches if—
  - (a) he is within subsection (4), and
  - (b) a request that the school lunches be provided free of charge has been made by him or on his behalf to the authority.
- (3) Where a local education authority exercise their power under subsection (1) of section 512 to provide a person within paragraph (a) or (c) of that subsection with milk, the authority shall provide the milk free of charge if—
  - (a) the person is within subsection (4), and
  - (b) a request that the milk be provided free of charge has been made by him or on his behalf to the authority.
- (4) A person is within this subsection if—
  - (a) his parent is—
    - (i) in receipt of income support,
    - (ii) in receipt of an income-based jobseeker's allowance (payable under the Jobseekers Act 1995 (c. 18)),
    - (iii) in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999 (c. 33), or
    - (iv) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed, or
  - (b) he, himself, is—
    - (i) in receipt of income support,
    - (ii) in receipt of an income-based jobseeker's allowance, or

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- (iii) in receipt of any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 (c. 21) or element of such a tax credit, prescribed for the purposes of this paragraph, in such circumstances as may be so prescribed.
- (5) In this section “prescribed” and “school lunch” have the same meaning as in section 512.”
- (2) In section 512A of that Act (transfer of functions under section 512 to governing bodies)—
- (a) in subsection (2)—
- (i) in paragraph (a) for “section 512(1A) and (1B)” there is substituted “section 512(3) and (4)”,
- (ii) in paragraph (b) for “section 512(3)(a)” there is substituted “section 512ZB(1)”, and
- (iii) in paragraph (c) for “section 512(3)(b)” there is substituted “section 512ZB(3)”, and
- (b) in subsection (6) for “section 512(2)(b)” there is substituted “section 512ZA(2)”.
- (3) In section 114 of the School Standards and Framework Act 1998 (c. 31) (nutritional standards for school lunches for pupils at schools maintained by local education authorities)—
- (a) in subsection (1), after “lunches for” there is inserted “ (a) ” and after “authorities” there is inserted “, or
- (b) other persons who are provided with school lunches free of charge in accordance with section 512ZB of the Education Act 1996;”,
- (b) in subsection (2), after “a school” there is inserted “ or for such other persons who are provided with school lunches free of charge ”, and
- (c) in subsection (3)(b), at the beginning there is inserted “ in the case of lunches provided to registered pupils at schools maintained by local education authorities, ”.

#### Commencement Information

- I34** S. 201 partly in force; s. 201 not in force at Royal Assent, see s. 216; s. 201(1) in force for certain purposes and s. 201(2)(3) in force for W. at 31.3.2003 by S.I. 2002/3185, art. 5, Sch. Pt. II
- I35** S. 201 in force at 6.4.2003 for specified purposes except in relation to W. by S.I. 2003/124, art. 5 (with art. 6)
- I36** S. 201(1) in force at 31.3.2003 for specified purposes for W. by S.I. 2002/3185, art. 5, Sch. Pt. II
- I37** S. 201(2)(3) in force at 31.3.2003 for W. by S.I. 2002/3185, art. 5, Sch. Pt. II

#### Miscellaneous

### 202 Further education institutions: records

- (1) Regulations may make provision about the compilation, retention and disclosure of educational records of further education institutions.
- (2) The regulations may, in particular, impose a function on—



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- (a) a local education authority, or
  - (b) the governing body of a further education institution.
- (3) The regulations may, in particular, make a duty to provide a copy of a record conditional on the payment of a charge which does not exceed the cost of providing the copy.
- (4) In this section “further education institution” has the same meaning as in section 140.

#### Commencement Information

- I38** S. 202 in force at 1.8.2003 except in relation to W. by S.I. 2003/1667, art. 3
- I39** S. 202 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

### 203 Further education institutions: hazardous material, etc.

- (1) The Secretary of State may by regulations require the governing body of a further education institution in England to prevent the use in the institution of specified equipment or specified materials without the approval of the Secretary of State.
- (2) The Secretary of State may specify equipment or materials under this section only if he thinks the equipment or materials might endanger a person’s health or safety.
- (3) The National Assembly for Wales may by regulations require the governing body of a further education institution in Wales to prevent the use in the institution of specified equipment or specified materials without the approval of the Assembly.
- (4) The National Assembly for Wales may specify equipment or materials under this section only if it thinks the equipment or materials might endanger a person’s health or safety.
- (5) In this section “further education institution” means an institution within the further education sector.

#### Commencement Information

- I40** S. 203 in force at 1.8.2003 except in relation to W. by S.I. 2003/1667, art. 3
- I41** S. 203 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

### 204 Baseline assessments

Chapter 1 of Part 4 of the Education Act 1997 (c. 44) (baseline assessments) shall cease to have effect.

#### Commencement Information

- I42** S. 204 in force at 2.9.2002 for E. by S.I. 2002/2002, art. 4

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## 205 Application of Part 5 of Education Act 1996 to nursery education

Section 410 of the Education Act 1996 (c. 56) (which excludes the application of Part 5 of that Act in relation to a nursery school or in relation to a nursery class at a primary school) shall cease to have effect.

### Commencement Information

- I43** S. 205 partly in force; s. 205 not in force at Royal Assent, see s. 216; s. 205 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)

## 206 Nuisance or disturbance on educational premises

Schedule 20 (nuisance or disturbance on educational premises) shall have effect.

### Commencement Information

- I44** S. 206 partly in force; s. 206 not in force at Royal Assent, see s. 216; s. 206 in force for certain purposes for E. at 1.10.2002 by S.I. 2002/2439, art. 3 (with transitional provisions and savings in art. 4, Sch.)
- I45** S. 206 in force at 1.9.2003 for W. by S.I. 2003/1718, art. 5, Sch. Pt. II

## 207 Recoupment: adjustment between local education authorities

- (1) Regulations may provide, in relation to cases where any provision for education to which this section applies is made by a local education authority (in this section referred to as “the providing authority”) in respect of a person who belongs to the area of another local education authority, for requiring or authorising the other authority (in this section referred to as the “home authority”) to pay to the providing authority—
  - (a) such amount as the authorities may agree, or
  - (b) failing agreement, such amount as may be determined by or under the regulations.
- (2) This section applies to primary education and secondary education.
- (3) The regulations may provide for the amounts payable by one authority to another—
  - (a) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas), and
  - (b) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State, or as the case may be the National Assembly for Wales, considers appropriate.
- (4) Regulations made under this section in relation to Wales by the National Assembly for Wales may provide for the amounts so payable, in such cases as may be specified in or determined in accordance with the regulations, to be such amounts as may be determined—
  - (a) where the providing authority and the home authority are both in Wales, by the National Assembly for Wales, or

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- (b) where the providing authority is in Wales and the home authority is in England, by the Assembly with the consent of the Secretary of State.
- (5) Any dispute between local education authorities in Wales as to whether one of them is entitled to be paid any amount by another under the regulations shall be determined by the National Assembly for Wales.
- (6) Any dispute between a providing authority in Wales and a home authority in England as to whether the providing authority is entitled to be paid any amount by the home authority under the regulations shall be determined by the National Assembly for Wales with the consent of the Secretary of State.
- (7) In this section references to provision for education include provision of any benefits or services for which provision is made by or under this Act or any other enactment relating to education.

#### Commencement Information

I46 S. 207 in force at 1.4.2003 except in relation to W. by S.I. 2003/124, art. 4

### 208 Recoupment: special cases

- (1) In section 493 of the Education Act 1996 (c. 56) (recoupment: cross-border provisions) for subsection (2) there is substituted—
  - “(2) Subsection (3) of section 207 of the Education Act 2002 (recoupment: adjustment between local education authorities) shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the reference to the National Assembly for Wales.
  - (2A) The regulations may provide for the amounts payable by one authority to another, in such cases as may be specified by or under the regulations, to be such amounts as may be determined by the Secretary of State.”
- (2) The function of making regulations under section 494 of the Education Act 1996 (recoupment: excluded pupils), so far as exercisable in relation to Wales, is hereby transferred to the National Assembly for Wales.
- (3) The function mentioned in subsection (2) is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38); and, accordingly, the transfer may be revoked or varied by an Order in Council under that section.

#### Commencement Information

I47 S. 208 in force at 1.4.2003 except in relation to W. by S.I. 2003/124, art. 4

### 209 Paid chairmen for local learning and skills councils

In Schedule 2 to the Learning and Skills Act 2000 (c. 21) (local learning and skills councils) for paragraph 4 there is substituted—

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**“Salaries, allowances etc.**

- 4 The Council must pay—
- (a) in respect of the chairman of a local council such salary and such travelling, subsistence and other allowances as the Secretary of State may determine, and
  - (b) in respect of the other members of a local council such travelling, subsistence and other allowances as the Secretary of State may determine.”

**Commencement Information**

**I48** S. 209 in force at 1.4.2003 by S.I. 2003/124, art. 3

*General*

**210 Orders and regulations**

- (1) Subject to subsection (2), any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Subsection (1) does not apply to any order under—
  - (a) section 165 or 192, or
  - (b) paragraph 3(6) or 5 of Schedule 1.
- (3) No order shall be made by the Secretary of State under—
  - (a) section 80(3),
  - (b) section 82(4)(b),
  - (c) section 83(3),
  - (d) section 84(6),
  - (e) section 86, or
  - (f) section 125(4),
 unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subject to subsections (5) and (6), a statutory instrument which contains any order or regulations made under this Act by the Secretary of State and is not subject to the requirement in subsection (3) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (4) does not apply to an order under—
  - (a) section 7(2),
  - (b) section 87(2)(c) or (3)(c),
  - (c) section 128(2), or
  - (d) section 216.

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- (6) If an order under section 122 contains only provisions which in the opinion of the Secretary of State give effect without significant modification to recommendations of the School Teachers' Review Body—
  - (a) the order shall contain a statement to that effect, and
  - (b) subsection (4) shall not apply.
- (7) Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under this Act includes power—
  - (a) to make different provisions for different cases or areas,
  - (b) to make provision generally or only in relation to specific cases, and
  - (c) to make such incidental, supplemental, saving or transitional provisions as the Secretary of State or the Assembly thinks fit.
- (8) Nothing in this Act shall be regarded as affecting the generality of subsection (7).

## **211 Wales**

- (1) Subsection (2) applies where—
  - (a) this Act confers a function (in this section referred to as “the new function”) on the Secretary of State by amendment of another Act, and
  - (b) any functions under that Act have before the passing of this Act been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38) (transfer of Ministerial functions).
- (2) The new function, so far as exercisable in relation to Wales, is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 and, accordingly, the transfer may be varied or revoked by an Order in Council under that section.
- (3) For the purposes of section 22 of the Government of Wales Act 1998, an Order in Council made by virtue of subsection (2) or section 208(3) is to be treated as if it were revoking or varying a previous Order in Council.
- (4) Subsection (2) does not apply in relation to the amendment made by section 208(1).

## **212 General interpretation**

- (1) In this Act, unless the context otherwise requires—
  - “contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996 (c. 18);
  - “the local education authority”, in relation to a school maintained (or proposed to be maintained) by a local education authority, means that authority;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made under this Act by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales).
- (2) Subject to subsection (4), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (3) are to be construed as if those provisions were contained in that Act.

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- (3) The provisions of this Act referred to in subsection (2) are—
- (a) Part 1 (provision for new legal frameworks),
  - (b) Part 2 (financial assistance for education and childcare),
  - (c) Part 3 (maintained schools),
  - (d) Part 5 (school organisation), except section 72 and Schedule 9,
  - (e) Parts 6 and 7 (the curriculum),
  - (f) in Part 8, sections 119 to 146,
  - (g) in Part 9, section 153,
  - (h) Part 10 (independent schools), and
  - (i) in this Part, sections 175 and 176, sections 181 to 185, sections 190 to 198 and section 207.
- (4) Where an expression is given for the purposes of any provision falling within subsection (3) a meaning different from that given to it for the purposes of the Education Act 1996 (c. 56), the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Unless the context otherwise requires, any reference in this Act or in any Act amended by this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

### **213 Financial provisions**

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

### **214 Transitional provisions etc.**

- (1) Regulations may at any time make such incidental, consequential, transitional or supplementary provision as appears to the Secretary of State, or as the case may be the National Assembly for Wales, to be necessary or expedient for the general purposes, or any particular purposes, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for any provision of this Act which comes into force before—
    - (i) another such provision has come into force, or
    - (ii) anything falling to be done under another such provision has been done,
 to have effect, until that other provision has come into force or (as the case may be) that thing has been done, with such modifications as are specified in the regulations;
  - (b) for amending, repealing or revoking (with or without savings) any statutory provision passed or made before the passing of this Act, for applying any such

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provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act.

- (3) The amendments that may be made under subsection (2)(b) shall be in addition (and without prejudice) to those made by any other provision of this Act.
- (4) Nothing in this Act shall be read as prejudicing the generality of subsection (1).
- (5) In this section “statutory provision” has the same meaning as in Chapter 1 of Part 3.

## 215 Minor and consequential amendments and repeals

- (1) Schedule 21 (which contains minor and consequential amendments) shall have effect.
- (2) The enactments specified in the first column of Schedule 22 (which include spent provisions) are repealed to the extent specified in the second column.

### Commencement Information

- I49** S. 215 partly in force; s. 215 not in force at Royal Assent, see s. 216; s. 215(2) in force for certain purposes for E. at 26.7.2002 by [S.I. 2002/2002](#), [art. 3](#); s. 215 in force for certain further purposes for E. at 2.9.2002 by [S.I. 2002/2002](#), [art. 4](#); s. 215 in force for certain purposes at 1.10.2002 by [S.I. 2002/2439](#), [arts. 2, 3](#) (with [Sch.](#)); s. 215 in force for certain further purposes for E. at 20.1.2003 by [S.I. 2002/2952](#), [art. 2](#) (with [art. 3](#), [Sch.](#)); s. 215(1) in force for certain purposes for W. and s. 215(2) in force for certain purposes at 19.12.2002 by [S.I. 2002/3185](#), [art. 4](#), [Sch. Pt. I](#) (with [art. 7](#))
- I50** S. 215 in force at 20.1.2003 for specified purposes except in relation to W. by [S.I. 2002/2952](#), [art. 2](#)
- I51** S. 215 in force at 31.3.2003 for specified purposes for W. by [S.I. 2002/3185](#), [art. 5](#), [Sch. Pt. II](#)
- I52** S. 215 in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 4](#)
- I53** S. 215 in force at 1.6.2003 for specified purposes except in relation to W. by [S.I. 2003/1115](#), [art. 3](#)
- I54** S. 215 in force at 1.8.2003 for specified purposes by [S.I. 2003/1667](#), [art. 2](#)
- I55** S. 215 in force at 1.8.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), [art. 3](#)
- I56** S. 215 in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718](#), [art. 5](#), [Sch. Pt. II](#)
- I57** S. 215 in force at 1.9.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)
- I58** S. 215 in force at 1.10.2003 for specified purposes except in relation to W. by [S.I. 2003/1667](#), [art. 5](#)
- I59** S. 215 in force at 4.12.2003 for specified purposes for W. by [S.I. 2003/2961](#), [art. 5](#), [Sch. Pt. II](#)
- I60** [S. 215](#) in force at 1.1.2004 for specified purposes for W. by [S.I. 2003/2961](#), [art. 6](#), [Sch. Pt. III](#)
- I61** S. 215(1) in force at 1.3.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 2](#)
- I62** S. 215(2) in force at 6.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124](#), [art. 5](#)
- I63** S. 215(2) in force at 1.8.2003 for specified purposes for W. by [S.I. 2003/1718](#), [art. 4](#), [Sch. Pt. I](#)
- I64** S. 215(2) in force at 1.9.2003 for specified purposes by [S.I. 2002/3185](#), [art. 6](#), [Sch. Pt. III](#)

## 216 Commencement

- (1) The following provisions shall come into force on the day on which this Act is passed—
  - section 13,
  - section 52(7) to (10),
  - section 147,
  - section 186,
  - section 190,
  - sections 210 to 214, and
  - this section and section 217.

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- (2) The following provisions shall come into force in accordance with provision made by the Secretary of State by order—
- sections 65 to 69 and Schedule 7,
  - section 70 and Schedule 8,
  - section 71,
  - section 73,
  - Part 6,
  - sections 119 to 130 and Schedule 11,
  - section 209,
  - paragraphs 1 to 4 and 9 of Schedule 17, and section 189 so far as relating to those paragraphs,
  - paragraphs 14, 17, 18, 56, 91 and 119 of Schedule 21, and section 215(1) so far as relating to those paragraphs, and
  - Part 1 of Schedule 22, and section 215(2) so far as relating to that Part.
- (3) The following provisions shall come into force in accordance with provision made by the National Assembly for Wales by order—
- Part 7,
  - section 139,
  - sections 191 to 198 and Schedule 18,
  - paragraphs 5 to 8 of Schedule 17, and section 189 so far as relating to those paragraphs, and
  - Part 2 of Schedule 22, and section 215(2) so far as relating to that Part.
- (4) Subject to subsections (1) to (3), this Act shall come into force—
- (a) except in relation to Wales, in accordance with provision made by the Secretary of State by order, and
  - (b) in relation to Wales, in accordance with provision made by the National Assembly for Wales by order.
- (5) An order under this section may—
- (a) make provision generally or for specified purposes only,
  - (b) make different provision for different purposes, and
  - (c) contain such transitional provisions and savings as the person making the order thinks fit.

#### Subordinate Legislation Made

**P1** S. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {S.I. 2002/2002}, arts. 2-4 (as amended by S.I. 2002/2018); s. 216(4) power partly exercised 1.10.2002 appointed for specified provisions and certain purposes by S.I. 2002/2439, arts. 2, 3 (with transitional and saving provisions in Sch.); s. 216(4) power partly exercised: 20.1.2003 appointed for specified provisions and certain purposes by {S.I. 2002/2952}, art. 2 (with transitional and saving provisions in Sch.); s. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {S.I. 2002/3185}, arts. 4-6, Sch. (with transitional provisions and savings in art. 7)



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## **217 Short title and extent**

- (1) This Act may be cited as the Education Act 2002.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).
- (3) Any amendment or repeal in this Act has the same extent as the provision amended or repealed.
- (4) Except as provided by subsection (3), this Act extends to England and Wales only.

**Status:**

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**Changes to legislation:**

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