



School Standards and Framework Act 1998

1998 CHAPTER 31

PART VII

MISCELLANEOUS AND GENERAL

Supplementary

138 Orders and regulations.

- (1) Subject to subsection (2), any power of the Secretary of State [^{F1}or the Assembly] to make an order or regulations under this Act shall be exercised by statutory instrument.
- (2) Subsection (1) does not apply to any order under—
 - (a) section 11(5), 20(5), 21(8), 73, 82, 111(3)(a) [^{F2}, 124AA(2)] or 142(1); or
 - (b) paragraph 5 of Schedule 5, paragraph 2 or 3 of Schedule 7, ^{F3}..., paragraph 1 of Schedule 14, paragraph 10 of Schedule 21, paragraph 4(2) [^{F4}, 7(3)(c) or 8A] of Schedule 22 or paragraph 5(3) of Schedule 32.
- (3) Subject to subsections (4) and (5), a statutory instrument containing any order or regulations [^{F5}made by the Secretary of State] under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to any order under—
 - (a) section 20(7), ^{F6}... [^{F7}45C(2),] 69(3), 85(5), 104^{F8}... or 145; or
 - (b) ^{F9}... paragraph 1 of Schedule 32.
- (5) Subsection (3) also does not apply to—
 - (a) any order under—
 - (i) section 1(5),
 - ^{F10}(ii)
 - ^{F10}(iii)

Changes to legislation: *School Standards and Framework Act 1998, Section 138 is up to date with all changes known to be in force on or before 08 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- ; or
- (b) the first regulations to be made under—
- (i) section 38(3) or 39(1),
 - (ii) section ^{F11}... , 47 or 48(1), or
 - (iii) section 105 or 108(2);^{F12} or
- (c) the first regulations to be made under section 45AA, or
- (d) the first regulations to be made under section 47 in relation to England after the coming into force of paragraph 6 of Schedule 16 to the Education Act 2005,] and no such order or regulations shall be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (6) If a draft of the statutory instrument containing any such regulations under section 105 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (7) Any order or regulations under this Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State [^{F13}or the Assembly] thinks fit.
- (8) Any order or regulations under this Act may make different provision in relation to England and Wales respectively.
- (9) Nothing in this Act shall be read as affecting the generality of subsection (7).

Subordinate Legislation Made

- P1** S. 138(7) power partly exercised (9.9.1998): different days appointed for specified provisions by [S.I. 1998/2212](#).
- S. 138(7) power partly exercised (15.12.1998): different days appointed for specified provisions by [S.I. 1998/3198](#).
- S. 138(7) power partly exercised (20.1.1999): different days appointed for specified provisions by [S.I. 1999/120](#).
- S. 138(7) power partly exercised (13.8.1999): different days appointed for specified provisions by [S.I. 1999/2323](#).

Textual Amendments

- F1** Words in s. 138(1) inserted (30.6.2008) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 17 para. 3\(2\)](#); [S.I. 2008/1429](#), art. 3(2), [Sch. Pt. 2](#)
- F2** Word in s. 138(2)(a) inserted (1.2.2012) by [Education Act 2011 \(c. 21\)](#), [ss. 62\(4\)\(b\)](#), 82(3); [S.I. 2012/84](#), art. 3
- F3** Words in s. 138(2)(b) repealed (1.10.2002 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), [Sch. 22 Pt. 3](#) (with [ss. 210\(8\)](#), 214(4)); [S.I. 2002/2439](#), art. 3; [S.I. 2005/2910](#), art. 4, [Sch.](#)
- F4** Words in s. 138(2)(b) substituted (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 4 para. 21](#); [S.I. 2007/935](#), art. 7(p)
- F5** Words in s. 138(3) inserted (30.6.2008) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 17 para. 3\(3\)](#); [S.I. 2008/1429](#), art. 3(2), [Sch. Pt. 2](#)
- F6** Word in s. 138(4) repealed (25.5.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), [Sch. 18 Pt. 3](#); [S.I. 2007/935](#), art. 7(q)

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- F7** Word in s. 138(4)(a) inserted (1.10.2002 for E., 2.1.2008 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 111** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2007/3611, art. 4(1), **Sch. Pt. 1**
- F8** Word in s. 138(4)(a) omitted (1.1.2016) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 16 para. 2(2)(a)**; S.I. 2015/2074, art. 2
- F9** Words in s. 138(4)(b) repealed (1.10.2002 for E., 1.9.2004 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3; S.I. 2004/1728, art. 5, Sch. Pt. 2
- F10** S. 138(5)(a)(ii)(iii) repealed (1.4.2003 for E., 1.9.2004 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2004/1728, art. 5, Sch. Pt. 2
- F11** Word in s. 138(5)(b)(ii) repealed (1.10.2002 for E., 1.9.2004 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3; S.I. 2004/1728, art. 5, Sch. Pt. 2
- F12** S. 138(5)(c)(d) and preceding word inserted (1.11.2005) by Education Act 2005 (c. 18), s. 125(4), **Sch. 16 para. 8** (with s. 119); S.I. 2005/2034, art. 9
- F13** Words in s. 138(7) inserted (30.6.2008) by Education and Inspections Act 2006 (c. 40), s. 188(3), **Sch. 17 para. 3(4)**; S.I. 2008/1429, art. 3(2), Sch. Pt. 2

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3)(aa) inserted by [2011 nawm 7 s. 16\(2\)](#) (Amendment not applied to [legislation.gov.uk](#) - s.16(02) of 2011 nawm007 omitted by 2013 nawm001 s. 100(4), Sch. 5 para. 13(2); S.I. 2014/178, art. 2(f) (with art. 3) prior to commencement)
- s. 18B inserted by [2011 nawm 7 s. 16\(3\)](#) (Amendment not applied to [legislation.gov.uk](#) - s.16(02) of 2011 nawm007 omitted by 2013 nawm001 s. 100(4), Sch. 5 para. 13(2); S.I. 2014/178, art. 2(f) (with art. 3) prior to commencement)
- Sch. 22 para. 5(1B) inserted by [2023 c. 55 s. 235\(4\)](#)