

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Educational Institutions: Other Provisions

Standards

Section 40: School inspections: exempt schools

201. **Section 40** amends the current requirement under section 5 of EA 2005 for the Chief Inspector to inspect and report on every school in England at intervals prescribed in regulations. **Subsection (2)** provides for regulations to stipulate that certain schools (to be known as “exempt schools”) are to be exempt from inspection under section 5.
202. Exempt schools remain eligible for inspection under section 8 of EA 2005 and so may be subject to inspection as part of the Chief Inspector’s programme of surveys of curriculum subjects and thematic reviews, including those focused on best practice provision in schools. Exempt schools may also be inspected under this section in circumstances where the Chief Inspector or the Secretary of State has concerns about the performance of the school.
203. **Subsection (4)** allows the Chief Inspector to be able to charge for the cost of an inspection where the Chief Inspector inspects a school in response to a request from that school and the Chief Inspector is not required to inspect the school. Such an inspection must be treated as if it were an inspection under section 5. The provision is likely to be particularly relevant in cases where an exempt school is seeking an updated independent assessment of its performance, or where a school believes its performance has improved and wishes an early assessment of this.
204. **Subsection (5)** amends section 9 of EA 2005 to enable the Chief Inspector to treat an inspection of an exempt school conducted under section 8 as if it were an inspection under section 5, and to require the Chief Inspector to do so where requested by the Secretary of State.
205. **Subsection (9)** provides that, with the exception of the first set of regulations made under section 5 of EA 2005, regulations under section 5 are subject to the affirmative procedure.

Section 41: School inspections: matters to be covered in Chief Inspector’s report

206. **Section 41** changes the areas that the Chief Inspector is under a general duty to report on as part of an inspection conducted under section 5 of EA 2005.
207. The section replaces subsections (5) and (5A) of section 5 and inserts a new subsection (5B). New subsection (5) sets out the general duty of the Chief Inspector to report on the quality of education provided in the school, and new subsection (5A) sets out details of what the report must in particular cover. These areas are:
 - the achievement of pupils at the school;

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- the quality of teaching in the school;
 - the quality of leadership in and management of the school; and
 - the behaviour and safety of pupils at the school.
208. In reporting on the quality of education provided in a school, including in relation to the four specified areas above, the Chief Inspector must consider the areas set out in new subsection (5B). This includes consideration of how well a school provides for different groups of pupils. Such groups include but are not limited to gender and minority ethnic groups, those eligible for free school meals and the pupil premium, looked after children and gifted and talented pupils. The Chief Inspector must in particular consider how well the school meets the needs of pupils with a disability and those with special educational needs. In addition, the Chief Inspector must consider the school's provision for the spiritual, moral, social and cultural development of pupils.

Section 42: Inspection of further education institutions: exempt institutions

209. **Section 42** amends the current requirement in section 125 of EIA 2006 for the Chief Inspector to inspect and report on all institutions within the further education sector. **Subsection (2)** of this section provides for regulations to stipulate that certain types of sixth form and general further education colleges are to be exempt from inspection under section 125 of EIA 2006 in certain circumstances (“exempt institutions”).
210. The Chief Inspector will retain the power to inspect exempt institutions under section 126 of EIA 2006 which will allow for inspections in circumstances where the Chief Inspector has concerns about the performance of an exempt institution, and will also allow for inspections as part of a programme of surveys or curriculum subjects and thematic review. **Subsection (4)** inserts a new provision into section 126 that requires the Chief Inspector to inspect an exempt institution under that section where requested to do so by the Secretary of State.
211. **Subsection (8)** allows the Chief Inspector to charge for inspections under section 126(1) where they are conducted as a result of a request from a provider of education or training. Such an inspection must be treated as if it were an inspection under section 125. The provision is likely to be particularly relevant in cases where an exempt institution is seeking an updated independent assessment of its performance, or where the institution believes its performance has improved and wishes an early assessment of this.
212. **Subsection (11)** provides that, with the exception of the first set of regulations made under section 125 of EIA 2006, regulations under section 125 would be subject to the affirmative procedure.

Section 43: Inspection of boarding accommodation

213. **Subsection (2)(a)** clarifies what is meant by a school or college providing accommodation for a child for the purposes of sections 87 to 87D of CA 1989. The new section 87(1A) extends the meaning of “providing accommodation” to include circumstances in which a school or college arranges boarding accommodation for a child otherwise than on its own premises, for example with host families.
214. **Subsection (2)(c)** inserts a new subsection (3A) into section 87 which will allow the Secretary of State to direct the Chief Inspector to take steps to determine whether a child's welfare is being adequately safeguarded and promoted whilst accommodated by a school or college in England. This power can be exercised even where the Chief Inspector's duty to take such steps has been suspended by virtue of section 87A and an appointed inspectorate has entered into an agreement with the school or college concerned. A new subsection (3B) is also inserted to enable the Welsh Ministers to take steps in respect of a school or college in Wales in circumstances where their duty has been suspended by virtue of section 87A.

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215. *Subsection (3)(b)* allows for regulations to be made specifying the matters to be taken into account in appointing, or terminating the appointment of, independent inspectorates in England.
216. *Subsection (4)* provides for Ofsted to monitor the work of independent inspectorates appointed to conduct welfare inspections of boarding schools under section 87A, and for the Chief Inspector to report annually to the Secretary of State on those inspectorates. Both of these provisions mirror existing provisions in sections 106 and 107 of ESA 2008 for independent inspectorates conducting inspections of education provision in independent schools in England.

Section 44: Schools causing concern: powers of Secretary of State

217. **Section 44** amends Part 4 of EIA 2006 which sets out the legal framework for maintained schools causing concern in England.
218. Under section 68 of EIA 2006 the Secretary of State can currently direct the closure of a school because the school “requires special measures” (section 62 of EIA 2006). *Subsection (2)* of this section amends section 68 of EIA 2006 to extend the situations in which the Secretary of State can direct the closure of a school.
219. The effect of this amendment is therefore that the Secretary of State will also be able to direct the closure of a school when a school has failed to comply with a performance standards or safety warning notice (as defined in section 60 of EIA 2006) and when a school has been identified as requiring significant improvement by the Chief Inspector and has been issued with a notice to improve (as defined in section 61 of that Act).
220. *Subsection (3)* of this section amends section 69A of EIA 2006. Section 69A currently gives the Secretary of State the power to direct a local authority to “consider” giving performance standards and safety warning notices in terms specified by him.
221. This amendment strengthens the Secretary of State’s power set out in section 69A so that where a local authority has been directed to consider giving a performance standards and safety warning notice and has decided not to do so, the Secretary of State may direct the authority to give a warning notice in specified terms. Where any warning notice has been given, whether following a direction or not, failure to comply with it would result in the school becoming eligible for intervention. The warning notice will inform the governing body of their right to make representations to the Chief Inspector against the giving of the warning notice. The Chief Inspector, as an independent body, may confirm the warning notice or otherwise.

Section 45: Complaints: repeal of power to complain to Local Commissioner

222. **Section 45** repeals sections 206 to 224 of ASCLA 2009. These sections give the Local Commissioner for England (more commonly known as the Local Government Ombudsman) responsibility for considering complaints received from parents and pupils about maintained schools. They also amend the Secretary of State’s powers of intervention (where he is satisfied that the school’s governing body has acted, or is intending to act, unreasonably, or in breach of a duty) under section 496 or 497 of EA 1996 to provide that those powers may not be exercised in respect of a matter that has, or in his opinion could be, complained about to the Local Commissioner. The effect of the repeal is that the Secretary of State’s powers of intervention are no longer so restricted.
223. *Subsection (2)* makes a number of consequential amendments, including:
- *paragraphs (a) and (d)* - the amendment of section 409 of, and paragraph 6 (3) and (4) of Schedule 1 to, EA 1996, to remove the duty on local authorities in England to consider complaints relating to the curriculum. Local authorities in Wales retain this duty; and

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- *paragraphs (b) and (c)* – the amendments of sections 496 and 497 of EA 1996 to remove the restrictions on the Secretary of State's intervention powers.