

# THE LAW OF EDUCATION

**Bulletin Editor**

Nicholas Hancox BSc LLM Solicitor  
(Nicholas Hancox Solicitors: [www.nicholashancox.co.uk](http://www.nicholashancox.co.uk))

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**ACT OF THE NATIONAL ASSEMBLY FOR WALES**

The Education (Wales) Act 2014, which makes provision about the Education Workforce Council (formerly the Teaching Council for Wales) and some other matters has received Royal Assent. Full details are at **LoE B(W) [901]**.

**STATUTORY INSTRUMENTS**

**Education (Wales) Act 2014 Commencement (1)**

*The Education (Wales) Act 2014 (Commencement No 1) Order 2014 (SI 2014 No 1605)*

The following section of the 2014 Act are now in force in Wales:

- Sections 42 and 48 (partially) of, and para 1(1), (2) and (6) of Sch 3 (14 July 2014) which make provision in relation to the setting of term and holiday dates and times of school sessions. The effect of these

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provisions is that the first term dates which local authorities and the governing bodies of voluntary aided and foundation schools have determined and which must be notified to the Welsh Ministers by local authorities are for the school year 2016/2017.

- Section 44 (14 July 2014). That section amends ss 25 and 26 of the School Standards and Organisation (Wales) Act 2013 which make provision in relation to intervention by Welsh Ministers in the exercise of a local authority's education functions.
- Section 43 (1 September 2014). That section makes provision in relation to Her Majesty's Inspectorate of Education and Training in Wales.

### **Wales: Staffing of Maintained Schools**

#### *The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014 (SI 2014 No 1609)*

These Regulations, which make provision for the staffing of maintained schools in Wales, came into force on 16 July 2014. The Explanatory Note states:

'Regulation 7(3) and (4) of the 2006 Regulations [SI 2006/873] make provision for allegations of a child protection nature against members of a school staff to be independently investigated. These Regulations revoke those provisions (regulation 2(2) and (3)) and further amend the 2006 Regulations so as to make new provision for allegations of causing harm to a registered pupil against members of a school staff to be independently investigated (regulation 2(4)).

Regulation 10 of the 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in community, voluntary controlled, community special and maintained nursery schools. Regulation 2(5) of these Regulations amends those provisions to reflect the coming into force of the Federation of Maintained Schools (Wales) Regulations 2014 [SI 2014/1132].

Similarly regulation 24 of the 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in foundation, voluntary aided and foundation special schools. Regulation 2(6) of these Regulations amends those provisions in light of the coming into force of the Federation Regulations.

The Government of Maintained Schools (Wales) Regulations 2005 [SI 2005/2914] makes provision in relation to the constitution and procedures of governing bodies. Regulation 55 of the 2005 Regulations requires that certain disciplinary functions of governing bodies must be delegated to a staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee. In particular regulation 55(3) of the 2005 Regulations provides that where an allegation involves issues of a child protection nature the membership of the committee must

include an independent person. These Regulations amend regulation 55(3) of the 2005 Regulations so as to omit reference to “issues of a child protection nature” and insert a new regulation 55(3) and (3A) which reflect the amendments made to the 2006 Regulations by regulation 2(4) of these Regulations.

Regulation 55(4A) of the 2005 Regulations sets out the circumstances where a person is not to be regarded as independent for the purposes of regulation 55(3) of the 2005 Regulations. Regulation 3(2) of these Regulations inserts a new regulation (4A) into the 2005 Regulations to reflect the amendments made to the 2006 Regulations by regulation 2(4) of these Regulations.’

## **Special Educational Needs (1)**

### ***The Special Educational Needs (Personal Budgets) Regulations 2014 (SI 2014 No 1652)***

These Regulations came into force in England on 1 September 2014. They make provision for personal budgets under Part 3 of the Children and Families Act 2014 for children and young people with special educational needs, for whom the local authority maintains an EHC plan. The Explanatory Note states:

‘Regulation 3 requires a local authority to make arrangements to ensure information, advice and support is available in relation to personal budgets.

Regulation 4 sets out when a request for a personal budget or direct payments may be made by the child’s parent or the young person.

Regulation 5 sets out to whom direct payments may be made and the criteria which must be considered by the local authority when considering the appropriateness of the intended recipient.

Regulation 6 sets out the criteria which must be satisfied before the local authority can make direct payments.

When a local authority decides not to make direct payments, regulation 7 requires the local authority to provide the written reasons for its decision and to provide the child’s parent or young person with a right to ask the local authority to review the decision.

When making direct payments, regulation 8 requires the local authority to provide written notice to the recipient, setting out the details of how the direct payments will secure the agreed provision and any conditions in relation to direct payments.

Regulation 9 provides that a local authority cannot make direct payments in respect provision which will take place in a school or post-16 institution or early years provider, without the written consent of the head teacher or person who holds an equivalent role.

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Regulation 10 requires the local authority to ensure that the amount of direct payments is adequate to secure the agreed provision. The local authority may adjust the direct payments to ensure this.

Once the local authority has decided to make direct payments, regulation 11 sets out when the arrangements must be reviewed by the local authority and what must happen during a review.

Regulation 12 specifies what the local authority should do when it is looking at reducing the amount of direct payments. This includes a requirement for the local authority to provide notice to the recipient before decreasing the payments and providing the recipient with the right to ask the local authority to reconsider the decision.

Regulation 13 provides that a local authority may require direct payments to be repaid. Where the local authority decides to recover all or part of the direct payments it must provide written notice of its decision and advise the recipient of their right to ask the local authority to reconsider its decision.

Regulation 14 sets out the circumstances where a local authority must stop making direct payments, and states what happens to rights or liabilities which are incurred by the recipient because direct payments have stopped.

Regulation 15 specifies what happens when a child, in respect of whom direct payments are being made, becomes a young person.

Regulation 16 makes provision where a parent or young person lacks capacity.'

See also the Special Educational Needs (Miscellaneous Amendments) Regulations 2014 (SI 2014/2096) below which amend these Regulations.

### **Teachers: Disciplinary**

#### ***The Teachers' Disciplinary (Amendment) (England) Regulations 2014 (SI 2014 No 1685)***

These Regulations, which came into force in England on 1 September 2014, amend the Teachers' Disciplinary (England) Regulations 2012 (SI 2012/560). They provide:

- for teacher members of professional conduct panels to have been teachers in the five years prior to being appointed generally as a member of such panels, rather than prior to being appointed to a particular panel;
- a limitation on the evidence that can be required to be produced under the Regulations;
- for the Secretary of State to serve notice of a prohibition order on a person by whom the teacher was engaged to carry out teaching work.

## Early Years Provision

### *The Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2014 (SI 2014 No 1705)*

These Regulations amend the definition of ‘eligible child’ in the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013 (SI 2013/3193) as a consequence of the introduction (in England) of education, health and care plans under the Children and Families Act 2014. They came into force on 1 September 2014.

## Wales: FE and HE (1)

### *The Further and Higher Education (Governance and Information) (Wales) Act 2014 (Commencement) Order 2014 (SI 2014 No 1706)*

This 2014 Act is now fully in force in Wales.

### *The Education (Student Support) (Wales) (Amendment) Regulations 2014 (SI 2014 No 1712)*

These Regulations amend the Education (Student Support) (Wales) Regulations 2013 (SI 2013/3177) and which provide for financial support for students who are ordinarily resident in Wales and taking designated higher education courses in respect of academic years beginning on or after 1 September 2014. Amendments, the Explanatory Note states, include:

- The introduction of a number of new terms into the list of defined terms in the 2013 Regulations.
- A requirement that in order to be designated under the 2013 Regulations a course must be provided in the United Kingdom.
- Regulation 6 of the 2013 Regulations is amended in relation to the period of eligibility calculation for eligible students who have undertaken a previous course of higher education. This amendment provides that the grant for disabled students’ living costs and any of the grants for dependants will not be caught by this particular period of eligibility calculation.
- Amendments relating to the provision of support to part-time eligible students. Subject to certain exceptions, prisoners who are eligible part-time prisoners will be able to access tuition fee support under the 2013 Regulations in respect of part-time higher education courses beginning on or after 1 September 2014. The amendments also provide that prisoners, including eligible part-time prisoners, will be unable to access any other type of part-time support under the 2013 Regulations.
- Regulation 7 makes a minor amendment to a figure in the 2013 Regulations.

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### **FE and HE: Student Support (1)**

#### ***The Further and Higher Education (Student Support) (Amendment) Regulations 2014 (SI 2014 No 1766)***

These Regulations amend the Further Education Loans Regulations 2012 (SI 2012/1818) and the Education (Student Support) Regulations 2011 (SI 2011/1986) and came into force in England on 1 August 2014.

Amendments to the 2012 Regulations include:

- the deletion of the definition of ‘Apprenticeship Framework’ from the 2012 Regulations.
- the substitution of a new definition of ‘further education course’ which covers any course which is of a level equivalent to or higher than a course in preparation for an examination for the General Certificate of Secondary Education.
- the substitution of a new provision for regulation 4. Regulation 4(1) now provides that a course may be designated at the discretion of the Secretary of State provided that it meets the conditions in regulation 4(1)(a) and (b). The Secretary of State may suspend or revoke a designation made under paragraph (1).
- amendment to provide that the maximum period of eligibility in connection with a designated further education course will be three years for further education courses other than those described in regulation 5(3)(a)–(f) and clarification that a student can only once rely on that paragraph to qualify for a fee loan to repeat a further education course they have previously failed to complete.
- consequential amendments and the correction of two cross-referencing errors.

Amendments to the 2011 Regulations include the substitution of a new definition of ‘taxable income’.

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

#### ***The Diocese of Bangor (Educational Endowments) (Llangristiolus Church in Wales School) (Wales) Order 2014 (SI 2014 No 1836)***

Bangor Diocesan Trust is appointed as trustee of the endowment of the educational foundation known as the Llangristiolus School Foundation (formerly known as Henblas School, Henblas Old School, Hen Ysgol and Llangristiolus Primary School) and there is new provision as to the use of that endowment.

### **National Curriculum (1)**

#### ***The National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) (Amendment) Regulations 2014 (SI 2014 No 1866)***

These Regulations, which came into force in England on 1 September 2014, amend the National Curriculum (Exceptions for First, Second, Third and

Fourth Key Stages) (England) Regulations 2013 (SI 2013/1487). They provide for the programmes of study for the core subjects of English and mathematics to be disapplied for year 11 pupils for the school year 2015 to 2016.

***The Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) Order 2014 (SI 2014 No 1867)***

This (short-lived) Order was revoked by the Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment No 2) Order 2014 (SI 2014/1941) (see below).

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

***The Inspectors of Education, Children’s Services and Skills (No 6) Order 2014 (SI 2014 No 1877)***

This Order appoints the four persons named in the Schedule as Her Majesty’s Inspectors of Education, Children’s Services and Skills.

### **Wales: FE and HE (2)**

***The Education (European Institutions) and Student Support (Wales) (Revocation) Regulations 2014 (SI 2014 No 1895)***

The Education (European Institutions) and Student Support (Wales) Regulations 2013 (SI 2013/765) are revoked.

### **National Curriculum (2)**

***The Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) (No 2) Order 2014 (SI 2014 No 1941)***

This Order amends the Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) Order 2013 (SI 2013/2232). The Explanatory Note states that it ‘gives effect to a revised Framework Document (from 2015), with new key stage 4 programmes of study for English and mathematics that will apply to year 10 pupils in 2015–16 and to all pupils in key stage 4 from 2016 onwards. It also provides that those Orders which contain the current key stage 4 programmes of study for English and mathematics will continue to apply to all pupils in key stage 4 up to 2015, and to year 11 pupils only in 2015–16.

The Order also gives effect to a revised P Scale Document.’

A copy of the revised Framework Document and of the P Scale Document can be accessed at this weblink: [www.gov.uk/government/collections/national-curriculum](http://www.gov.uk/government/collections/national-curriculum).

The Order also revokes the Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) Order 2014 (see above).

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### School Governance

#### *The School Governance (Constitution and Federations) (England) (Amendment) (No 2) Regulations 2014 (SI 2014 No 1959)*

The Explanatory Note states:

‘These Regulations amend the dates on which provisions of the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 [SI 2014/1257] ... come into force.

The 2014 Amendment Regulations amend the School Governance (Constitution) (England) Regulations 2012 [SI 2012/1034] and the School Governance (Federations) (England) Regulations 2012 [SI 2012/1035] (together, “the 2012 Regulations”).

The effect of these Regulations is that most of the changes to the 2012 Regulations made by the 2014 Amendment Regulations come into force (in England) a year earlier than originally planned, on 1 September 2014. The exceptions are those amendments whose effect will be to require all governing bodies to be constituted under the 2012 Regulations. Those changes still come into force on 1 September 2015.’

### Independent Educational Provision: Prohibition on Participation in Management

#### *The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 (SI 2014 No 1977)*

The Explanatory Note states:

‘These Regulations prescribe the grounds on which a direction may be given under section 128 of the Education and Skills Act 2008 prohibiting a person from taking part in the management of an independent school or alternative provision Academy in England, or placing a restriction on a person’s ability to do so. The Regulations also make provision about the procedure for giving a section 128 direction, the circumstances in which a section 128 direction may be varied or revoked and provision about appeals in respect of section 128 directions.

Section 128 directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or is subject to a relevant finding in respect of a relevant offence, or has engaged in relevant conduct, if the appropriate authority (the Secretary of State) considers that the person is therefore unsuitable to take part in the management of an independent school or alternative provision Academy (regulation 2).

Regulation 2 provides that the reference to conduct includes conduct aimed at undermining fundamental British values, conduct that is in breach of professional standards, and conduct that is so inappropriate that it makes a person unsuitable to take part in the management of an

independent school. Regulation 2 also provides that references to convictions and cautions include those that are spent provided there has been an order made excluding the operation of provisions of the Rehabilitation of Offenders Act 1974 which prohibit spent convictions and cautions being used as a ground to exclude a person from any office, profession, occupation or employment.

Before making a section 128 direction, the appropriate authority must give the person an opportunity to make representations as to why the direction should not be given and notice of that opportunity (regulation 3). Regulation 3 makes provision about the giving of the notice and the period within which representations may be made. All reasonable steps must be taken to notify a person in respect of whom a section 128 direction has been made.

The appropriate authority may vary or revoke a direction where a person seeks to have it revoked on one of the grounds set out in regulation 5, or in the absence of variation or revocation being sought, where new information comes to light or where there has been a material change in circumstances of the person subject to the direction, provided in all cases that the appropriate authority considers it appropriate to vary or revoke (regulation 4).

Under regulation 5, a person subject to a section 128 direction may seek to have it varied or revoked on the grounds that the conviction, caution or finding in question has been quashed, that the conviction or caution in question is spent or becomes protected, or that a period of five years have passed since the finding in question was made. A person subject to a direction on conduct grounds may seek to have it varied or revoked on the grounds that new information has come to light or where there has been a material change in circumstances of the person subject to the direction.

Section 129(1) of the Education and Skills Act 2008 provides for a right of appeal against decisions in respect of section 128 directions. Regulation 6 contains a restriction on the power of the Tribunal to entertain appeals in relation to section 128 directions which are given on the grounds of convictions. "Tribunal" is defined in section 124(5) of the Education and Skills Act 2008 as meaning the First-tier Tribunal. Regulation 7 provides for the Tribunal's powers on allowing an appeal in relation to a section 128 direction. Where the Tribunal considers the decision to give the direction, or the decision not to vary or revoke it, is not appropriate it may order the appropriate authority to vary or revoke the direction.

Regulation 8 sets out the circumstances in which a person subject to a direction under section 142 of the Education Act 2002 immediately before the coming into force of section 128 of the 2008 Act will be treated as being subject to a section 128 direction as from the day the Regulations come into force.'

The Regulations came into force in England on 1 September 2014.

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### **Wales: National Curriculum (1)**

#### ***The Education (National Curriculum) (Foundation Phase) (Wales) Order 2014 (SI 2014 No 1996)***

The Explanatory Note tells us that English cannot always be accurately translated into Welsh, or vice versa. It states:

‘The foundation phase was introduced in Wales on 1 August 2008 by the Education (National Curriculum) (Foundation Stage) (Wales) Order 2008 [SI 2008/1732]... The “foundation phase” was originally called the “foundation stage”... In practice practitioners referred to the “foundation stage” as the “foundation phase” in English. Consequently the Education (Wales) Measure 2009... amended Part 7 of the Education Act 2002 so as to refer to the “foundation phase” instead of the “foundation stage”. In light of that change ... it is considered appropriate to revoke the 2008 Order (article 2) and re-make that Order so as to reflect the change of name in English to the “foundation phase” (article 3). In Welsh the name “cyfnod sylfaen” is used for the “foundation stage” and the “foundation phase”.’

### **Wales: Head Teacher’s Report to Parents and Adult Pupils**

#### ***The Head Teacher’s Report to Parents and Adult Pupils (Wales) (Amendment) Regulations 2014 (SI 2014 No 1998)***

These Regulations amend the Head Teacher’s Report to Parents and Adult Pupils (Wales) Regulations 2011 (SI 2011/1943). They make provision as to the report the head teacher is required to send to parents and adult pupils each school year, at the end of the foundation phase and the second and third key stages and the additional information parents of registered pupils who are assessed in any key stage may request.

### **Wales: National Curriculum (2)**

#### ***The National Curriculum (Assessment Arrangements for the Foundation Phase and the Second and Third Key Stages) (Wales) Order 2014 (SI 2014 No 1999)***

Section 108(2)(b)(iii) and (3)(c) of the Education Act 2002 provides a power for the Welsh Ministers to prescribe by way of an Order assessment arrangements in respect of the foundation phase and the key stages.

This Order requires head teachers of maintained schools in Wales to make arrangements for all pupils in the foundation phase to be assessed throughout the year by a teacher for the purpose of monitoring and supporting the pupil’s educational progress in respect of the educational programmes given legal effect by Part 1 of the National Curriculum (Educational Programmes for the Foundation Phase and Programmes of Study for the Second and Third Key Stages) (Wales) Order 2013 (‘the 2013 Order’) (article 3).

This Order also requires head teachers of maintained schools in England to make arrangements for all pupils in the second and third key stages to be assessed throughout the year by a teacher for the purpose of monitoring and supporting the pupil's educational progress in respect of the programmes of study given legal effect by Part 2 of the 2013 Order (article 4).

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

*The Diocese of Bath and Wells (Educational Endowments)  
(Newbridge St John's Church of England Infants' School) Order 2014  
(SI 2014 No 2006)*

The Bath and Wells Diocesan Board of Finance is appointed as trustee of the foundation known as Newbridge St John's Church of England Infants' School and new provision is made as to the use of the endowment of that foundation.

### **Teachers: Pay and Conditions**

*The School Teachers' Pay and Conditions Order 2014 (SI 2014  
No 2045)*

This Order makes provision for the determination of the remuneration of school teachers in England and in Wales by reference to section 2 of the document: 'School Teachers' Pay and Conditions Document 2014 and Guidance on School Teachers' Pay and Conditions'. These have effect from 1 September 2014. The School Teachers' Pay and Conditions Order 2013 (SI 2013/1932) is revoked.

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

*The Prospects College of Advanced Technology (Incorporation)  
Order 2014 (SI 2014 No 2067) and*

*The Prospects College of Advanced Technology (Government)  
Regulations 2014 (SI 2014 No 2068)*

The further education corporation called 'Prospects College of Advanced Technology' is established and its governance provisions are prescribed.

### **Special Educational Needs (2)**

*The Special Educational Needs (Miscellaneous Amendments)  
Regulations 2014 (SI 2014 No 2096)*

This one applies only in England. The Explanatory Note states:

'Regulation 2 amends the Special Educational Needs (Personal Budgets) Regulations 2014 [SI 2014/1652, see above] by inserting a new regulation 4A. Regulation 4A provides that a local authority is not required to prepare a personal budget in respect of specified special educational provision where, the amount for the specified special educational provision is a notional amount of a larger sum, and the

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authority is unable to disaggregate the notional amount without causing an adverse impact on other services or where it would not be an efficient use of the authority's resources.

Regulation 3 amends the Special Educational Needs and Disability Regulations 2014 [SI 2014/1530] to make it clear that regulation 20 of those Regulations only applies to children and young people who attend a school or other institution.'

### ***The Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 (SI 2014 No 2103)***

This Order applies only in England and makes amendments to secondary legislation in consequence of Part 3 of the Children and Families Act 2014 which replaces Part 4 of the Education Act 1996 (in England).

### **Wales: FE and HE (3)**

#### ***The Dissolution of Further Education Corporations (Publication of Proposals and Prescribed Bodies) (Wales) Regulations 2014 (SI 2014 No 2126)***

The Explanatory Note states:

'These Regulations prescribe the time and manner of publication, and content of draft proposals for the dissolution of further education corporations [in Wales]. The Regulations also provide detail on the consultation process that must be followed, as well as prescribing the bodies to which a further education corporation can transfer its property, rights and liabilities upon dissolution.'

### **Tribunal Procedure**

#### ***The Tribunal Procedure (Amendment No 3) Rules 2014 (SI 2014 No 2128)***

The Explanatory Note states:

'These Rules amend the rules of procedure which apply in some of the chambers of the First-tier Tribunal and Upper Tribunal ...

Rules 19 to 28 amend the rules of the Health, Education and Social Care Chamber of the First-tier Tribunal. They relate to changes made by Part 3 of the Children and Families Act 2014 (c. 6) (children and young people in England with special educational needs or disabilities) and the Special Educational Needs and Disability Regulations 2014 (S.I. 2014/1530) made under that Act. They make provision, in particular, where young persons bring appeals themselves in cases relating to special educational needs or disability discrimination in schools, for matters such as the need for permission to appeal if no mediation certificate has been issued, the time limits for appealing, and they cover

matters such as their right to be represented, attend the hearing, give evidence and make submissions to the Tribunal. A related saving provision is contained in rule 38.

Rule 28 introduces a three month time limit for appeals to the Tribunal under section 129 of the Education and Skills Act 2008 (c. 25)...

The other changes revoke obsolete provisions or are minor corrections or improvements.'

### **Early Years Provision (1)**

#### ***The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014 No 2147)***

The Explanatory Note states:

'Regulation 2 of these Regulations prescribes the early years provision which a local authority in England must secure free of charge. Regulation 3 prescribes the description of children for whom an English local authority must ensure prescribed early years provision is available free of charge. Regulation 4 sets out the amount of free prescribed early years provision which an English local authority must make available.

Section 7A of the 2006 Act makes provision for regulations to require an English local authority to discharge its duty to a young child under section 7 by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled in cases where the early years provider is willing to provide the provision, and to accept the terms of the local authority imposed in respect of the provision.

Regulation 5 of these Regulations imposes that requirement. The requirement in regulation 5 is subject to regulation 6, which describes the kind of early years provider and the kind of early years provision which fall within the scope of the requirement. Regulation 7 sets out the circumstances in which the arrangements may be terminated.

Section 9A of the 2006 Act makes provision for regulations to prescribe requirements which may, or may not, be imposed in arrangements made by an English local authority for the purpose of discharging its duty under section 7. Regulation 8(1) prescribes the requirements which may be imposed, and regulation 8(2) prescribes the requirements which may not be imposed.

Regulation 9 revokes the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013 [SI 2013/3193] and amending regulations.'

### **Independent Inspectorates**

#### ***The Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014 (SI 2014 No 2158)***

The Explanatory Note states that these Regulations specify the matters which the Secretary of State must take into account in deciding whether to approve,

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or withdraw approval from, a body to carry out inspections of independent educational institutions [in England] under section 106 of the Education and Skills Act 2008 and to appoint, or terminate the appointment of a person to inspect whether the welfare of children provided with accommodation by schools or colleges is adequately safeguarded and promoted under section 87A of the Children Act 1989.

### **Wales: FE and HE (4)**

#### ***The Student Fees (Amounts) (Wales) (Amendment) Regulations 2014 (SI 2014 No 2071)***

These Regulations amend the Student Fees (Amounts) (Wales) Regulations 2011. The Explanatory Note states:

‘Regulation 3 makes a minor amendment to regulation 3 of the Principal Regulations. The amendment provides that the basic and higher amounts prescribed by regulation 3 are subject to regulations 4–6.

Regulation 4 replaces regulation 4 of the Principal Regulations. Regulation 4 prescribes the basic and higher amounts in respect of the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks’ attendance and in respect of an academic year of a course of initial training of teachers during which any periods of full time study are in aggregate less than 10 weeks.

Regulation 5 inserts two new regulations (5 and 6) which prescribe the basic and higher amounts for sandwich courses and for study and work placements overseas.’

### **Education (Wales) Act 2014 Commencement (2)**

#### ***The Education (Wales) Act 2014 (Commencement No 2) Order 2014 (SI 2014 No 2162)***

This Order brought into force on 18 August 2014 the following provisions of the Education (Wales) Act 2014 in so far as they make provision in relation to the membership and appointment of members to the Education Workforce Council:

- section 2 so far as it relates to Schedule 1 (education workforce council); and
- the following paragraphs of Schedule 1:
  - paragraph 3(1), (2), (3), (4)(a) and (5) (membership);
  - paragraph 4 (membership: further provision);
  - paragraph 5 (tenure);
  - paragraph 6 (removal from office);

- o paragraph 7 (remuneration, allowances and expenses of members);
- o paragraph 9(1), (2) and (3) (in so far as it relates to the chief officer); and
- o paragraph 12 (committees generally).

### **FE and HE: Prescribed Courses of Higher Education**

#### ***The Education (Prescribed Courses of Higher Education) (Information Requirements) (England) Regulations 2014 (SI 2014 No 2179)***

The Explanatory Note states that these Regulations prescribe courses of higher education for the purposes of section 79(c) of the Further and Higher Education Act 1992 in relation to the Higher Education Funding Council for England. Section 79(c) imposes a duty on the governing body of any institution at which prescribed courses of higher education are or have been provided to give the Higher Education Funding Councils such information as required by the Councils.

### **Wales: School Governance: Training Requirements for Governors**

#### ***The Government of Maintained Schools (Training Requirements for Governors) (Wales) (Amendment) Regulations 2014 (SI 2014 No 2225)***

These Regulations amend the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 in respect of the training on school performance data required for governors. Governors for community special schools will be required to complete different training from governors of other maintained schools.

### **Wales: Local: Educational Endowments**

#### ***The Diocese of St Davids (Educational Endowments) (Llangennech Church in Wales School) (Wales) Order 2014 (2014 No 2235)***

#### ***The Diocese of St Davids (Educational Endowments) (Spittal Church in Wales School) (Wales) Order 2014 (SI 2014 No 2236)***

#### ***The Diocese of St Davids (Educational Endowments) (Llangynllo Church in Wales School) (Wales) Order 2014 (SI 2014 No 2237)***

#### ***The Diocese of St Davids (Educational Endowments) (Abernant Church in Wales School) (Wales) Order 2014 (SI 2014 No 2238)***

These Orders appoint St Davids Diocesan Trust as the trustee of various educational endowments and make other provision about those endowments.

## Statutory Instruments

### **Special Educational Needs: Code of Practice**

#### ***The Special Educational Needs (Code of Practice) (Appointed Day) Order 2014 (SI 2014 No 2254)***

This Order appoints 1 September 2014 as the day on which the Special Educational Needs and Disability Code of Practice: 0–25 years comes into force in England. The Code of Practice is available at [www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25).

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

#### ***The Children and Families Act 2014 (Transitional and Saving Provisions) (No 2) Order 2014 (SI 2014 No 2270)***

The Explanatory Note states:

‘This Order makes transitional provisions in connection with the coming into force on 1st September 2014 ... of provisions in Part 3 of the Children and Families Act 2014 [in England] ... in accordance with S.I. 2014/889 (as amended by S.I. 2014/1134).

Article 2 contains definitions, including the “new law” in the 2014 Act and the “old law” at Part 4 of the Education Act 1996.

Parts 2 to 4 deal with children and young people who did not have a SEN statement on commencement. Part 2 is about children or young people who have been refused an assessment or statement and provides for section 36(3) of the 2014 Act not to apply to them. Part 3 preserves the old law in relation to cases where an assessment is being considered or in progress on commencement. Part 4 applies to appeals against the refusal of an assessment or statement before commencement.

Part 5 deals with children or young people who have a statement on commencement and sets out when they should be transferred to the new regime.

Part 6 deals with learning difficulty assessments under section 139A of the Learning and Skills Act 2000.

Part 7 deals with children and young people with EHC plans who become detained, and provides that while in detention their plans are treated as statements. This is in light of the fact that sections 70(2) to 75 of the 2014 Act which make special provision for applying the 2014 Act to detained persons, are not yet commenced.’

### **Local: Educational Endowments (3)**

#### ***The Diocese of Bradford (Educational Endowments) (St Augustine’s Church of England Community School) Order 2014 (SI 2014 No 2295)***

This Order appoints the Bradford Diocese Board of Education as trustee of the foundation known as St Augustine’s Church of England Community School and makes new provision as to the use of the endowment of that foundation.

## **Local: Faith Schools**

### ***The Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2014 (SI 2014 No 2342)***

Eight schools are designated as having a religious character (the specified religion being Christian (2), Church of England (3) and Islam (3)). The designation of a religious character for two other schools (Al Karam School and Worldshapers Academy) is revoked.

## **Wales: Education Workforce Council**

### ***The Education Workforce Council (Membership and Appointment) (Wales) Regulations 2014 (SI 2014 No 2365)***

The Explanatory Note states:

‘Section 2 in Part 2 of the Education (Wales) Act 2014 provides that the General Teaching Council for Wales is to continue to exist but will change its name to the Education Workforce Council (“the Council”). Part 2 makes further provision in relation to the Council. These Regulations make provision in relation to membership of the Council and the appointment of the chief officer and they come into force on 29 September 2014 except for those provisions in regulation 2 which come into force on 1 April 2015 when it is anticipated that the Council will be fully operational.’

## **Independent School Standards**

### ***The Education (Independent School Standards) (England) (Amendment) Regulations 2014 (SI 2014 No 2374)***

These Regulations, which came into force in England on 29 September 2014, amend the Education (Independent School Standards) (England) Regulations 2010. The Explanatory Note states:

‘Regulation 2 amends Part 2 of Schedule 1 to the 2010 Regulations, which makes provision in relation to the spiritual, moral, social and cultural development of pupils. The standard has been amended so as to require a proprietor of an independent school to actively promote British values.’

## **Education and Skills Act 2008 Commencement**

### ***The Education and Skills Act 2008 (Commencement No 10 and Transitory Provisions) Order 2014 (SI 2014 No 2379)***

The Explanatory Note states that Article 2 brings into force [in England] on 1 September 2014 the following provisions of the 2008 Act to the extent set out in that article –

## Statutory Instruments

- (a) section 106 (approval of independent inspectorates) and section 107 (quality assurance of independent inspectorates);
- (b) section 128 (power to make a direction prohibiting a person from participating in the management of an independent school), section 129 (right of appeal in relation to a direction made under section 128), section 130 (provision of information which is relevant to the exercise of functions under section 128 or by virtue of section 129) and section 131 (duty to notify the Secretary of State and the Welsh Ministers of a direction made, varied or revoked under section 128);
- (c) section 138(1) (interpretation);
- (d) paragraph 12 of Schedule 1 (minor and consequential amendments) and section 169(1) so far as it relates to that amendment.

Article 3 contains transitory provisions in connection with the commencement of sections 106 and 128 of the 2008 Act.

### **Education and Inspections Act 2006 Commencement**

#### ***The Education and Inspections Act 2006 (Commencement No 8) Order 2014 (SI 2014 No 2380)***

The Explanatory Note states:

‘This Order brings section 170(2) of the Education and Inspections Act 2006 into force [in England] on 1st September 2014. Section 170(2) amends section 113BA of the Police Act 1997 (c.50). Together with an amendment made by paragraph 12 of Schedule 1 to the Education and Skills Act 2008 (c.25), it amends the definition of suitability information relating to children. The definition includes, in prescribed cases, whether the person applying for an enhanced criminal record certificate is subject to a direction under section 128 of the Education and Skills Act 2008 (prohibition on participation in management of independent educational institutions in England) or section 167A of the Education Act 2002 (prohibition on participation in management of independent schools in Wales).’

### **Local: Educational Endowments (4)**

#### ***The Diocese of Lichfield (Educational Endowments) (Wall Church of England School) Order 2014 (SI 2014 No 2631)***

This Order appoints the Lichfield Diocesan Board of Education as trustee of the foundation known as Wall Church of England School and makes new provision as to the use of the endowment of that foundation.

## Designation of Rural Primary Schools

### *The Designation of Rural Primary Schools (England) Order 2014 (SI 2014 No 2650)*

This Order designates those primary schools in England which are rural primary schools for the purpose of section 15 of the Education and Inspections Act 2006. It revokes the Designation of Rural Primary Schools (England) Order 2013.

## Teachers' Pensions

### *The Teachers' Pensions (Miscellaneous Amendments) (No 2) Regulations 2014 (SI 2014 No 2651)*

These Regulations, which come into force on 1 April 2015, amend the Teachers' Pensions Regulations 2010.

### *The Teachers' Pension Scheme (Amendment) Regulations 2014 (SI 2014 No 2652)*

These Regulations, which also come into force on 1 April 2015, amend the Teachers' Pensions Regulations 2014.

## Wales: School Development Plans

### *The Education (School Development Plans) (Wales) Regulations 2014 (SI 2014 No 2677)*

These Regulations came into force in Wales on 27 October 2014. The Explanatory Note states:

'These Regulations apply to governing bodies of maintained schools. They impose a duty on the governing body to draw up a school development plan in order to assist it to exercise its responsibility for conducting a maintained school with a view to promoting high standards of educational achievement (regulation 3). That duty does not affect the general principles and respective roles and responsibilities of governing bodies and head teachers set out in the School Government (Terms of Reference) (Wales) Regulations 2000 (regulation 3(2)).'

## School Teachers' Qualifications

### *The Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2014 (SI 2014 No 2697)*

These Regulations amend the Education (School Teachers' Qualifications) (England) Regulations 2003 and came into force in England on 1 November 2014. The Explanatory Note states:

'In consequence of the Institute for Learning ceasing operations and transferring its operations in relation to QTLS status [qualified teacher learning and skills status] to the Education and Training Foundation, these Regulations replace paragraph 13B of Schedule 2 to the 2003

## Statutory Instruments

Regulations. The new paragraph takes account of the fact that QTLS status will be awarded, with effect from the date these Regulations come into force, by the Education and Training Foundation in place of the Institute for Learning and provides for professional membership of the Education and Training Foundation to be an additional condition of qualified teacher status in place of membership of the Institute for Learning.’

### **Wales: Pupil Referral Units**

#### ***The Education (Pupil Referral Units) (Management Committees etc) (Wales) Regulations 2014 (SI 2014 No 2709)***

These Regulations require local authorities in Wales to establish management committees to run pupil referral units in their area, and make provision for the constitution and procedures of such committees. The Explanatory Note goes on to say:

‘Part 2 requires Local authorities to establish a committee in relation to each PRU in their area, with the proviso that a committee may run more than one PRU. In relation to PRUs opened before 31 October 2014, a committee must be established by 23 February 2015. In relation to PRUs opened on or after 31 October 2014, a committee must be established (or arrangements must be made for an existing committee to take on the management of the PRU) by no later than the first day it is open to pupils (regulations 3 and 4).’

The Regulations came into force on 31 October 2014, except for regulations 22 and 23 which come into force on 23 February 2015.

### **Local: Educational Endowments (5)**

#### ***The Diocese of Lichfield (Educational Endowments) (Brereton National School) Order 2014 (SI 2014 No 2719)***

The Lichfield Diocesan Board of Education is appointed as trustee of Brereton National School and new provision is made as to the use of the endowment of that foundation.

### **FE and HE: Student Support (2)**

#### ***The Education (Student Support) (Amendment) Regulations 2014 (SI 2014 No 2765)***

These Regulations amend (in England) the Education (Student Support) Regulations 2011 (SI 2011/1986). The Explanatory Note states that:

‘The provisions mentioned in regulation 1(2) of these Regulations come into force on 7th November 2014. However, regulation 1(3) provides that regulation 3(a) does not apply in relation to students who begin their course before 7th November 2014 and who has been awarded

disabled students' allowance for a designated full-time, distance learning, part-time or postgraduate course in relation to an academic year beginning before that date.

Regulation 1(4) provides that all other provisions of these Regulations come into force on 7th November 2014 and apply in relation to an academic year which begins on or after 1st September 2015. However, regulation 1(5) provides that regulations 9, 10, 14, 18(a), (c) and (d), 19, 21 and 22 do not apply in relation to students who begin their course before 1st August 2015 and who are awarded disabled students' allowance (for a designated full-time, distance learning, part-time or post-graduate course) in relation to an academic year beginning before that date.'

See the Regulations for details of the changes made to the 2011 Regulations.

### CASES DECIDED AND REPORTED

#### Teacher: Prohibition Order

*O v Secretary of State for Education [2014] EWHC 22 (Admin); judgment on 17 January 2014*

A teacher appealed against a prohibition order. The Order was imposed on her on the recommendation of the Professional Conduct Panel of the Teaching Agency. She challenged the Panel's findings that she had formed an inappropriate relationship with Pupil A and that she had formed an inappropriate relationship with Pupil B.

The judge in the High Court concluded that there was substantial material to support the Panel's findings of fact as regards her relationship with Pupil A and to support its conclusion as to the credibility of Pupil A's evidence. The Panel had not confined itself to the issue of consistency, but had taken into account an array of factors in deciding to accept Pupil A's account and reject that of the Appellant. It might have been helpful had it given examples of where or why it found the evidence to be consistent or inconsistent or detailed or credible, but the fact that it did not give examples, did not mean that the reasons given were inadequate. A challenge under Article 6 of the ECHR also failed. She had been as much in a position to seek any additional material from the police as the Teaching Agency. She did not do so, nor did she ask the Teaching Agency to do so, nor did she raise this as an objection before the Panel.

Appeal dismissed.

#### Special Educational Needs

*R on the application of BNR v the Governing Body of CV Memorial School [2014] EWHC 1238 (Admin); decision on 8 April 2014*

See LOE Division F [2014.6].

## Cases Decided and Reported

*Manchester City Council v JW (SEN) [2014] UKUT 168 (AAC); decision on 11 April 2014*

See LOE Division F [2014.7].

### Nursery Education Provision

*R on the application of (1) Mary West, (2) Nicola Beer, (3) Paula Webb, (4) Donna Thomas v Rhondda Cyon Taff County Borough Council [2014] EWHC 2134 (Admin); judgment on 23 May 2014*

See LOE Division F [2014.8].

### Special Educational Needs: Learning Difficulties Assessment

*R on the application of S v Suffolk County Council [2014] EWHC 2780 (Admin); judgment given on 19 June 2014*

The claimant had a statement of educational needs and was being educated at a largely residential school. She turned 19 in April 2014 and at the end of the 2013–2014 academic year she would cease to be a person in relation to whom a statement was maintained. Through her litigation friend she challenged the local authority as to whether the authority was liable to make an assessment relating to her learning difficulties under section 139A of the Learning and Skills Act 2000.

At issue in the High Court was whether she was a person who would leave school to receive post16 education or training or higher education and the meaning of ‘post16 education or training’:

‘10. The claimant is a person in respect of whom a statement of special educational needs is maintained. She is at school at the moment. She will leave school during or at the end of the current school year. The question is, is she a person who will leave school to receive post16 education or training or higher education and is the local authority’s belief on that issue one which is justified?’

11. Section 139B [of the Learning and Skills Act 2000] provides interpretation provisions for the purposes of 139A. Of those definitions I need refer only to those in subsections (6) and (7). Subsection (6) defines higher education as education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988. Subsection 7, as originally enacted, reads as follows.

“(7) ‘Post16 education or training’ means post16 education or post16 training within the meaning of Part 1 [that is to say Part 1 of the Learning and Skills Act 2000].”

Those two definitions are crucial for the understanding of the meaning of section 139A(3)(b) because that paragraph imposes the LDA duty on the local authority if, but only if, the local authority believes that the person will leave school to receive post16 education or training or

higher education. In this case there is no question in relation to higher education. The question therefore is whether the claimant would be leaving school to receive 'post16 education or training'.

12. One's reaction on reading the definition of post16 education or training in section 139B(7) would be to look at Part 1 of the 2000 Act. But that however is not now possible. Part 1 of the 2000 Act was repealed by the Apprenticeships, Skills, Children and Learning Act 2009 and there was no consequent amendment made to section 139B(7). The question under those circumstances is the meaning to be given to the phrase "post16 education or training" in the light of its presence in an interpretation section but accompanied by a definition which is now wholly ineffective ...

30. ... I apply the general rule and I read post16 education or training as meaning simply post16 education or training, that is to say education or training provided to a person over the age of 16. As has been remarked in a number of cases, both of those words are capable of bearing a very broad meaning.

31. Looking at the assessments which have been made, avowedly now not regarded as section 139A assessments, there is no doubt that every one of the proposals in the assessments and almost every page of the assessments themselves looks forward to further development of the claimant's abilities and skills. In my judgment, those are identifications of education and/or training. Each of the assessments assumes that those developments would go forward in one way or another. It seems to me that in those circumstances there was simply no basis upon which the local authority could do other than believe that the claimant would leave school during or at the end of the current school year to receive post16 education or training.

32. It follows from that, that in my judgment the local authority in this case had, and has, a duty to make an assessment under section 139A. It admits, indeed it pleads, that it has not done so and it follows that that duty remains outstanding.

33. Before me, both parties have agreed that if that was my view virtually nothing else matters in this case. But there is one further issue which does arise and on which I think I should comment. The local authority have made, under section 47 of the 1990 Act, an assessment of what provision would be necessary to fulfil their duties under section 21 of the National Assistance Act 1948. That assessment has made the choice of residence and support at one of the places which I have mentioned early in this judgment. Mr Parkhill's position is that the process of assessment under section 47 is essentially different from the process of undertaking an LDA under section 139A. Section 47 is not about education or training, section 139A is.

34. I have a great deal of sympathy with that submission. Nevertheless, it appears to me that where a person is entitled to have a section 139A

## Cases Decided and Reported

assessment made in his or her case and it has not yet been made, it may well be necessary to reconsider the section 21 provision in the light of whatever decisions are made as a result of the LDA assessment. So that although legally there is no necessary link between the two assessments in an individual case factually, practically or pragmatically, there may well be a link between the two assessments in the identification of a solution or programme which can meet the needs identified by both the assessments ...

38. The final point with which I need to deal is this. Mr Parkhill, perfectly properly, pointed out, citing numerous authorities in support, that where there is a complaints scheme available, it should normally be regarded as an appropriate alternative remedy and therefore however strong the grounds of claim, judicial review should be refused in the matter of the court's discretion. Judicial review is a last resort. It is not to be resorted to where there are other ways of getting the matter dealt with, and a proper complaints process, backed up as it would have been in the present case by the possibility of a reference to the Ombudsman is under normal circumstances the way in which matters of this sort should be dealt with. I do not descend for a moment, as Mr Friel's written submission asks me to do, into the time that it is said to have taken for other complaints made to the local authority to have been dealt with. If there is a complaints process, then it should be used. However, as the submissions to me today have shown, this is not a case in which the complaints process would have been likely to produce any useful outcome. The essential issue here was an issue of the interpretation of statute, not an easy question by any means but not one which would be likely to be properly resolved during a complaints process or a reference to the Ombudsman: it is a matter which essentially needed the decision of the court.

39. As I have said, it was a matter of statutory interpretation, the conclusion of which was by no means obvious. That of itself is the reason why permission is granted and for the others reasons I have given judicial review will be granted and there will be a declaration that the defendant is under a duty to make a section 139A LDA in respect of the claimant.'

### **Exclusion**

*R on the application of CR v Independent Review Panel of Lambeth [2014] EWHC 2461 (Admin); judgment on 27 June 2014*

See LOE Division F [2014.9].

### **Academy Conversion**

*R (on the application of Governing Body of the Warren Comprehensive School) v Secretary of State for Education [2014] EWHC 2252 (Admin); judgment on 10 July 2014*

See LOE Division F [2014.10].

## **FE and HE**

*R (on the application of Guildhall College) v Secretary of State for Business Innovation and Skills [2014] EWCA Civ 986; judgment on 17 July 2014*

See LOE Division F [2014.11].

## **Independent School**

*St Christopher School (Letchworth) Ltd v Schymanski [2014] EWHC 2573 (QB); judgment on 30 July 2014*

See LOE Division F [2014.13].

## **FE and HE**

*R on the application of Beaurish Tigere v the Secretary of State for Business, Innovation and Skills (Defendant) and Student Loans Company Ltd (Interested Party) [2014] EWCA Civ 1216; judgment on 31 July 2014*

See LOE Division F [2014.15].

## **Special Educational Needs**

*Worcestershire County Council v JJ (SEN); [2014] UKUT 0406 (AAC); decision on 10 September 2014*

See LOE Division F [2014.15].

## **Special Educational Needs; Local Government Ombudsman**

*R (on the application of ER) v Commissioner for Local Administration (Local Government Ombudsman) [2014] EWCA Civ 1407; judgment on 29 October 2014*

The Appellant, ER, was the mother of N, a boy with special educational needs. N's placement at his residential special school broke down and he was then without education for 12 months ('the first period'). His local authority, Hillingdon, named Moorcroft School on N's new statement rather than ER's preference which was Penhurst School. N only attended Moorcroft for two days and was then out of school for a second period. ER appealed to the Tribunal and was successful in getting Penhurst School named on his Statement. ER complained to the Local Government Ombudsman of the failure of Hillingdon to provide N with any education for these two periods. The LGO upheld the complaint in respect of the first period, holding that Hillingdon had failed to arrange alternative education provision for N while seeking a suitable full time place for him. She recommended the payment of financial compensation in respect of the first period. But she rejected the

## Cases Decided and Reported

complaint relating to the second period and ER sought to challenge that decision. She was unsuccessful at first instance and on appeal.

In the Court of Appeal, Bean LJ said this:

‘9. The LGO rejected the complaint relating to the second period. She did so on the basis that Hillingdon had offered education for that period at Moorcroft School; and, although SENDIST found this to be unsuitable, it was not for her to “determine the suitability of education, regardless of the decision of the ... Tribunal”. ER sought judicial review also of this decision of the LGO. On 23rd April 2013 Judge Stewart QC (as he then was: now Stewart J) dismissed the application: *R (on the application of NR) v Local Government Ombudsman (London Borough of Hillingdon, interested party)* [2013] EWHC 1335 (Admin). ER, with the permission of Tomlinson LJ, appeals to this court.

*The statutory framework*

...

Matters subject to investigation

...

(6) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,

(a) any action in respect of which the person affected has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment;

(b) ...

(c) any action in respect of which the person affected has or had a remedy by way of proceedings in any court of law:

Provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person affected to resort or have resorted to it. [Emphasis added.]

...

*Conclusion*

30. Judge Stewart observed that what ER’s complaint to the LGO really boiled down to was failure to provide a service (namely suitable education) under s 19 [Education Act 1996]; and that what the appeal to SENDIST boiled down to, albeit under s 324 [Education Act 1996], was whether the type and nature of the school should be in N’s statement. “The reality”, said the judge, “was that there was an inextricable linkage between the two”. I agree.

31. In my view one could characterise Hillingdon’s decision in this case either as an action (the naming of an unsuitable school) or as a failure to act (the failure to name a suitable school); but either way it was fairly

and squarely within s 26(6)(a), as being an “action” in respect of which ER had the right of appeal to SENDIST. It is true that a *consequence* of that wrong decision was that Hillingdon failed for a period to discharge their section 19 duty to N. But I reject the submission that the LGO has jurisdiction to investigate the consequences of a decision if investigation of the decision itself is excluded by s 26(6).

32. I would accordingly dismiss this appeal.’

Appeal dismissed.

## ITEM OF INTEREST

### The Deregulation Bill 2014

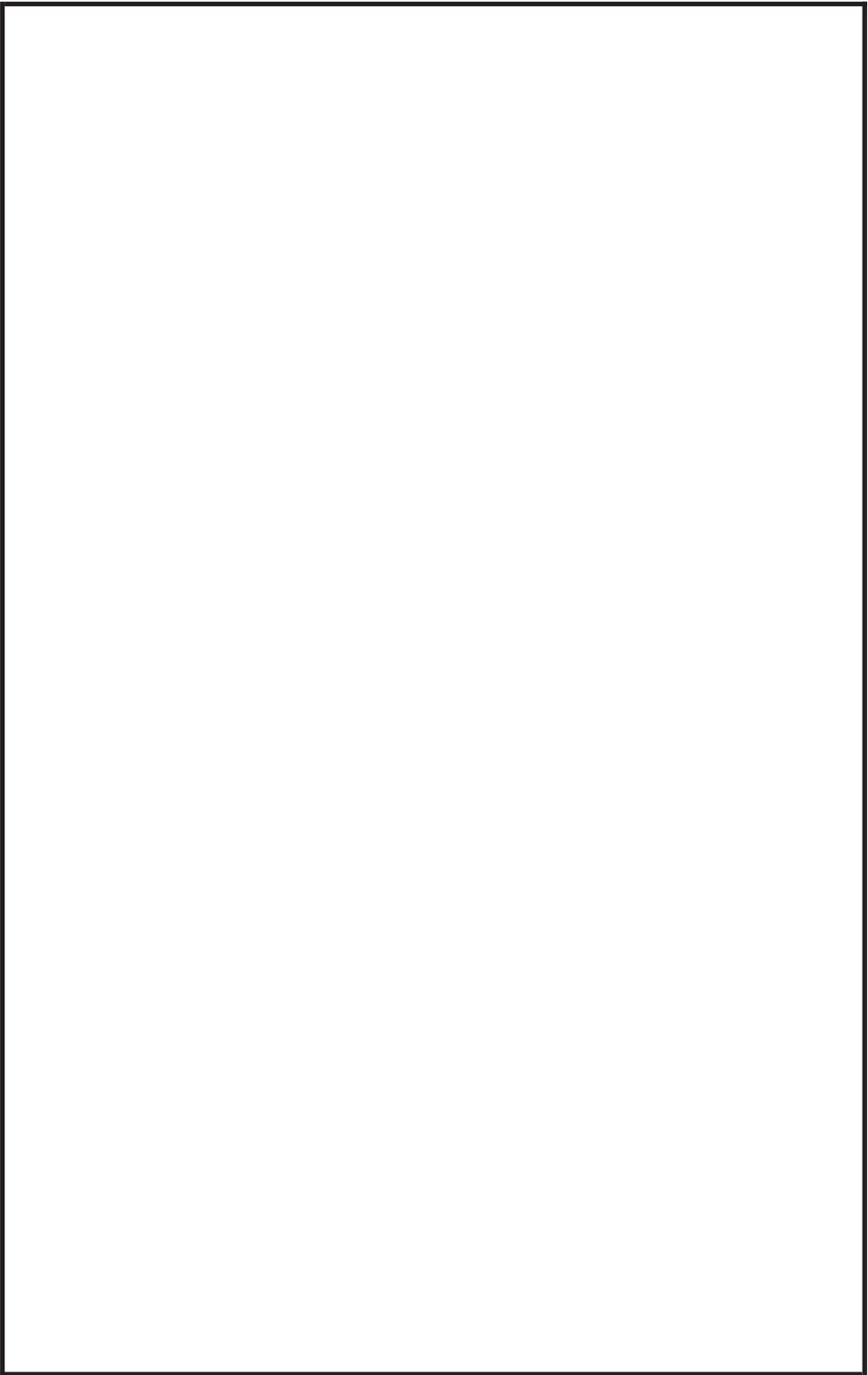
Coming up to the 2015 general election, one is not surprised to see the Deregulation Bill currently going through the Parliamentary process. In amongst the deregulation of some aspects of taxis, footpaths, safety helmets and knitting yarns are a few clauses promising some minor deregulation of the administration of state education.

Clause 49 and Schedule 13 will abolish the office of the Chief Executive of Skills Funding and move his work into the office of the Secretary of State.

Clause 50 and Schedule 14 will deregulate the requirement for FE teachers and principals in England to have particular qualifications.

Clause 51 and Schedule 15 will deregulate some aspects of the running of maintained schools in England. Home-school agreements will no longer be required. Responsibility for pupil discipline will be shifted from the governing bodies to the head teachers. There will be less pressure to disseminate detailed reports on complaints etc.





Correspondence about the content of this Bulletin should be sent to: Fiona Prowting, Content Acquisition and Development Specialist, LexisNexis, 30 Farringdon Street, LONDON, EC4A 4HH (tel: +44 (0)20 3364 4445). For online services queries, please contact +44 (0)84 5370 1234; Fax: +44 (0)20 8662 2012.

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