

# THE LAW OF EDUCATION

**Bulletin Editor**

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## HEADLINE

Here comes the Children and Families Act 2014, re-vamping the entire system of SEN in England.

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#### **The Children and Families Act 2014**

This is a substantial piece of legislation and readers of *The Law of Education* will be particularly interested on Part 3, which will make great changes to the current system of Special Needs education in England.

The Parliamentary Explanatory Note says:

#### **Part 3: Children and young people in England with special educational needs or disabilities**

##### **Local authority functions: general principles**

Section 19 ... sets out the general principles that local authorities must have regard to in exercising their powers and duties under Part 3 of the Act in the case of children and young people. The principles are based on the Government's vision for reforming services for children and young people with special educational needs, as set out in the 2011 Green Paper, *Support and Aspiration: A new approach to Special Educational Needs and Disability*. They seek to ensure that local authorities place children, young people and families at the centre of decision making, enable them to participate in a fully informed way, and with a focus on achieving the best possible outcomes.

##### **Special educational needs etc**

Section 20: ... A child or young person has special educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for them. Children and young people with special educational needs may require extra or different provision in relation to thinking and understanding, as a result of physical or sensory difficulties, emotional or behavioural difficulties, difficulties with speech and language or

how they relate to and behave with other people. Disabled children and young people may require extra or different provision, for example, if they are less mobile than their peers and require additional or extra provision so they can access the same learning opportunities. A child or young person does not have a learning difficulty or disability simply because the language in which they are (or will be) taught is different from the one they speak at home. This section [20] replicates the current definition of special educational needs in section 312 of the Education Act 1996 and the definition of a learning difficulty in section 15Z(6) and (7) of the Education Act 1996, applying a single definition to children and young people from birth to 25.

Section 83 [of the 2014 Act] defines various terms:

- Young person is a person over compulsory school age (1) but under 25.
- Child is a person who is not over compulsory school age: see section 579 of the Education Act 1996.
- Mainstream schools are maintained schools and Academy schools that are not special schools. A maintained school is a community, foundation or voluntary school, or a community or foundation special school not established in a hospital.
- Post-16 institution is any institution that provides education or training for those over compulsory school age, but which is not a school or within the higher education sector. Mainstream post-16 institutions are those which are not specially organised to make special educational provision for students with special educational needs, that is, further education colleges, sixth form colleges, 16–19 Academies and training providers. Special post-16 institutions are post-16 institutions that are specially organised to make special educational provision for students with special educational needs. They are not within the further education sector or 16–19 Academies and are currently often referred to as independent specialist providers or independent specialist colleges.

Section 21 ... defines special educational provision, health care provision and social care provision. Special educational provision is additional or different from that which would normally be provided for children or young people of the same age in mainstream schools or colleges, maintained nursery schools and places at which relevant early years education is provided. It might include support from a specialist teacher, access to a specialist teaching programme, specialist ICT equipment or a specialist job coach. For children under two it means educational provision of any kind. Health care provision means provision of health care services provided as part of the NHS. These services may be provided by or on behalf of NHS bodies including by private providers. Social care provision is provision made by local authority social services. Health care provision or social care provision which educates or trains the child or young person is to be treated as special educational provision (rather than health care or social care provision). This reflects the precedents set by case law in relation to the current special educational needs legislation ... Section [21] replicates, and replaces in England, the current

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definition of special educational provision in section 312 of the Education Act 1996 and applies it to young people over compulsory school age. Relevant early years education is defined in the section as having the same meaning as under section 123 of the Schools Standards and Framework Act 1998, that is, free early years provision (as defined in section 20 of the Childcare Act 2006) which is provided under arrangements made by a local authority pursuant to section 7 of the Childcare Act 2006.

Section 22 ... places a duty on local authorities to identify all those children and young people in their area who have or may have special educational needs or disabilities. Children and young people can be brought to the attention of the local authority by their parents, their school or college, or other professionals, for example a social worker, General Practitioner, health visitor, teacher, early years professional or a further education tutor. This section [22] is based on, but differs from, sections 13(5) and 321 of the Education Act 1996 and will apply in England. The Education Act provisions will be repealed in relation to England when these provisions come into force.

Section 23 ... replicates section 332 of the Education Act 1996 and extends it to disabled children. Where a clinical commissioning group (CCG), NHS Trust or NHS Foundation Trust, in carrying out their functions in relation to a child under compulsory school age, are of the opinion that the child has or probably has special educational needs or a disability they must tell the child's parents and give them the chance to discuss this with an officer of the group or trust. They must then tell the appropriate local authority. They must also tell the parent if they think a particular voluntary organisation is likely to be able to give them advice or assistance in respect of their child's special educational needs or disability. This section helps to ensure that young children who may need special educational provision or information and support in relation to a disability are brought to the local authority's attention early on.

### **Children and young people for whom a local authority is responsible**

Section 24 ... specifies the children and young people for whom a local authority is responsible for the purposes of Part 3 of the Act. These functions include identifying and assessing a child or young person's education, health and care needs and drawing up an EHC plan to meet them, and preparing a local offer of services that are available for children and young people with special educational needs and their families. A local authority is responsible for a child or young person if he or she is in the authority's area and he or she has been identified by the authority or brought to its attention as someone who has or may have special educational needs. This will cover children and young people who live in the authority's area and are educated within it and those who live in the authority's area but who are educated outside its area. This would include, for example, children and young people with an EHC plan from the local authority's area who the authority has placed in an independent school or post-16 Independent Specialist College. This section allows anyone to bring a child to the attention of the local authority as having or possibly having special educational needs. Explicit

rights for parents and young people and schools and colleges to request a statutory assessment, carried forward from the present SEN system, are set out in section 36. Section [24] replaces, in England, section 321 of the Education Act 1996 and section 139B(4) of the Learning and Skills Act 2000. Section 81 makes clear that references in this Part to a child or young person who is in the area of a local authority in England do not include a child or young person who is wholly or mainly resident in the area of a local authority in Wales.

**Education, health and care provision: integration and joint commissioning**

[Under] section 25 ... Local authorities are required to carry out their functions under Part 3 in a way that promotes integration between educational and training provision with health care provision and social care provision where they consider that this would promote the well-being of children or young people who have special educational needs or a disability or where it would improve the quality of special educational provision for children and young people with special educational needs (as described in *subsection (1)*). This section is intended to assist children and young people with educational, health and social care needs by improving the way services work together to provide support for them. This section reflects the duty placed on CCGs by section 14Z1 of the National Health Service Act 2006 (as inserted by section 26 of the Health and Social Care Act 2012) and the proposed duty on local authorities under clause 3 of the Care Bill which look to improve integrated working between services.

Section 26 ... requires the local authority and its partner commissioning bodies to make arrangements about the education, health and care provision to be secured for children and young people with special educational needs for whom it is responsible and for those with disabilities. Those must include arrangements for considering and agreeing the education, health and care provision reasonably required by the learning difficulties and disabilities which result in the children and young people for whom the authority is responsible having special educational needs and by the disabilities of the children and young people in its area. It does not specify the form which the arrangements should take as this should be agreed locally. Commissioning Bodies are defined to include the NHS Commissioning Board as well as the individual CCGs, so the arrangements may cover circumstances in which the Board is responsible for commissioning services directly, such as low incidence/high need specialist services, and for particular groups for whom it has commissioning responsibility, such as the children of members of the armed forces. Each body which is under a duty to arrange for the provision of services and facilities under the National Health Service Act 2006 for children and young people for whom a local authority is responsible will be a partner commissioning body of the authority. *Subsection (9)* provides a power to prescribe the circumstances in which a CCG is not to be treated as a partner commissioning body. The joint commissioning arrangements must include arrangements for the local authority and commissioning bodies to consider and agree the special educational, health and social care provision required locally, and to determine what provision is to be secured and by

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whom, in order to meet that need. The arrangements must also cover what information and advice is to be provided about education, health and care provision, how it is to be provided, and how complaints about education, health and care provision may be made and handled. In addition, the arrangements will also include procedures for resolving disputes between the partners. The joint commissioning arrangements are also intended to help support other provisions. It is anticipated that the arrangements will help the local authority better inform its local offer (see section 30), help those children and young people who have special educational, health and social care needs by ensuring that there are adequate and “joined up” assessments under section 36, help secure the provision included in EHC plans, and help in agreeing personal budgets for providing support (see section 49). The local authority and its partner commissioning bodies are required to act consistently with the joint commissioning arrangements and to keep them under review so they can be updated where necessary. The duty under joint commissioning arrangements may be fulfilled by making use of existing local arrangements where they are used to meet the purposes set out under this section. Such arrangements will include joint strategic needs assessments and joint health and wellbeing strategies developed pursuant to sections 116 and 116A of the Local Government and Public Involvement in Health Act 2007 (as amended by sections 192 and 193 of the Health and Social Care Act 2012).

### **Review of education and care provision**

Section 27 ... requires local authorities in England to keep under review the educational and training provision and social care provision made in their area for children and young people with special educational needs or disabilities and the provision made outside their area for children and young people with special educational needs for whom they are responsible and for those with disabilities. Local authorities must consider the extent of provision and whether it is sufficient to meet children and young people’s educational needs, training needs and social care needs. This complements the local authority’s duties under section 14 and section 15ZA of the Education Act 1996 to secure sufficient schools and suitable education and training for young people. When keeping their provision under review local authorities are required to consult with children and young people with special educational needs and disabilities, parents of children with special educational needs and disabilities, the bodies named in *subsection (3)* of the section and any other such people as the local authority thinks appropriate. In carrying out their duties under this section local authorities must have regard to the relevant Joint Strategic Needs Assessment and Health and Well-being Strategy. This section replaces section 315 of the Education Act 1996 in England and will operate alongside section 26 on joint commissioning to provide the local authority with relevant information with which to prepare the local offer.

### **Co-operation and assistance**

Section 28 ... is a reciprocal duty of co-operation which requires local authorities and partners (listed in *subsection (2)*) to co-operate with one

another in the exercise of the authority's functions in this Part relating to children and young people with special educational needs. The local authority must under *subsection (3)* ensure that there is co-operation between its officers involved in education and training and social services and any other officers who assist children or young people to prepare for adulthood and independent living as part of the local offer. *Subsection (4)* provides a power to prescribe the circumstances in which a CCG is not to be treated as a partner of a local authority.

Section 29 ... complements the duty in section 28, and relates to the functions of governing bodies, proprietors and management committees, rather than local authorities. It requires co-operation between those institutions listed in *subsection (2)* and local authorities in the delivery of their duties set out in these provisions.

**Information and advice**

Section 30 ... requires local authorities to publish information about services they expect to be available for children and young people with special educational needs and disabilities. This will be called the "local offer" and local authorities will keep their local offer under review and revise it. The local offer must include information about the provision the local authority expects to be available in its own area for children and young people with special educational needs and disabilities and outside its area for those children and young people, regardless of whether or not they have EHC plans. Information about provision outside the local authority's area could include, for example, specialist provision located in a neighbouring authority but which is available to children and young people in its area. The local offer will cover special educational, health care and social care provision, other educational provision, training provision, provision to assist in preparing children and young people for adulthood and independent living (such as finding employment or obtaining accommodation), arrangements for children and young people to travel to schools or post-16 education (including further education colleges, sixth form colleges, independent specialist providers and training providers) and providers of relevant early years education. Regulations will set out the information local authorities should include in their local offer, how it is to be published, who is to be consulted in preparing it and how the authority will involve children and young people with special educational needs and disabilities and parents of children with special educational needs and disabilities in preparing and reviewing it. This involvement will include publishing comments about the local offer that have been received from or on behalf of those children and young people and parents, and the authority's responses to those comments, including any action it intends to take. Local authorities will also have to include information about how to seek an assessment for an EHC plan, about other sources of information, advice and support, and about how to make a complaint about provision in the local offer. The regulations will also set out the extent of the information local authorities should include about provision outside their area. Local authorities will be free to include other information in their local offer if they wish. This section on the local offer works alongside section 27

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which requires local authorities to keep their education and social care provision for children and young people with special educational needs and disabilities under review, and also section 26 which requires local authorities to make joint commissioning arrangements with partner clinical commissioning groups.

Section 31 ... supplements the duties in section 28 and 29. It requires health service partners, other local authorities, the person in charge of any relevant youth accommodation, and youth offending teams to co-operate when asked by a local authority for help in carrying out its duties towards children and young people with special educational needs. Requests for cooperation could be in relation to assessments of individual children's special educational needs and preparation of EHC plans. Regulations may impose time limits where a request to co-operate relates to local authority duties in these areas. This section [31] replaces, in England, section 322 of the Education Act 1996.

Section 32 ... requires local authorities to make arrangements for advice and information about special educational needs and disabilities to be provided for children, young people and the parents of children in its area with those needs, and to make the services provided known to those people, schools, colleges and others they consider appropriate. This section [32] replaces and extends section 332A of the Education Act 1996 under which local authorities have provided parent partnership services which already provide information and advice to parents of children with special educational needs. Section 332A related to children, parents and schools. The section extends the reach of the provision in section 332A to children and young people with SEN, disabled children and their parents and disabled young people. It places a duty on local authorities to make these provisions known to the head teachers, proprietors and principals of schools and post-16 institutions in their area. The local authority may also inform anyone else it thinks is appropriate.

### **Mainstream education**

Section 33 sets out what action should be taken when a local authority is making an EHC plan for a child or young person with special educational needs who is to go to a school or college, where either:

- The child's parents or the young person do not ask for a particular school or college to be named in the EHC plan in accordance with section 38; or
- The child's parents or the young person do make a request, but the local authority does not intend to name the requested provider.

It places a duty on the local authority to make sure that the EHC plan provides for the child or young person to be educated in a maintained nursery school or mainstream setting (that is, not in a special school or special college) unless that is against the wishes of the young person or the child's parent, or would damage the efficient education of others and there are no reasonable steps that could be taken to overcome this. If one of those conditions applies, the child or young person's EHC plan can provide for

them to be educated in a special school or a special post-16 institution such as an independent specialist provider. This section replaces sections 316 and 316A of the Education Act 1996 and extends the provisions to young people in post-16 education.

Section 34 ... applies to a child or young person in England who has special educational needs but no EHC plan and who is to be educated in a school or post-16 institution. It sets out the general principle that those children and young people must be educated in a maintained nursery school, mainstream school or mainstream college except in particular circumstances. These are: where it is agreed that they are admitted to a special school or special post-16 institution to be assessed for an EHC plan; it is agreed that they are admitted to a special school or special post-16 institution following a change in their circumstances; they are admitted to a special school which is established in a hospital; or where they are admitted to a Special Academy whose Academy arrangements allow it to admit children or young people with special educational needs who do not have an EHC plan. This section replaces sections 316 and 316A of the Education Act 1996 and extends the provisions to young people in post-16 education.

[Under] section 35, when a child with special educational needs is being educated in a maintained nursery school or a mainstream school, the school must enable the child to take part in the activities of the school with other children as far as is reasonably practicable and so long as this ensures the child gets the special educational provision they need, does not damage the education of the other children and does not mean an inefficient use of resources. This section replaces, in England, section 317(4) of the Education Act 1996.

### **Assessment**

... Section 36 gives a child's parent, a young person or a person acting on behalf of a school or post-16 institution the right to request a statutory assessment. It requires local authorities to consider whether an assessment is necessary for a child or young person where such a request has been made or where the authority has become responsible for the child or young person in some other way, such as by someone else bringing the child or young person to the authority's attention. The section sets out the local authority's duties when making their decision about whether to carry out an assessment and in carrying out any subsequent assessment of the child or young person. In making a decision on whether an assessment is necessary, the local authority must consult with the child's parents or the young person, to ensure they are involved in the process from the outset. If the local authority decides not to carry out an assessment they must inform the child's parents or the young person of their decision and their reasons for it. If they intend to carry out an education, health and care needs assessment they must inform the child's parents or the young person and make sure that they are aware of their rights to have their own views considered by the local authority (either orally or in writing). The local authority must carry out an assessment if, after taking account of any views expressed and evidence submitted, it thinks that the

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child or young person has or may have special educational needs and that it may be necessary for special educational provision to be made for a child or young person through an EHC plan. The parent or young person should be informed of the outcome of the assessment and whether the local authority intends to prepare an EHC plan. Further detail about the assessment process will be set out in regulations, including, for example, how assessments are conducted and advice obtained, how parents and young people can express their views and submit evidence, and about the provision of information, advice and support in connection with an assessment.

Section 51 provides that if, having received and considered a request for an assessment, a local authority decides not to carry one out, the child's parents or the young person may appeal against that decision to the First-tier Tribunal.

The provision in section 36(10) is intended to make clear that when a local authority is deciding whether to carry out an assessment for a young person aged 19 or over, it must consider whether the young person needs more time, in comparison to the majority of people their age who do not have special educational needs, to complete their education or training. Young people may have an EHC plan up to age 25 but, as young people will be ready to leave education or training and make the transition into adult life at differing ages, in many cases an EHC plan will end sooner than that. This section replaces, in England, sections 323 and 331 of the Education Act 1996 and sections 139A–139C of the Learning and Skills Act 2000.

### **Education, health and care plans**

Section 37 ... sets out what a local authority must do if the education, health and care assessment in section 36 indicates that a child or young person requires an EHC plan for their special educational provision. The local authority is under a duty to make sure that an EHC plan is prepared and then implemented. The EHC plan should specify the short and long term outcomes that it is designed to help the child or young person to achieve and the special educational, health and social care provision that will be made to support them. This could include, for example, access to specialist teaching, speech and language therapy provision, and short breaks. The health care provision to be specified in the EHC plan is that which is reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs. For example, health provision could include therapies, such as occupational therapy, and equipment, such as wheelchairs and continence supplies (see also section 21). The social care provision to be specified in the EHC plan includes any social care provision which must be made for a child or young person under 18 by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970. This could include practical assistance in the home or providing an outing for a child. The social care provision to be specified in the EHC plan also includes other social care provision which is reasonably required by the learning difficulty or disability which results in the child or young person having special educational needs. This may include provision

made under section 17 of the Children Act which is not covered by the Chronically Sick and Disabled Persons Act 1970, for example residential short breaks. It may also include adult social care provision for young people aged 18–25 with EHC plans. Other health and social care provision may be included in plans, where local authorities and health commissioners consider this would be beneficial to the child or young person. For example, if a child with an EHC plan for significant dyslexia developed an unrelated illness, it might make sense for them, their parents and the professionals supporting them to co-ordinate their care through the EHC plan. Further detail about the preparation (including time limits), content and maintenance of an EHC plan may be set out in regulations. This section replaces, in England, section 324 of the Education Act 1996.

Section 38 ... sets out the process that must be undertaken by a local authority when preparing a draft EHC plan. The local authority must consult with the child's parents or the young person, to ensure they are involved in the planning process from the outset and their views are taken into account. The local authority must send a copy of the draft EHC plan to the child's parent or the young person and make sure that they are aware of the ways in which they can express their views on the content of the draft EHC plan. The draft EHC plan must not name a specific institution or a type of institution. This is so that parents or young people have the opportunity to request (before the end of the time period which is specified in the notice sent to the parent or young person under *subsection (2)(b)*) that a particular school, further education college in England or other institution is named in the EHC plan before it is finalised. Parents and young people may request any institution of the types listed in *subsection (3)*. Parents and young people will also be able make representations for an independent school or post-16 independent specialist provider not included in this list as is the case under the current legislative framework (although there will be no corresponding duty on the local authority to name such an institution in the EHC plan or for that institution to be under a duty to admit the child or young person). Local authorities may also specify education otherwise than in a school or post-16 institution in an EHC plan where they consider this to be suitable provision. This section replaces, in England, section 323 of the Education Act 1996.

Section 39 ... applies where the child's parent or the young person has received a draft EHC plan and requested that a particular institution is named in the EHC plan. The local authority is required to consult any institution that it is considering naming in the EHC plan and, where that institution is maintained by another local authority, the other authority. The local authority must comply with the parent or young person's request unless the child or young person's attendance at the school would not meet their special educational needs, or would be incompatible with the efficient education of others or the efficient use of resources. If it believes that these circumstances apply, the local authority must name the school or other institution, or type of institution, that the local authority considers to be most appropriate for the child or young person (having consulted that

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institution before naming it in the EHC plan). A copy of the final EHC plan must then be sent to the child's parent or the young person and to the school, college or other institution that has been named in the EHC plan. This section replaces, in England, section 324 and parts of Schedule 27 of the Education Act 1996.

Section 40 ... applies where the child's parent or young person has received a draft EHC plan but has not made a request for a particular institution in accordance with section 38(2)(b)(ii). They may have said they would like an independent school, training provider or early years education provider to be named, or they may have indicated no preference at all. In this eventuality, the EHC plan must name the specific institution or type of institution that the local authority considers appropriate. The local authority must consult any school or institution that it is considering naming, and where that institution is maintained by another local authority, that authority, before finalising the EHC plan. A copy of the final EHC plan must then be sent to the child's parent or the young person and the school or other institution named in the EHC plan. Further duties on the local authority which apply in these circumstances are set out in section 33 (duty to educate within the mainstream sector). This section replaces, in England, section 324 of the Education Act 1996.

Section 41: ... Independent schools that are specially organised to make special educational provision for children with special educational needs, and special post-16 institutions (independent specialist colleges) can be named in an EHC plan. This section gives the Secretary of State the power to approve such institutions and once he has done so parents and young people can express a preference for them under section 38(2), with the resultant conditional duty on the local authority to name the institution in the EHC plan. Approval can only be given if the institution consents. The Secretary of State may withdraw approval and regulations may make provision about the types of institution that can be approved, and the criteria that must be met for such approval. Regulations may also set out the matters to be taken into account in deciding whether to give or withdraw approval and may cover publication of a list of institutions that have been approved by the Secretary of State.

Section 42: ... Where an EHC plan is maintained for a child or young person, the local authority must make sure that the special educational provision set out in it is made. The local authority need not make the special educational provision set out in the EHC plan if the child's parent or the young person makes alternative, suitable arrangements. The responsible commissioning body must make sure that any health provision set out in the EHC plan is made. The "responsible commissioning body" in relation to any specified health care provision means the body (or each body) that is under a duty to arrange the health care provision for the child or young person. This will typically be the relevant clinical commissioning group but may also be the NHS Commissioning Board. The responsible commissioning body need not make the health provision set out in the EHC plan if the child's parent or the young person makes alternative, suitable arrangements. This section replaces and expands, in England, section 324 of the Education Act 1996.

Section 43: ... Where a maintained school, maintained nursery school, Academy, institution in the English further education sector (a further education college or sixth form college), non-maintained special school or independent school or independent specialist college approved by the Secretary of State under section 41 is named in an EHC plan it must admit the child or young person. This section replaces, in England, section 324 of the Education Act 1996.

Section 44 ... requires local authorities to review a child or young person's EHC plan at least every 12 months. It also sets out when re-assessments must take place. A review is intended to consider whether the provision in the EHC plan is meeting the child or young person's assessed needs and whether they are making progress towards the outcomes identified. A re-assessment means undertaking the assessment process in section 36 again, for example when a child or young person's needs may have changed significantly. Local authorities must consult with the parent of the child, or the young person, during any review or re-assessment to ensure they are involved in the process from the outset and their views are taken into account. The local authority must carry out a re-assessment if one is requested by the child's parent, the young person or the school, college or other institution that they attend, subject to particular exemptions to be set out in regulations (which might include for example where a previous assessment has been conducted relatively recently). The local authority also has the power to carry out a re-assessment without waiting for one to be requested by a parent or school. In reviewing an EHC plan maintained for a young person aged 19 or over, or deciding whether to reassess their needs the local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved. Many young people will have completed their education and made a successful transition to adulthood before 25. However an EHC plan can remain in place for those who need longer to complete or consolidate their learning to enable them to make a successful transition to adulthood. More detail about the process for reviewing, amending or replacing EHC plans will be provided in regulations including circumstances in which a local authority must or may review an EHC plan (for example, before the end of a specified phase of a child or young person's education, or when a young person becomes NEET, that is, they are not in education, employment or training). This section replaces, in England, section 323 of the Education Act 1996.

Section 45: A local authority may only stop maintaining an EHC plan if they are no longer responsible for that child or young person, for example if the child or young person has moved to another area, or they consider that it is no longer necessary for the EHC plan to be maintained. The section sets out some of the circumstances under which it would no longer be necessary to maintain the EHC plan, for example, where the child or young person no longer requires the special educational provision specified in the EHC plan. When determining that a young person aged 19 or over no longer requires special educational provision, the local authority must have regard to whether the educational or training outcomes specified in the EHC plan have been achieved. This enables a local authority to continue an EHC plan where

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a young person has dropped out of education (ie is not in education, employment or training (NEET)) but would like to return to education or training. Regulations may make further provisions about ceasing to maintain an EHC plan. When an appeal is made against a local authority's decision to cease an EHC plan, the authority must continue to maintain the EHC plan until the time has passed for bringing an appeal or the appeal has been determined by the First tier Tribunal.

Section 46 ... gives local authorities the power to maintain an EHC plan for a young person until the end of the academic year (such date to be prescribed in regulations) in which they become 25, enabling them to take account of individual needs and circumstances.

Section 47 ... enables regulations to be made regarding the process for transfers of EHC plans, when a child or young person with an EHC plan moves between local authority areas. This may include a duty on the new local authority to maintain an EHC plan prepared by the previous local authority. This section replaces, in relation to England, paragraph 7(2) of Schedule 27 to the Education Act 1996.

Section 48: ... If a child or young person who is released from a custodial sentence previously had an EHC plan, or if the local authority is keeping a plan for them under section 70 the local authority that is responsible for the child or young person on their release (which may not be the same local authority that secured the EHC plan originally) must maintain the previous EHC plan and review it as soon as is practicable after release.

Section 49 ... requires local authorities to prepare a personal budget for children or young people for whom the local authority maintains an EHC plan or has decided to make an EHC plan, if asked to do so by the child's parent or the young person. A personal budget is an amount available to secure particular provision set out in the EHC plan and provides a way of involving parents or young people in securing that provision. Personal budgets can take the form of direct payments which families can spend themselves or notional budgets which they can devise with the local authority and which the local authority can spend on their behalf at their direction by arranging the provision in the EHC plan – or a combination of both. Regulations will provide details about personal budgets, including provision that may be included in a personal budget or to which a direct payment may relate, the provision of information, support and advice in connection with personal budgets and direct payments, and when, to whom and on what conditions direct payments may or may not be made. Any regulations which authorise direct payments to a parent or a young person must require them to consent before a direct payment can be made. They must also require local authorities to stop making direct payments where that consent is withdrawn. Special educational provision purchased with a direct payment will be treated as provision secured by the local authority for the purposes of fulfilling its duty under section 42(2) to secure the special educational provision in an EHC plan and health care provision purchased with a direct payment will be treated as provision arranged by the commissioning body for the purposes of fulfilling its duty under section 42(3).

Section 50 inserts a new provision (section 17ZG) into the Children Act 1989. It gives a power to local authorities to continue to provide services they have been providing to a young person before their 18th birthday under section 17 of the Children Act 1989 (services to children in need, their families and others) to the young person when they are 18 and over, where the young person has an EHC plan. The local authority retains discretion over how long it chooses to provide services under section 17 while an EHC plan remains in place. Where the young person no longer has an EHC plan, the local authority no longer has the power to extend the provision of these services to young people over 18. The provision in this section aims to support better transitions between children's and adult services for young people with EHC plans. Guidance on how an authority should use this discretion will be set out in the Code of Practice issued under section 77.

**Appeals, mediation and dispute resolution**

Section 51 sets out the decisions taken by a local authority in relation to assessments and EHC plans against which a parent or young person can appeal. These are set out in *subsection (2)*. This section extends the current right of appeal to the First-tier Tribunal to young people aged up to 25 and, in the case of young people in school, transfers the right from the parent to the young person. The section also extends the right of appeal to the Tribunal to the parents of children under 2 years of age. An appeal can only be made after mediation has been considered and, where the parent or young person has decided to take part in mediation, this has taken place in accordance with section 52. The Secretary of State may make regulations in relation to appeals. The Secretary of State's powers include the power to make regulations giving the Tribunal the power to make recommendations about the health and social care elements of EHC plans in pilot areas (see section 51(4)(a)). *Subsection (5)* recreates an offence, carried over from the Education Act 1996. A person commits an offence if, without reasonable excuse, they fail to comply with any requirement to provide or allow for inspection of documents, or attend a Tribunal hearing to give evidence or produce documents, where that requirement is imposed by the Tribunal Procedure Rules in relation to an SEN appeal. Under *subsection (6)* a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. Under the Tribunal Procedure Rules nobody may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law. This section replaces, in England, sections 325, 326, 328, 328A, 329 and 336(5A) and (6) of, and paragraphs 8 and 11 of Schedule 27 to, the Education Act 1996.

Section 52 ... sets out that local authorities must inform parents and young people, following a decision in relation to an assessment or a plan or after the plan is made, amended or replaced, of their right to mediation about educational, health and social care issues. Mediation is different to an appeal, in that it seeks to resolve matters through agreement between parents/young people and local authorities rather than through a judicial decision. The mediator must be independent, meaning that he or she cannot be an

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employee of a local authority. The local authority must also inform parents and young people that before making certain appeals to the Tribunal they must obtain a certificate, either following the receipt of information about mediation or following mediation. If the parent wishes to pursue mediation then they must tell the local authority that they intend to do so and what they want to pursue mediation about and, if they want health provision or a particular kind of health provision included in the plan, what that health provision is.

Section 53 ... sets out that where the parent or young person wants to pursue mediation and the mediation issues include health care provision then the local authority must inform the relevant health commissioning body, either the clinical commissioning group or the NHS Commissioning Board, of the mediation issues and of any health care provision that the parent or young person wants. If the parent or young person just wants mediation about health care provision then the responsible commissioning body or bodies must arrange for mediation, ensure that the mediation is conducted by an independent person and participate in the mediation. If the mediation issues include education and/or social care then the local authority must arrange the mediation, ensure it is conducted by an independent person and the local authority and the responsible health commissioning body must participate. An independent person, in this context, is someone who is not employed by a local authority in England or a clinical commissioning group or the NHS Commissioning Board.

Section 54 ensures that where the mediation does not include health care issues but involves education and/or social care, the local authority must arrange the mediation, make sure that it is conducted by an independent person and participate in the mediation.

Section 55: ... When a parent or young person wishes to bring an appeal about the special educational needs element of a plan, they may do so only if an independent mediation adviser has provided them with information about mediation and how it might help. It will be up to the parents or young person to decide whether to go forward to mediation. Where they decide to do so, they must take part in mediation before they can bring an appeal to the First-tier Tribunal. Where they decide against mediation they will be able to go straight to appeal. The mediation adviser must issue a certificate to the parent or young person if he or she has provided them with information and advice about pursuing mediation and the parent or young person has informed the adviser that they do not wish to pursue mediation about assessments, the drawing up of plans or the special educational element of the EHC plan. The adviser must also issue a certificate if they have provided information and advice, the parent or young person has told them they wish to pursue mediation with the local authority and has participated in mediation. Parents and young people do not have to contact the mediation adviser if they want mediation about the health or social care elements of the plan. Appeals which only concern the name of a school, college or other institution specified in the EHC plan or the type of school, college or institution specified in the EHC plan or the fact that the EHC plan does not name any

school, college or other institution can be made without getting mediation information or going to mediation. This is because the parent or young person will already have been able to request a particular school or institution in the further education sector, and had discussions with the local authority about which institution should be named on the EHC plan. Requiring mediation in these circumstances would involve repeating the same discussions. This section gives the Secretary of State regulation-making powers concerning mediation as listed in this section, including about giving notice, imposing time limits, qualifications and experience of mediation advisers and local authority action following mediation.

Section 56 gives the Secretary of State the power to make regulations about mediation, about such things as giving notice, imposing time limits and enabling a local authority or commissioning body to take prescribed steps following the conclusion of mediation. It also defines “mediation adviser”, and makes clear that the adviser cannot be an employee of a local authority, clinical commissioning group or the NHS Commissioning Board. This section also defines “commissioning body” in relation to mediation.

Section 57: ... Local authorities must make arrangements for avoiding or resolving disagreements where the parents of a child with special educational needs, or a young person with such needs, do not agree with how the local authority or an education body (listed in *subsection (9)*) with duties under Part 3 of the Act has carried out those duties. It must also make arrangements to avoid or resolve disagreements between the parents of a child or a young person and any school or post-16 institution specifically about the special educational provision made by the institution for that child or young person. The disagreements in this section also cover disagreements between parents or young people on the one hand and the responsible health commissioning bodies on the other about health care provision at the time assessments or re-assessments are being undertaken or EHC plans are being drawn up or reviewed. Disagreement resolution can also cover disagreements between local authorities and their responsible health commissioning bodies. The section does not require either parents or young people on the one hand, or education bodies, local authorities or health commissioning bodies on the other, to participate in resolving disagreements – use of these arrangements is entirely voluntary. Local authorities must appoint someone who is independent to help resolve a disagreement, or prevent it happening in the first place. Employees of a local authority, clinical commissioning group or the NHS Commissioning Board do not meet the criterion of being independent and cannot take on that role. Local authorities must tell various people, including parents and young people, about the arrangements they have put in place to resolve disagreements. This section replaces, in England, section 332B of the Education Act 1996.

Section 58 ... gives the Secretary of State a power to establish pilot schemes in local authority areas to enable children to make appeals in relation to their special educational needs and to bring disability discrimination claims against schools to the First-tier Tribunal. Currently the Education Act 1996 and the Equality Act 2010 only give parents such a right. The pilots will test

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whether the right to appeal is something that children would use, the best way to handle these appeals and the cost implications, with a view to extending the right to children across England. The section establishes the things the pilot scheme can cover. These include the age from which a child may appeal and make claims; how mediation before a child's appeal works; and advice, information and advocacy provided to a child. The section stipulates that the power to make an order establishing pilot schemes is repealed after five years (from the date on which the Act receives Royal Assent).

Section 59 provides the Secretary of State with the power to make an order enabling all children in England to bring appeals and make disability discrimination claims to the First-tier Tribunal. The power would be used after pilots have been run. The Secretary of State may not use this power until pilot schemes have been in place for two years. The section establishes what an order made by the Secretary of State can cover and this includes the age from which a child may bring appeals or make disability discrimination claims; about mediation; and advice, information and advocacy provided to a child (mirroring section 58(2)).

Section 60 ... amends the Equality Act 2010 so that young people in England who are over compulsory school age and in school can make disability discrimination claims to the First-tier Tribunal themselves. Currently only the parents of disabled young people can make claims to the Tribunal. This mirrors the provision made in section 51 which allows for young people over compulsory school age to make special educational needs appeals to the Tribunal. This section does not affect the rights of parents of young people in Wales to make disability discrimination claims to the Special Educational Needs Tribunal for Wales. Pilots on giving children and young people in Wales the right to make special educational needs appeals and disability discrimination claims to its Tribunal are being conducted with the right being given to all children and young people in Wales following the pilots. The necessary changes to the Equality Act 2010 and the Education Act 1996 will be achieved through an Act of the Assembly.

### **Special educational provision: functions of local authorities**

Section 61: ... A local authority may arrange for special educational provision to be made for a child or young person otherwise than in a school, college or provider of relevant early years education. But before it can do so it has to be satisfied that it would be inappropriate for provision to be made in one of those settings and must have consulted the child's parent or the young person. This provision could include, for example, early years provision that is not part of the free early years provision under section 7 of the Childcare Act 2006. This section replaces, in England, section 319 of the Education Act 1996.

Section 62 ... enables local authorities to arrange special education provision for a child or young person with an EHC plan outside England and Wales in an institution that specialises in providing for special educational needs, and gives them power to pay for, or contribute to, the costs of the child or young

person attending such an institution. This section replaces, in England, section 320 of the Education Act 1996.

Section 63: ... Where a local authority is responsible for a child or young person with special educational needs, and special educational provision is made for him or her at a school, post-16 institution or provider of relevant early years education, the local authority must pay the fees for the education and training received where the institution is named in the EHC plan. This also applies if there is no EHC plan and the local authority is satisfied the child or young person requires special educational provision and that it is appropriate for them to receive it at the institution in question. Where board and lodging are provided for the child or young person at such a school or college or place where relevant early years education is provided, the local authority must pay those fees if it is satisfied that special educational provision cannot be made there unless board and lodging are provided. This section replaces, in England, section 348 of the Education Act 1996.

Section 64 ... gives local authorities the power to supply goods and services to maintained schools, maintained nursery schools, Academies and institutions in the further education sector (further education colleges or sixth form colleges) that are likely to be attended by a person with an EHC plan that the authority is maintaining for the purpose of supporting children and young people with special educational needs. Local authorities may supply goods and services on terms and conditions they see fit (including payment). Local authorities may supply goods and services to other local authorities and other bodies to help them make special educational provision for children receiving relevant early years education. This could cover specialist services to support children with different special educational needs, for example, sensory impairments. This section replaces, in England, section 318 of the Education Act 1996.

Section 65 ... gives local authorities in England the right to have access at any reasonable time to the premises of a school or other institution in England at which education or training is provided to a child or young person with an EHC plan maintained by the local authority in question, for the purpose of monitoring that education or training. The section replaces, in England, and expands the remit of, section 327 of the Education Act 1996. Section 327 only applies to maintained schools which are maintained by another authority and independent schools. This section takes account of the extended age remit to which the new special educational needs provisions apply and applies to any institution providing the child or young person with education or training in accordance with an EHC plan. Local authorities will, under this section, have access to schools and special post-16 institutions in Wales (but not to general further education institutions in Wales) for the purpose of monitoring the education or training made under an EHC plan.

### **Special educational provision: functions of governing bodies and others**

Section 66 ... requires that the governing bodies, proprietors or management committees of those institutions listed in *subsection (1)* use their best endeavours to secure that the special educational provision that is called for by a

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pupil or student's special educational needs is made. The section replaces, in England, and expands the remit of section 317(1)(a) of the Education Act 1996. Section 317 applied to the governing bodies of community, foundation or voluntary schools or maintained nursery schools. The new section takes account of the age remit of the new special educational needs provisions and the expansion in the number of Academies by applying the duty to further education institutions, Academy schools and 16 to 19 Academies. The new section also applies to pupil referral units.

Section 67 ... requires governing bodies of maintained mainstream schools, (including Academy schools) and maintained nursery schools to ensure that there is a member of staff designated as Special Educational Needs (SEN) co-ordinator. The SEN Co-ordinator will have responsibility for co-ordinating special educational provision for children and young people with special educational needs in their school. This can include providing advice to other teachers on supporting children with special educational needs and liaising with agencies outside the school such as social care services. The section gives the Secretary of State power to make regulations requiring governing bodies and proprietors to ensure that SEN Co-ordinators have prescribed qualifications and/or experience and conferring other functions on them in relation to SEN co-ordinators. This section replaces, in England, section 317(3A) and (3B) of the Education Act 1996.

Section 68 ... which applies where a child or young person has no EHC plan, requires governing bodies of maintained schools, maintained nursery schools, the management committees of pupil referral units, and the proprietors of Academy schools and Alternative Provision Academies to tell a child's parent, or the young person when special educational provision is being made for the child or young person. This does not need to happen if the child or young person has an EHC plan since parents of children with EHC plans and young people who have EHC plans will already be aware that special educational provision is being made. This section replaces, in England, section 317A of the Education Act 1996 and extends the provision to include young people.

Section 69 ... imposes a duty on the governing bodies of maintained schools and maintained nursery schools in England, and proprietors of Academy schools in England to prepare a report containing "special educational needs information". Special educational needs information is information about the implementation of the governing body's or proprietor's policy for pupils at the school with special educational needs, and information as to the arrangements for the admission of disabled pupils to the school; the steps taken to prevent less favourable treatment of disabled pupils; the facilities provided to assist access to the school by disabled pupils; and the accessibility plan which schools must publish under the Equality Act 2010. Regulations will set out the information to be provided. This section replaces, in England, section 317(5) and (6) of the Education Act 1996. This information is currently published on schools' websites.

### **Detained Persons**

[Sections 70–76 set out which sections of Part 3 apply to those in custody, namely children and young people that are detained in pursuance of a court order or an order of recall made by the Secretary of State] ... .

### **Code of Practice**

Section 77 requires the Secretary of State to issue a Code of Practice giving guidance to local authorities, the governing bodies, proprietors and management committees of various institutions, and other bodies listed in *subsection (1)* on the exercise of their functions under these provisions. These bodies must have regard to the Code when carrying out those functions, as must those who help them carry out those functions. The First-tier Tribunal must also have regard to any provision in the Code that it considers to be relevant to any question arising out of a special educational needs appeal with which it is dealing. This section also empowers the Secretary of State to revise the Code from time to time, and requires him or her to publish the current version. This section replaces, in England, section 313 of the Education Act 1996 and widens the scope of the bodies who must have regard to the Code from maintained schools, maintained nursery schools and local authorities to include colleges, Academies, pupil referral units and early years education providers.

Section 78 ... sets out the procedure for making and approving the Code of Practice [and] ... replaces section 314 of the Education Act 1996 in relation to England ...

Section 81 ... provides for Chapter 1 of Part 4 of the Education Act 1996 to cease to apply in relation to children with special educational needs in the area of a local authority in England when these provisions are implemented. The 1996 Act ... will continue to apply in relation to Wales and children with SEN statements prepared by a local authority in Wales under that Chapter.

### **Commencement of Part 3 of the Children and Families Act 2014**

Much of Part 3 will soon be in force in England. See the Children and Families Act 2014 (Commencement No 2) Order 2014 (SI 2014 No 889) and the Children and Families Act 2014 (Commencement No 2) (Amendment) Order 2014 (SI 2014 No 1134), below.

## **ACTS OF THE NATIONAL ASSEMBLY FOR WALES**

The Further and Higher Education (Governance and Information) (Wales) Act 2014 has received Royal Assent and is set out at LoE B(W) [801].

## **STATUTORY INSTRUMENTS**

### **Teachers' Pensions (1)**

#### ***The Teachers' Pensions (Amendment) Regulations 2014 (SI 2014 No 424)***

These Regulations, which came into force on 1 April 2014, amend the Teachers' Pensions Regulations 2010. The Explanatory Note states:

## STATUTORY INSTRUMENTS

‘Regulations 3 to 7 give effect to the new Fair Deal, found in “Fair Deal for staff pensions: staff transfer from central government” issued by HMT in October 2013 ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/246933/PU1571\\_Fair\\_Deal\\_for\\_staf\\_pensions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246933/PU1571_Fair_Deal_for_staf_pensions.pdf)). The regulations extend access to the teachers’ pension scheme for teachers, on the same terms as other members, who have moved from the public sector to an independent contractor by way of a compulsory transfer ... Regulation 7 extends pensionable employment to those teachers who have been transferred to the private sector ... .’

### **Inspectors of Education, Children’s Services and Skills (1)**

#### ***The Inspectors of Education, Children’s Services and Skills (No 2) Order 2014 (SI 2014 No 498)***

This Order appoints a further Inspector of Education, Children’s Services and Skills.

### **Teachers’ Pensions (2)**

#### ***The Teachers’ Pension Scheme Regulations 2014 (SI 2014 No 512)***

The Explanatory Note states that these Regulations establish a career-average re-valued earnings scheme for the payment of pensions and other benefits to and in respect of teachers in England and Wales. The Regulations are partly in force.

### **Tribunal Procedure**

#### ***The Tribunal Procedure (Amendment) Rules 2014 (SI 2014 No 514)***

These Rules amend various sets of Tribunal Rules including the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). The Explanatory Note states:

‘Rules 8 and 11 amend rules 22 and 30 of the Upper Tribunal Rules, which relate to applications for permission to appeal and applications for permission to apply for judicial review respectively. In both situations the Tribunal must send a written notice of a refusal to admit a late application. Where an application to admit a late application for permission to apply for judicial review is refused by the Tribunal without a hearing, an applicant may apply for reconsideration of that refusal.’

### **FE and HE: Student Loans**

#### ***The Education (Student Loans) (Repayment) (Amendment) Regulations 2014 (SI 2014 No 651)***

The Explanatory Note states:

‘These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ... . The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998 (c 30) ...

Regulation 3 amends the content which may form part of a information notice which may be served on a borrower. Regulations 4 and 12 remove the limit to the number of annual increases to repayment threshold and the applicable threshold for student loans which are not post-2012 student loans, by the retail price index, where the final increase would have been for the year 6 April 2015 to 5 April 2016. Regulations 5 and 10 change the legislative provisions under which interest rates are calculated for amounts which employers have not paid to Her Majesty’s Revenue and Customs. Regulation 6 permits the smallest employers to file returns about all the student loan repayments in a month on or before making the last payment to employees in the tax month, providing that they meet certain conditions. Regulation 7 extends the time for those employers who are permitted to file on paper (ie care and support employers) to file information with Her Majesty’s Revenue and Customs from 14 days after the end of the tax month to 14 days after the end of the tax quarter. Regulation 8 clarifies that regulation 59F (Returns under regulations 59B and 59E: amendments) applies whether the mistake is careless or deliberate. Regulation 9 ensures there is no penalty awarded under section 98A Taxes Management Act 1970 (c 9) if the final return for 2014–15 is not made by 19 May 2015. Regulation 11 provides for penalties under Schedule 24 to Finance Act 2007 (c 11) where an employer makes an incorrect return and as a result of that return there is an understatement of a student loan or a false claim for repayment from Her Majesty’s Revenue and Customs.’

**Inspections: Fees and Frequency of Inspections**

***Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc) (Amendment) Regulations 2014 (SI 2014 No 670)***

The Explanatory Note states:

‘These Regulations amend Part 4 (annual fees) of the Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc) Regulations 2007 (SI 2007/694). They amend the annual fees that are paid under the Children Act 1989, the Care Standards Act 2000 and the Education and Inspections Act 2006 to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills in respect of voluntary adoption agencies, adoption support agencies, fostering agencies, children’s homes, residential family centres, boarding schools, residential colleges, residential special schools and local authority adoption and fostering functions.’

## STATUTORY INSTRUMENTS

### **Local: Educational Endowments (1)**

*The Diocese of Manchester (Educational Endowments) (The Former Scot Lane End Church of England Primary School) Order 2014 (SI 2014 No 699)*

The Manchester Diocesan Board of Education is appointed as trustee of the foundation known as the Former Scot Lane End Church of England Primary School and new provision is made as to the use of the endowment of that foundation.

### **School Staffing**

*The School Staffing (England) (Amendment) Regulations 2014 (SI 2014 No 798)*

The Explanatory Note states:

‘The School Staffing (England) Regulations 2009 ... make provision relating to the staffing of maintained schools. Regulation 9 makes provision about the completion of safer recruitment training for persons involved in the selection and recruitment of school staff. “Safer recruitment training” is defined in regulation 3 of the principal Regulations as training provided by a person approved by the Secretary of State for the purpose of ensuring that those who undertake it know how take account of the need to safeguard children when recruiting staff. These Regulations amend that definition so that from 1 September 2014, it is not a requirement for “safer recruitment training” to be provided by a person approved by the Secretary of State. In addition a minor clarifying amendment is also made to the definition in regulation 3.’

### **Children and Families Act 2014 Commencement (1)**

*The Children and Families Act 2014 (Commencement No 2) Order 2014 (SI 2014 No 889)*

The Explanatory Note states:

‘This Order brings into force certain provisions of the Children and Families Act 2014 on 1st April, 22nd April, 13th May, 25th July and 1st September 2014.

Article 3 commences certain sections of Part 3 (children and young people in England with special educational needs or disabilities) and section 84 and Schedule 4 (childminder agencies), for the purposes of making orders or regulations, on 1st April 2014 ... Article 7 brings Part 3 (children and young people in England with special educational needs or disabilities) into force on 1st September 2014, to the extent that it is not already in force, except for sections 70 to 75 (detained persons) in respect of which only section 70(1) will be brought into force on that date, without the words “Subject to this section and

sections 71 to 75". The effect of this will be that the provisions in Part 3 which relate to young offenders will not be commenced for the time being. Article 7 also commences section 84 and Schedule 4 (childminder agencies), in so far as they have not already been commenced, and commences section 100 (duty to support pupils with medical conditions) and section 106 (provision of free school lunches) on 1st September 2014.'

### **Local: Educational Endowments (2)**

#### ***The Diocese of York (Educational Endowments) (Ellerton Priory Church of England School) (Amendment) Order 2014 (SI 2014 No 942)***

The Diocese of York (Educational Endowments) (Ellerton Priory Church of England School) (Amendment) Order 2013 is amended.

### **Local: Faith Schools**

#### ***The Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2014 (SI 2014 No 1024)***

Three schools are designated as having a religious character (one as Orthodox Jewish, as one Plymouth Brethren Christian Church, and one as Church of England). The Order also includes two revocations (one relating to a school which has closed and the other to a school which was previously designated but has changed its name and location).

### **School Teachers' Prescribed Qualifications**

#### ***The Education (School Teachers' Prescribed Qualifications, etc) (Amendment) Order 2014 (SI 2014 No 1063)***

This Order amends the Education (School Teachers' Prescribed Qualifications, etc) Order 2003. The Explanatory Note states:

'The 2003 Order prescribes persons who are school teachers for the purposes of section 122 of the Education Act 2002, which gives the Secretary of State a power to determine the remuneration and other conditions of employment of school teachers. Article 5 of the 2003 Order prescribes as school teachers instructors with special qualifications or experience, subject to certain specified restrictions. This Order removes the restriction that instructors are prescribed only if no suitable qualified teacher or a teacher on an employment-based scheme is available.'

### **Wales: Education (Wales) Measure 2011 Commencement**

#### ***The Education (Wales) Measure 2011 (Commencement No 3) Order 2014 (SI 2014 No 1066)***

Sections 10–15 and 17–21 of the Education (Wales) Measure 2011 (which makes provision about the federation of maintained schools) came into force on 28 April 2014.

## STATUTORY INSTRUMENTS

### **Inspectors of Education, Children's Services and Skills (2)**

#### *The Inspectors of Education, Children's Services and Skills (No 3) Order 2014 (SI 2014 No 1103)*

Eleven Inspectors of Education, Children's Services and Skills were appointed on 29 April 2014.

### **Wales: School Organisation and Governance**

#### *The Federation of Maintained Schools (Wales) Regulations 2014 (SI 2014 No 1132)*

These Regulations set out the circumstances in which a federation can be established or a school can join an existing federation and the governance arrangements which shall apply. They also set out the procedure required for a federated school to leave a federation, and for the dissolution of a federation,

The Regulations amend the Collaboration Between Education Bodies (Wales) Regulations 2012 (SI 2012/2655, **LOE D(W) [14551]**), the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 (SI 2013/2124, **LOE D(W) [16051]**) and the Government of Maintained Schools (Clerk to a Governing Body) (Wales) Regulations 2013 (SI 2013/2127, **LOE D(W) [16101]**). The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 (SI 2010/638, **LOE D(W) [11351]**) are revoked with savings and transitional provisions.

#### *The Education (Small Schools) (Wales) Order 2014 (SI 2014 No 1133)*

The Explanatory Note states that this Order identifies a small maintained school for the purposes of Chapter 1 of Part 2 of the Education (Wales) Measure 2011, **LOE B(W) [501]**, which sets out the statutory framework for the federation of maintained schools:

'Section 11 of the 2011 Measure provides that a local authority may make proposals to federate schools and that certain provisions relating to publication and consultation do not apply to a proposal to federate only small schools.

Article 2 provides that a small maintained school is one with fewer than 91 registered pupils on the third Tuesday in the January immediately preceding the date on which a proposal is made under section 11 of the 2011 Measure.'

### **Children and Families Act 2014 Commencement (2)**

#### *The Children and Families Act 2014 (Commencement No 2) (Amendment) Order 2014 (SI 2014 No 1134)*

This Order amends the Children and Families Act 2014 (Commencement No 2) Order 2014 to change the date of coming into force of section 78 of the

2014 Act from 13 May 2014 to 1 May 2014. Section 78 makes provision about the making and approval of codes of practice under section 77.

## **Wales: Inspection of Education and Training**

### ***The Education (Amendments Relating to the Inspection of Education and Training) (Wales) Regulations 2014 (SI 2014 No 1212)***

The Explanatory Note states:

‘These Regulations amend the—

- (a) Education (Inspection of Nursery Education) (Wales) Regulations 1999,
- (b) Inspection of Education and Training (Wales) Regulations 2001,
- (c) Education (School Inspection) (Wales) Regulations 2006, and
- (d) Inspection of Careers and Related Services (Wales) Regulations 2006,

so as to require Her Majesty’s Chief Inspector of Education and Training in Wales ... to ensure that inspections are conducted at least once within every six year period beginning on 1 September 2014. The amendments will allow the Chief Inspector greater scope to vary the date on which a school or education setting is inspected in order to reduce predictability of inspections. This will allow the Chief Inspector to inspect those schools that may be causing concern more frequently. In contrast if there was no such cause for concern the school may be inspected less frequently.

These Regulations further amend the—

- (a) Inspection of Education and Training (Wales) Regulations 2001,
- (b) Education (School Inspection) (Wales) Regulations 2006, and
- (c) Inspection of Careers and Related Services (Wales) Regulations 2006,

so as to require the post inspection action plan to be produced within 20 working days from the date the appropriate authority for the school (the governing body or the local authority maintaining the school), or the proprietor (as the case maybe) receives the inspection report.

The Education (School Inspection) (Wales) Regulations 2006 require a school to give at least three weeks notice of a parents meeting held pursuant to its duty in paragraph 6(b) of Schedule 4 of the Education Act 2005. These Regulations remove the requirement that the notice be given at least three weeks in advance.’

## STATUTORY INSTRUMENTS

### **Wales: Notification of School Term Dates**

#### ***The Education (Notification of School Term Dates) (Wales) Regulations 2014 (SI 2014 No 1249)***

Local authorities and governing bodies of foundation and voluntary aided schools are required to co-operate and co-ordinate with each other to ensure that school term dates are the same (or as similar as can be) (under section 32A(3)–(4) of the Education Act 2002). The Explanatory Note states:

‘Section 32A(5) further provides that local authorities must notify the Welsh Ministers of the school term dates determined. These Regulations provide that the notice must be sent at least two school years in advance. Therefore, the first term dates which local authorities have determined and which must be notified to the Welsh Ministers are for the school year 2016/2017. Section 32A(6) provides that the Welsh Ministers may prescribe the form and content of the notifications, the period in which notification must be given and the procedure for notification. Accordingly, these Regulations make provision in relation to those matters.’

### **School Governance**

#### ***The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 (SI 2014 No 1257)***

The Explanatory Note states that these Regulations amend the School Governance (Constitution) (England) Regulations 2012, the School Governance (Federations) (England) Regulations 2012 and the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013. They also revoke the School Governance (Constitution) (England) Regulations 2007 and the School Governance (Federations) (England) Regulations 2007, to the extent that those Regulations remain in force.

The Constitution Regulations 2007 and related saving and transitional provisions are fully revoked from 1 September 2015, and there are equivalent amendments to the Federations Regulations 2012.

The Constitution Regulations 2012 are amended to provide that local authority governors, foundation governors, parent governors and partnership governors are only eligible to be appointed where they have the skills required to contribute to the effective governance and success of the school. Similarly, the Federation Regulations 2012 are amended to make equivalent provision in relation to the appointment of governors on federated governing bodies.

A new procedure for removing surplus governors is introduced.

The Rules and Procedures Regulations 2013 are amended to provide that decisions to remove surplus governors will not have effect unless they are specified as an item of business on the agenda for the meeting of the governing body or federated governing body.

The Constitution Regulations 2007 (until they are fully revoked) and the Constitution Regulations 2012 are amended, so that a person subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008 is disqualified from holding office as a governor of a maintained school.

### **Wales: Student Loans**

#### ***The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2014 (SI 2014 No 1314)***

The Explanatory Note states:

‘These Regulations govern the student loan liability of students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2014/2015.

These Regulations provide for up to £1,500 of each borrower’s living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.’

### **Inspectors of Education, Children’s Services and Skills (3)**

#### ***The Inspectors of Education, Children’s Services and Skills (No 4) Order 2014 (SI 2014 No 1354)***

Four more inspectors were appointed on 28 May 2014.

### **Copyright and Rights in Performances (Research, Education, Libraries and Archives)**

#### ***The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (SI 2014 No 1372)***

These Regulations make amendments to Chapter 3 of Part 1 of, and Schedule 2 to, the Copyright, Designs and Patents Act 1988 (exceptions relating to copyright and rights in performances). The Explanatory Note states:

‘... the provision made by these Regulations relate to research and private study (including text and data analysis for non-commercial research), education, libraries and archives, recordings of folksongs and recording of broadcasts for archival purposes.

Regulation 3 extends the provisions of section 29 (which currently allows some types of copyright works to be copied for research and private study) to cover all types of copyright work and introduces a new section 29A (which makes provision for the copying of material in order to carry out a computational analysis of all the materials

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contained therein, for the purposes of non-commercial research). Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 1C and 1D which introduce corresponding exceptions to rights in performances.

Regulation 4 substitutes new sections 32, 35 and 36 relating to education. New section 32 permits fair dealing with a copyright work for the sole purpose of illustration for instruction (which includes acts done in relation to the setting and answering of examination questions). The dealing must be for a non-commercial purpose and be by a person giving or receiving the instruction. New section 35 permits educational establishments to make copies of recordings of broadcasts which have been made for the non-commercial educational purposes of the establishment and communicate them to staff and pupils, provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. The existing requirement that the licensing scheme must be certified by the Secretary of State has been removed. New section 36 permits educational establishments to copy up to 5% of a work (other than a broadcast, or an artistic work which is not included in another work) in any 12 month period, provided that the copy is made for the purposes of instruction for a non-commercial purpose and is accompanied by a sufficient acknowledgement. It also permits such copies to be communicated to staff and pupils (for example by means of an interactive white board), provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. Any term of a licence which purports to restrict the proportion of any work which may be copied to less than 5% is of no effect. Corresponding amendments are made to Schedule 2 by the substitution of new paragraphs 4 and 6 and the insertion of new paragraph 6ZA which introduce similar exceptions to performers' rights in relation to fair dealing with their performances and the copying of recordings of performances.

Regulations 5 and 6 make a number of amendments to the provisions which relate to exceptions to copyright regarding libraries and archives. The effect of these amendments is to expand the scope of the existing exceptions to cover more types of copyright works. A new section 40B is introduced into the 1988 Act which allows libraries, archives, museums and educational establishments to make material available by means of dedicated terminals on their premises. New section 41 is introduced which allows librarians to supply copies of copyright works

to other libraries provided certain conditions are met. New section 42 allows the making of replacement copies of works for other libraries. New section 42A makes provision for the supply by librarians of single copies of published works to persons requesting them providing that certain conditions are met. New section 43 makes provision for the provision of single copies of unpublished works provided that certain conditions are met. New section 43A contains definitions. Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 6C–6H which introduce similar exceptions to rights in performances in relation to the copying of recordings of performances.’

### **Wales: Consultation on School Term Dates**

#### *The Education (Consultation on School Term Dates) (Wales) Regulations 2014 (SI 2014 No 1462)*

Under section 32B of the Education Act 2002, **LOE B[6501]**, the Welsh Ministers may direct a local authority or governing body of a voluntary aided or foundation school to determine such school term dates as are specified in the direction, but they must first carry out such consultation as they think appropriate. These Regulations set out the period and method of the consultation including when a consultation may not be required and who must be consulted.

### **Wales: The Higher Education Funding Council for Wales**

#### *The Higher Education Funding Council for Wales (Supplementary Functions) Order 2014 (SI 2014 No 1464)*

This Order confers supplementary functions on the Higher Education Funding Council for Wales. These functions relate to the payment of the new fee grant to institutions delivering higher education (and the recovery of over-payments of such grant) and requesting and receiving information connected to the payment of the new fee grant. They apply in respect of students starting designated higher education courses on or after 1 September 2014.

### **FE and HE: Local**

#### *The Plymouth College of Art (Transfer to the Higher Education Sector) Order 2014 (SI 2014 No 1507)*

Plymouth College of Art transfers from the further education sector to the higher education sector on 4 July 2014.

### **Special Educational Needs and Disability**

#### *The Special Educational Needs and Disability Regulations 2014 (SI 2014 No 1530)*

These Regulations come into force on 1 September 2014. The Explanatory Note states:

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‘These Regulations supplement the procedural framework assessing a child or young person with special educational needs, and the procedure for making, reviewing, amending and ceasing to maintain an EHC plan, set out in Part 3 of the Children and Families Act 2014 (“the Act”). They require local authorities to notify the child’s parent or the young person of decisions within certain timescales, as well as notifying them of any right to appeal such decision. (*regulations 3 to 31*).

The Regulations include details of mediation, both where mediation has to be considered before issuing an appeal in the First-tier Tribunal, and where mediation is desired in any other case, and the action local authority and commissioning bodies must take as a result of the mediation (*regulations 32 to 42*).

The Regulations also set out the powers of the First-tier Tribunal and the timescales in which local authorities must comply with orders of the Tribunal (*regulations 43 to 45*).

The Regulations prescribe the period of the academic year, for the purposes of continuing to maintain an EHC plan beyond a young person’s 25th birthday (*regulation 46*). They also make provision requiring a local authority to disclose an EHC plan to a person in connection with an assessment for a disabled student’s allowance in connection with undertaking higher education, and to the higher education institution itself, at the request of the young person (*regulation 47*). They set out the time period in which a child or young person may remain at a special school or post-16 institution when admitted for the purposes of an assessment (*regulation 48*).

The Regulations set out the qualifications and experience that SENCOs must have (*regulation 49*) and details of functions in relation to those SENCOs (*regulation 50*). They also set out details of the information to be included in a school’s SEN information report and requirements for publication (*regulations 51 and 52 and schedule 1*).

Provision is made in relation to the local offer. The Regulations set out details of what must be included in the local offer (*regulation 53 and Schedule 2*) and who the local authority must consult about the local offer (*regulations 54 and 55*), as well as requirements in relation to publication (*regulations 56 and 57*).

The Regulations also make provision in relation to approving schools and post-16 institutions under section 41. They set out the type of special post-16 institution that can be approved, and matters to be taken into account when approving such institutions and independent educational institutions and independent schools. They also set out the matters to be taken into account and the procedure when withdrawing approval, and require the list of approved institutions to be published (*regulations 58–62*).

Part 6 of the Regulations deals with parents and young people who lack mental capacity to take the decisions or actions required. For the

purposes of the Act, a person lacks capacity when they lack capacity within the meaning of the Mental Capacity Act 2005, that is when they lack mental, and not legal capacity. The Regulations provide that where a child's parent lacks capacity all references to a child's parent in Part 3 of the Act and all references in these Regulations (except two which are identified in regulation 63) are to be read as a reference to the representative of the parent (*regulation 63*). The Regulations also provide that, where a young person lacks capacity, the references to a young person in provisions in the Act identified in Part 1 of Schedule 3 to the Regulations are to be read as if they referred to both the young person and his alternative person; the references to a young person in provisions in the Act identified in Part 2 of Schedule 3 are to be read as if they referred to the young person's alternative person instead of the young person; the references to a young person in the provisions in these Regulations identified in Part 3 of Schedule 3 are to be read as if they referred to both the young person and to his alternative person; and the references to a young person in the provisions in these Regulations identified in Part 4 of Schedule 3 are to be read as if they referred to the young person's alternative person instead of to the young person (*regulation 65 and Schedule 3*).

The provisions identified in Parts 1 and 3 of Schedule 3 are those provisions in which, in relation to a child rather than a young person, both the child and the child's parent are involved in the decision or action. The provisions identified in Parts 2 and 4 of Schedule 3 are those provisions in which, in relation to a child rather than a young person, only the child's parent is involved.

The Regulations also make clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005 (*regulation 65*).<sup>7</sup>

## **Inspectors of Education, Children's Services and Skills (4)**

### ***The Inspectors of Education, Children's Services and Skills (No 5) Order 2014 (SI 2014 No 1560)***

A further inspector was appointed on 13 June 2014.

## **School Food**

### ***The Requirements for School Food Regulations 2014 (SI 2014 No 1603)***

The Explanatory Note states:

'These Regulations are made under section 114A of the School Standards and Framework Act 1998 and require food and drink provided to pupils in maintained schools and pupil referral units in England to comply with certain nutritional standards. Under subsection (4) of section 114A, the local authority or governing body has a duty to

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secure that applicable provisions of the regulations are complied with whenever they provide food or drink on, or in certain circumstances outside of, school premises. These Regulations revoke and replace the Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007 (as amended).

...

Regulation 2(3) and Schedule 1 divide food which is the subject of these Regulations into six groups for the purpose of the Schedules which prescribe requirements for food according to the groups. As some requirements in the Schedules refer to the frequency with which certain foods must or must not be provided by reference to weeks, regulation 2(4) provides that where a school is only open for part of the week those requirements apply as if the school were open for the whole week. Regulation 2(5) makes it clear that certain regulations do not apply to nursery schools or nursery units within primary schools.

Regulation 3 and Schedules 2 and 3 set out the requirements that must be complied with where a school lunch is provided to registered pupils at a maintained school or pupil referral unit, or any other person on the school premises.

Regulation 4 specifies that where food is provided to pupils on a school day otherwise than as part of a school lunch the requirements set out in Schedules 3 and 4 must be complied with, unless it is provided after 6pm or on a part of the premises which is controlled by another person under a transfer of control agreement. Certain requirements in Schedules 3 and 4 do not apply in relation to confectionery, snacks, cakes or biscuits that are provided as part of an evening meal to boarding school pupils.

Regulation 5 requires Schedules 3 and 4 to be complied with where food is provided before 6pm otherwise than as part of a school lunch by a local authority or governing body to pupils on a school trip that lasts for at least seven days.

Regulation 6 provides that drinking water must be provided free of charge to pupils on school premises.

Regulations 7 and 8 limit the ingredients and substances that fruit juice and other drinks provided in schools may contain.

Under Regulation 9, schools must ensure that lower fat milk is available for pupils to drink every day at a time during school hours.

Regulation 10 requires school lunches provided in maintained nursery schools and nursery units within primary schools to comply with the provisions of Schedule 5, unless they comply with Schedules 2 and 3.'



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Published by LexisNexis



ISBN 978-1-4057-7679-0

