



# Education Act 2002

## 2002 CHAPTER 32

### PART 6

#### THE CURRICULUM IN ENGLAND

##### *The National Curriculum for England: special cases*

#### **90 Development work and experiments**

- (1) For the purpose of enabling development work or experiments to be carried out, the Secretary of State may direct in respect of a particular maintained school <sup>F1</sup>... that, for such period as may be specified in the direction, the National Curriculum for England—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) A direction under subsection (1) may apply either generally or in such cases as may be specified in the direction.
- (3) In the case of a community, voluntary controlled or community special school <sup>F2</sup>..., a direction shall not be given under subsection (1) except on an application—
  - (a) by the governing body with the agreement of the local education authority,
  - (b) by the local education authority with the agreement of the governing body, or
  - (c) by the Qualifications and Curriculum Authority with the agreement of both the local education authority and the governing body.
- (4) In the case of a foundation, voluntary aided or foundation special school, a direction shall not be given under subsection (1) except on an application by the governing body or by the Qualifications and Curriculum Authority with the agreement of the governing body.
- (5) The Secretary of State may make it a condition of a direction under subsection (1) that any person by whom or with whose agreement the request for the direction was made

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should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him.

- (6) The Secretary of State may by a direction under this subsection vary or revoke a direction under subsection (1).

#### Textual Amendments

- F1** Words in s. 90(1) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), Sch. 1 para. 12(2), [Sch. 3 Pt. 1](#); S.I. 2008/2261, art. 2 (with Sch. 1)
- F2** Words in s. 90(3) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), Sch. 1 para. 12(3), [Sch. 3 Pt. 1](#); S.I. 2008/2261, art. 2 (with Sch. 1)

#### Modifications etc. (not altering text)

- C1** S. 90 applied (with modifications) (25.5.2007) by [The School Governance \(New Schools\) \(England\) Regulations 2007 \(S.I. 2007/958\)](#), regs. 1, [30](#)
- C2** S. 90(3) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), [3\(i\)](#)

## 91 Exceptions by regulations

Regulations may provide that the National Curriculum for England, or such of the provisions of the National Curriculum for England as may be specified in the regulations—

- (a) shall not apply, or
- (b) shall apply with such modifications as may be specified in the regulations, in such cases or circumstances as may be specified in the regulations.

## 92 Pupils with statements of special educational needs

The special educational provision for any pupil specified in a statement under section 324 of the Education Act 1996 (c. 56) of his special educational needs may include provision—

- (a) excluding the application of the National Curriculum for England, or
- (b) applying the National Curriculum for England with such modifications as may be specified in the statement.

## 93 Temporary exceptions for individual pupils

- (1) Regulations may enable the head teacher of a maintained school <sup>F3</sup>..., in such cases or circumstances and subject to such conditions as may be prescribed, to direct in respect of a registered pupil at the school that, for such period as may be specified in the direction (the “operative period” of the direction), the National Curriculum for England—
  - (a) shall not apply, or
  - (b) shall apply with such modifications as may be specified in the direction.
- (2) The conditions prescribed by the regulations shall, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations.

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- (3) Any maximum period specified (whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations) shall be either—
  - (a) a fixed period not exceeding six months, or
  - (b) a period determinable (in such manner as may be specified in the regulations) not later than six months from its beginning.
- (4) Any maximum period so specified may, without prejudice to the generality of section 210(7) (which provides that regulations under this Act may make different provision for different cases or circumstances etc.), differ according to whether or not the direction in question is given in respect of a period beginning—
  - (a) immediately after the end of the operative period of a previous direction, or
  - (b) within such period after the end of the operative period of a previous direction as may be specified in the regulations.
- (5) The regulations may enable the head teacher of a maintained school<sup>F4</sup>..., in such cases or circumstances and subject to such conditions as may be prescribed—
  - (a) to revoke any direction given by him under the regulations, and
  - (b) to vary such a direction, except so as to extend its operative period.
- (6) Before making any regulations under this section, the Secretary of State shall consult with any persons with whom consultation appears to him to be desirable.

#### Textual Amendments

- F3** Words in s. 93(1) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), Sch. 1 para. 13, **Sch. 3 Pt. 1**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F4** Words in s. 93(5) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), Sch. 1 para. 13, **Sch. 3 Pt. 1**; S.I. 2008/2261, art. 2 (with Sch. 1)

## 94 Information concerning directions under section 93

- (1) Where a head teacher gives or varies a direction under regulations made under section 93, he shall, in such manner as may be prescribed, give the information mentioned in subsection (2)—
  - (a) to the governing body, and
  - (b) to the local education authority by whom the school is maintained,and shall take such steps as may be prescribed to give that information also to a parent of the pupil concerned.
- (2) That information is—
  - (a) the fact that he has taken the action in question, its effect and his reasons for taking it,
  - (b) the provision that is being or is to be made for the pupil's education during the operative period of the direction, and
  - (c) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum for England in relation to the pupil after the end of that period, or an indication that he has the opinion mentioned in subsection (3).

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- (3) That opinion is that the pupil has or probably has special educational needs by virtue of which the responsible authority would be required to determine the special educational provision that should be made for him (whether initially or on a review of any statement of his special educational needs which the authority are for the time being required under section 324 of the Education Act 1996 (c. 56) to maintain).
- (4) Where—
- (a) the head teacher of a maintained school <sup>F5</sup>... includes an indication of any such opinion in information given under subsection (1), and
  - (b) the local education authority by whom the school is maintained are not the responsible authority in relation to the pupil in question,
- the head teacher shall also give that information, in such manner as may be prescribed, to the responsible authority.
- (5) Where the responsible authority receive information given to them under subsection (1) or (4) which includes an indication that the head teacher has the opinion mentioned in subsection (3), they shall consider whether any action on their part is required in the case of the pupil concerned under section 323 of the Education Act 1996 (c. 56) (assessment of special educational needs).
- (6) In this section “the responsible authority”, in relation to a pupil, means the local education authority responsible for him for the purposes of Part 4 of the Education Act 1996.

#### Textual Amendments

- F5** Words in s. 94(4)(a) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\), s. 109\(2\), Sch. 1 para. 14, Sch. 3 Pt. 1](#); S.I. 2008/2261, art. 2 (with [Sch. 1](#))

## 95 Appeals against directions under section 93 etc.

- (1) Where a head teacher—
- (a) gives, revokes or varies a direction under regulations made under section 93,
  - (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school, or
  - (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request,
- the parent of the pupil concerned may appeal to the governing body.
- (2) On such an appeal, the governing body may—
- (a) confirm the head teacher’s action, or
  - (b) direct the head teacher to take such action authorised by the regulations as they consider appropriate in the circumstances.
- (3) The head teacher shall comply with any directions of the governing body given under subsection (2)(b).
- (4) The governing body shall notify the appellant and the head teacher in writing of their decision on such an appeal.

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**Modifications etc. (not altering text)**

- C3** S. 95 modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), **3(j)**

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