



# Education Act 2011

## 2011 CHAPTER 21

### PART 5

#### EDUCATIONAL INSTITUTIONS: OTHER PROVISIONS

##### *Repeal of duties of governing bodies, local authorities and others*

#### **32 Duty to prepare and publish school profile**

- (1) Section 30A of EA 2002 (duty of governing body of maintained school in England to prepare and publish school profile) is repealed.
- (2) In consequence of subsection (1), section 104 of EA 2005 (insertion of section 30A of EA 2002) is repealed.

#### **33 Duty to appoint school improvement partners**

- (1) Section 5 of EIA 2006 (requirement for local authority to appoint school improvement partner for each school they maintain) is repealed.
- (2) In consequence of subsection (1), in section 187(3) of EIA 2006 (provisions to be read as if they were contained in EA 1996), omit paragraph (a).

#### **34 Duties in relation to school admissions**

- (1) Part 3 of SSFA 1998 (school admissions) is amended as follows.
- (2) In section 85A (admission forums)—
  - (a) in subsection (1)—
    - (i) in the opening words, after “authority” insert “in Wales”;
    - (ii) at the end of paragraph (a), insert “and”;
    - (iii) omit paragraph (c) (and the “and” preceding it);
  - (b) omit subsections (1A) to (1C);

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- (c) in subsection (3), omit paragraph (ba) (but not the “and” following it);
  - (d) omit subsection (3A);
  - (e) omit subsections (5A) and (5B).
- (3) In section 88I (other functions of adjudicator relating to admission arrangements), in subsection (3), omit paragraph (b) (and the “or” preceding it).
- (4) Section 88J (changes to admission arrangements by schools adjudicator) is repealed.
- (5) In section 88P (reports by local authorities)—
- (a) in subsection (1) for “prescribed” substitute “required by the code for school admissions”;
  - (b) omit subsections (4) and (5).
- (6) Schedule 10 (consequential amendments) has effect.

### **35 Duties in relation to school meals etc**

- (1) Part 9 of EA 1996 (ancillary functions) is amended as follows.
- (2) In section 512ZA (power to charge for meals etc)—
- (a) after subsection (1) insert—
    - “(1A) Where a local authority in England exercise the power to charge under subsection (1), the price they charge for an item must not exceed the cost of providing that item.”;
  - (b) in subsection (2), after “authority” insert “in Wales”.
- (3) In section 533 (functions of governing bodies of maintained schools with respect to provision of school meals etc)—
- (a) after subsection (3) insert—
    - “(3A) Where the governing body of a school in England exercise the power to charge under subsection (3), the price they charge for an item must not exceed the cost of providing that item.”;
  - (b) in subsection (4), after “school” insert “in Wales”.

### *Admissions*

### **36 Objections to admission arrangements**

- (1) Section 88H of SSFA 1998 (reference of objections to adjudicator) is amended as set out in subsections (2) to (6).
- (2) In subsection (2)—
- (a) in paragraph (a), for “an appropriate person” substitute “a body or person”;
  - (b) after “that” insert “body or”.
- (3) Omit subsection (3).
- (4) In subsection (4) omit “or (3)”.
- (5) In subsection (5)—
- (a) in paragraph (a)(i) omit “or (3)”;

- (b) in paragraph (a)(ii) for “(3)” substitute “(2)”;
  - (c) in paragraph (c) omit “or (3)”;
  - (d) in paragraph (d) omit “or (3)”.
- (6) Omit subsection (6).
- (7) In section 88K of SSFA 1998 (sections 88H to 88J: supplementary), for subsection (2) (b) substitute—
- “(b) any other person or body.”

#### *New schools*

### **37 Establishment of new schools**

Schedule 11 (establishment of new schools) has effect.

#### *Governing bodies: constitution and dissolution*

### **38 Constitution of governing bodies: maintained schools in England**

- (1) Section 19 of EA 2002 (governing bodies) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Regulations must provide for a governing body of a maintained school in England to consist of—
- (a) persons elected or appointed as parent governors,
  - (b) the head teacher of the school,
  - (c) a person elected as a staff governor,
  - (d) a person appointed as a local authority governor,
  - (e) in the case of a foundation school, a foundation special school or a voluntary school, persons appointed as foundation governors or partnership governors, and
  - (f) such other persons as may be prescribed.”
- (3) In subsection (2), after “governing body” insert “of a maintained school in Wales”.
- (4) After subsection (4) insert—
- “(4A) Regulations made by virtue of subsection (3)(c) in relation to a maintained school in England may include provision for eligibility criteria for the school’s local authority governor to be such as may be specified by the school’s governing body.
- (4B) Regulations made by virtue of subsection (3)(e) in relation to a maintained school in England may include provision allowing the head teacher of the school to resign from office as a governor (and to withdraw any such resignation).”

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### **39 Discontinuance of federated school: governing body not to be dissolved**

In paragraph 5 of Schedule 1 to EA 2002 (dissolution of school governing body on discontinuance of school), after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply if—

- (a) the school is a federated school in England, and
- (b) immediately after the discontinuance date, there will be more than one other school remaining in the federation.

(1B) “Federation” and “federated school” have the meanings given by section 24(2).”

#### *Standards*

### **40 School inspections: exempt schools**

(1) Part 1 of EA 2005 (school inspections and other inspections by school inspectors) is amended as set out in subsections (2) to (8).

(2) In section 5 (duty to inspect certain schools at prescribed intervals)—

- (a) in subsection (2), for “subsection (3)” substitute “subsections (3) and (4A)”; and
- (b) after subsection (4), insert—

“(4A) Regulations may provide that this section does not apply to prescribed categories of school in prescribed circumstances.

(4B) A school to which this section does not apply by virtue of regulations under subsection (4A) is an “exempt school”.”

(3) In section 6 (duty to notify parents of section 5 inspection), in subsection (1)—

- (a) omit “to which section 5 applies”; and
- (b) for “that section” substitute “section 5”.

(4) In section 8 (other inspections), at the end insert—

“(3) If the Chief Inspector carries out an inspection of a school under subsection (2) in response to a request from the appropriate authority for the school, the Chief Inspector may charge the appropriate authority for the cost of the inspection.

(4) In subsection (3), “appropriate authority” has the meaning given by section 6(3).”

(5) In section 9 (power of Chief Inspector to treat other inspection as section 5 inspection)

- (a) the existing provision is renumbered subsection (1); and
- (b) at the end insert—

“(2) In the case of an inspection of an exempt school under section 8, the Chief Inspector may elect to treat the inspection for the purposes of subsections (5) to (5B) and (7) of section 5, sections 6 and 7 and Chapter 2 as if it were an inspection under section 5.

(3) In the case of an inspection of an exempt school under section 8(1), the Secretary of State may require the Chief Inspector to treat the

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inspection for the purposes of subsections (5) to (5B) and (7) of section 5, sections 6 and 7 and Chapter 2 as if it were an inspection under section 5.

(4) In the case of an inspection of a school under section 8(2) which is carried out in response to a request from the appropriate authority for the school, the Chief Inspector must treat the inspection for the purposes of subsections (5) to (5B) and (7) of section 5, sections 6 and 7 and Chapter 2 as if it were an inspection under section 5.

(5) In subsection (4), “appropriate authority” has the meaning given by section 6(3).”;

(c) in the heading, for “of Chief Inspector” substitute “or duty”.

(6) In section 12 (interpretation of Chapter 1), after the definition of “the Chief Inspector” insert—

““exempt school” has the meaning given in section 5(4B);”.

(7) In section 15 (measures to be taken by local authority), in subsection (2C) for the words from “in respect of” to the end substitute “which is not treated as a section 5 inspection by virtue of section 9”.

(8) In section 17 (statement to be prepared by proprietor of school), in subsection (1D) for the words from “in respect of” to the end substitute “which is not treated as a section 5 inspection by virtue of section 9”.

(9) In section 121 of EA 2005 (parliamentary control of subordinate legislation)—

(a) in subsection (2)(a), after “subsection” insert “(2A) or”;

(b) after subsection (2) insert—

“(2A) This subsection applies to regulations under section 5(4A) (power to prescribe schools exempt from inspection), apart from the first regulations to be made under that subsection.

(2B) A statutory instrument which contains (whether alone or with other provisions) regulations to which subsection (2A) applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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

(1) In section 5 of EA 2005 (duty to inspect certain schools at prescribed intervals), for subsections (5) and (5A) (matters for report), substitute—

“(5) It is the general duty of the Chief Inspector, when conducting an inspection under this section, to report on the quality of education provided in the school.

(5A) The Chief Inspector’s report under subsection (5) must in particular cover—

- (a) the achievement of pupils at the school;
- (b) the quality of teaching in the school;
- (c) the quality of the leadership in and management of the school;
- (d) the behaviour and safety of pupils at the school.

(5B) In reporting under subsection (5), the Chief Inspector must consider—

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- (a) the spiritual, moral, social and cultural development of pupils at the school;
  - (b) the extent to which the education provided at the school meets the needs of the range of pupils at the school, and in particular the needs of—
    - (i) pupils who have a disability for the purposes of the Equality Act 2010, and
    - (ii) pupils who have special educational needs.”
- (2) In consequence of subsection (1), section 154 of EIA 2006 (amendments of section 5(5) of EA 2005) is repealed.

#### **42 Inspection of further education institutions: exempt institutions**

- (1) Chapter 3 of Part 8 of EIA 2006 (inspection of further education and training etc) is amended as set out in subsections (2) to (10).
- (2) In section 125 (inspection of further education institutions)—
- (a) in subsection (1), at the end insert “subject to subsection (1A)”;
  - (b) after that subsection insert—
    - “(1A) The Secretary of State may by regulations provide that the duty of the Chief Inspector in subsection (1) does not apply to prescribed categories of institution in prescribed circumstances.
    - (1B) An institution to which the duty in subsection (1) does not apply by virtue of regulations under subsection (1A) is an “exempt institution”.”;
  - (c) in subsection (2), for “The inspections” substitute “Inspections under subsection (1)”.
- (3) Section 126 (other inspections) is amended as set out in subsections (4) to (9).
- (4) After subsection (1), insert—
- “(1A) The Chief Inspector must inspect an exempt institution if requested to do so by the Secretary of State.”
- (5) After subsection (2) insert—
- “(2A) On completing an inspection under subsection (1) or (1A) conducted in response to a request from the Secretary of State or any other person or body, the Chief Inspector must—
- (a) make a written report on the inspection;
  - (b) arrange for the report to be published in such manner as the Chief Inspector considers appropriate.”
- (6) In subsection (3), after “this section” insert “conducted in any other case”.
- (7) In subsection (4), after “subsection (1)” insert “or (1A)”.
- (8) After subsection (5) insert—

“(5A) In the case of an inspection conducted under subsection (1) in response to a request from the provider of the education or training concerned, the Chief Inspector may charge the provider for the cost of the inspection.”

(9) At the end, insert—

“(8) In this section “exempt institution” has the meaning given by section 125(1B).”

(10) In section 127 (action plans), in subsection (1) at the end insert “or (1A)”.

(11) In section 182 of EIA 2006 (parliamentary control of orders and regulations)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) regulations to which subsection (2A) applies.”;

(b) after subsection (2) insert—

“(2A) This subsection applies to regulations made under section 125(1A) (power to prescribe institutions exempt from inspection), apart from the first regulations to be made under that subsection.”;

(c) in subsection (3), after paragraph (a) insert—

“(aa) regulations to which subsection (2A) applies.”.

#### **43 Inspection of boarding accommodation**

(1) Part 12 of the Children Act 1989 (miscellaneous and general) is amended as follows.

(2) In section 87 (welfare of children in boarding schools and colleges)—

(a) after subsection (1), insert—

“(1A) For the purposes of this section and sections 87A to 87D, a school or college provides accommodation for a child if—

(a) it provides accommodation for the child on its own premises,  
or

(b) it arranges for accommodation for the child to be provided elsewhere (other than in connection with a residential trip away from the school).”;

(b) in subsection (3), for “he is accommodated” substitute “accommodation for the child is provided”;

(c) after subsection (3), insert—

“(3A) Where accommodation is provided for a child by a school or college in England, the Secretary of State may at any time (including a time when the duty under subsection (3) is suspended by virtue of section 87A) direct the Chief Inspector for England to take the steps referred to in subsection (3).

(3B) Where accommodation is provided for a child by a school or college in Wales, the Welsh Ministers may, at any time when the duty under subsection (3) is suspended by virtue of section 87A, take the steps referred to in subsection (3).”;

(d) in subsection (5), for “its duty” substitute “any of its functions”;

(e) in subsection (9A), for “he is accommodated” substitute “accommodation for the child is provided”.

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- (3) In section 87A (suspension of duty under section 87(3))—
- (a) in subsection (1)(b), for “they are accommodated” substitute “accommodation for the children is provided”;
  - (b) after subsection (4) insert—

“(4A) The Secretary of State may by regulations specify matters that must be taken into account in deciding whether to appoint a person to be an inspector for the purposes of this section in relation to schools or colleges in England, or to terminate the appointment of such a person under subsection (4)(b).”

- (4) After section 87B insert—

**“87BA Quality assurance of inspectors under section 87A**

- (1) The Chief Inspector for England must, at intervals of no more than a year, prepare and send to the Secretary of State a report about inspectors who are appointed under section 87A in relation to schools or colleges in England.
- (2) In preparing a report under this section the Chief Inspector for England must have regard to such matters as the Secretary of State may direct.
- (3) The Secretary of State may in particular give directions about—
  - (a) matters to be taken into account in preparing a report, and
  - (b) the form and contents of a report.”
- (5) In section 87C (boarding schools: national minimum standards), in subsection (1), for “in” substitute “by”.

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

- (1) Part 4 of EIA 2006 (schools causing concern: England) is amended as follows.
- (2) In section 68 (power of Secretary of State to direct closure of school), in subsection (1), for “by virtue of section 62 (school requiring special measures)” substitute “other than by virtue of section 60A”.
- (3) In section 69A (power of Secretary of State to direct local authority to consider giving performance standards and safety warning notice)—
  - (a) omit subsection (5);
  - (b) for subsection (9) substitute—
    - “(9) If the response states that the authority have decided not to give a warning notice to the governing body in the specified terms—
      - (a) the response must set out the authority’s reasons for the decision, and
      - (b) the Secretary of State may direct the authority to give the warning notice to the governing body in those terms (and to withdraw any previous warning notice given to the governing body under section 60).



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- (9A) If the Secretary of State directs the authority under subsection (9)(b) to give a warning notice to the governing body in the specified terms, the authority must—
- (a) comply with the direction under subsection (9)(b) before the end of the period of 5 working days beginning with the day on which that direction is given, and
  - (b) on the same day as they do so, give the Secretary of State a copy of the notice.”;
- (c) in subsection (10), for “Subsection (8)(b) applies” substitute “Subsections (8) (b) and (9A)(b) apply”;
- (d) after subsection (10) insert—
- “(11) A direction under this section must be in writing.”;
- (e) for the heading, substitute “Power of Secretary of State to direct local authority to give performance standards and safety warning notice”.

#### **45 Complaints: repeal of power to complain to Local Commissioner**

- (1) Sections 206 to 224 of ASCLA 2009 (complaints against schools in England) are repealed.
- (2) In consequence of subsection (1)—
- (a) in section 409 of EA 1996 (complaints and enforcement: maintained schools) —
    - (i) in subsection (1), after “authority” insert “in Wales” and after “schools” insert “in Wales”;
    - (ii) in subsection (4), for “Secretary of State” substitute “Welsh Ministers”;
    - (iii) in the heading, after “schools” insert “in Wales”;
  - (b) in section 496 of EA 1996 (power of Secretary of State to prevent unreasonable exercise of functions), omit subsections (3) and (4);
  - (c) in section 497 of EA 1996 (Secretary of State’s general default powers), omit subsections (4) and (5);
  - (d) in paragraph 6 of Schedule 1 (pupil referral units: complaints)—
    - (i) in sub-paragraph (3), after “local authority” insert “in Wales” and after “unit” insert “in Wales”;
    - (ii) in sub-paragraph (4), for “Secretary of State” substitute “Welsh Ministers”, after “any local authority” and “a local authority” insert “in Wales”, and after “pupil referral unit” insert “in Wales”;
  - (e) in paragraph 1 of Schedule 4 to the Local Government Act 1974 (disqualifications from acting as Local Commissioner or investigating complaint), omit sub-paragraphs (2C) and (2D);
  - (f) in section 262(6) of ASCLA 2009 (statutory instruments subject to affirmative procedure), omit paragraph (f);
  - (g) in Schedule 16 to ASCLA 2009 (repeals and revocations), omit Part 7 (complaints);
  - (h) section 22 of CSFA 2010 (amendments of sections 207 and 216 of ASCLA 2009) is repealed.

### *Finance*

#### **46 Local authorities' financial schemes**

In Schedule 14 to SSFA 1998 (revision of local authority schemes), in paragraph 2A, at the end insert—

“(4) The Secretary of State may by a direction revise the whole or any part of a scheme maintained by a local authority in England as from such date as may be specified in the direction.

(5) Before giving such a direction the Secretary of State must consult the local authority and such other persons as the Secretary of State thinks fit.”

#### **47 Payments in respect of dismissal, etc**

(1) Section 37 of EA 2002 (payments in respect of dismissal, etc) is amended as follows.

(2) After subsection (7), insert—

“(7A) Any amount payable by virtue of subsection (7) by the governing body of a maintained school in England to the local authority may be met by the governing body out of the school's budget share for any funding period if and to the extent that the condition in subsection (7B) is met.

(7B) The condition is that the governing body are satisfied that meeting the amount out of the school's budget share will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the Education Acts.”

(3) In subsection (8), after “maintained school” insert “in Wales”.

#### **48 Determination of permitted charges**

(1) Section 456 of EA 1996 (regulation of permitted charges) is amended as follows.

(2) In subsection (4), after paragraph (a) insert—

“(aa) attributable to the provision of the buildings and accommodation used in connection with the provision of the optional extra, or”.

(3) In subsection (5), for “subsection (6)” substitute “subsections (6) and (6A)”.

(4) After subsection (6), insert—

“(6A) Where the optional extra in question consists of education which is early years provision (as defined by section 20 of the Childcare Act 2006), the cost of its provision includes the costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the education.”

### *Further education institutions*

#### **49 Further education institutions: amendments**

Schedule 12 (further education institutions: amendments) has effect.

### *Pupil referral units*

#### **50 Financing of pupil referral units**

- (1) Section 45 of SSFA 1998 (financing of maintained schools: maintained schools to have budget shares) is amended as follows.
- (2) In subsection (1A), omit “or” at the end of paragraph (b), and after paragraph (c) insert “, or  
(d) a pupil referral unit in England.”
- (3) In subsection (3)—
  - (a) in paragraph (a), after “pupil referral units” insert “in Wales”;
  - (b) after paragraph (a) insert—
    - “(aa) references to the governing body of a maintained school or of a school maintained by a local authority shall be read, in relation to a pupil referral unit in England, as references to the management committee for the unit (in spite of paragraph 1 of Schedule 1 to the Education Act 1996);
    - (ab) references to governors shall be read, in relation to a pupil referral unit in England, as references to the members of the management committee for the unit;”.

#### **51 Repeal of provision changing name of pupil referral units**

- (1) ASCLA 2009 is amended as set out in subsections (2) and (3).
- (2) In section 249 (short stay schools: miscellaneous)—
  - (a) omit subsections (1) and (2) (change of name from pupil referral unit to short stay school);
  - (b) for the heading, substitute “Regulations about pupil referral units”.
- (3) For the italic cross-heading above section 249, substitute “Pupil referral units”.
- (4) In Schedule 1 to EA 1996 (pupil referral units), in paragraph 3A—
  - (a) in sub-paragraph (a), for “short stay school” substitute “pupil referral unit”;
  - (b) in sub-paragraph (b), for “short stay schools”, in both places where it occurs, substitute “pupil referral units”.