



Education and Skills Act 2008

2008 CHAPTER 25

PART 5

MISCELLANEOUS AND GENERAL

CHAPTER 3

GENERAL

166 Orders and regulations

- (1) The following are to be made by statutory instrument—
 - (a) orders and regulations made by the Secretary of State or Lord Chancellor under this Act;
 - (b) orders made by the Welsh Ministers under section 173.
- (2) A statutory instrument containing—
 - (a) an order under section 3(5),
 - (b) regulations under section 5(1)(b),
 - (c) regulations under section 22(2) or 31(3), other than regulations for the purpose only of making provision within subsection (4),
 - (d) an order under section 56(9) or 58(3),
 - (e) regulations under section 61,
 - (f) an order under section 67,
 - (g) regulations under section 132(1), or
 - (h) regulations under section 170 which amend or repeal any provision of an Act, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing any other order or regulations under this Act, other than an order under section 173, is subject to annulment in pursuance of a resolution of either House of Parliament.

Changes to legislation: Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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

- (4) Provision contained in regulations under section 22(2) or 31(3) falls within this subsection if it substitutes, for an amount for the time being specified in such regulations, a smaller amount.
- (5) Before a draft of an instrument containing an order under section 67 is laid before either House of Parliament, the Secretary of State must consult the Welsh Ministers.
- (6) Any power of the Secretary of State or Lord Chancellor to make an order or regulations under this Act includes power—
 - (a) to make different provision for different cases, circumstances or areas,
 - (b) to make provision generally or in relation to specific cases, and
 - (c) to make such incidental, supplementary, transitional, transitory or saving provision as the Secretary of State or Lord Chancellor thinks fit.

167 Functions to be exercisable by Welsh Ministers

- (1) Any function conferred on the Secretary of State by section 150, 152 or 165, so far as exercisable in relation to Wales, is to be taken to be transferred, immediately after that section comes into force in relation to Wales, to the Welsh Ministers by an Order in Council under section 58 of the Government of Wales Act 2006 (c. 32).
- (2) Nothing in Schedule 1 or 2, so far as relating to the substitution of references to the Welsh Ministers for references to the Secretary of State in sections 89 to 90 of the School Standards and Framework Act 1998 (c. 31), is to be taken to affect the application of those sections, or anything done under or for the purposes of those sections, in relation to Wales.

168 General interpretation

- (1) In this Act, unless the context otherwise requires—
 - “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Secretary of State under this Act.
- (2) Subject to subsections (4) and (5), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (3) are to be construed as if those provisions were contained in that Act.
- (3) The provisions of this Act referred to in subsection (2) are—
 - (a) Part 1 (other than section 9 and sections 37 to 39);
 - (b) Chapter 1 of Part 4;
 - (c) section 148;
 - (d) section 173(10).
- (4) Where an expression is given for the purposes of any provision falling within subsection (3) a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Sections 561 and 562 of the Education Act 1996 (Act not to apply to persons in service of the Crown or persons detained under order of a court) do not apply for the purposes of Part 1.

Changes to legislation: Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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

- (6) Unless the context otherwise requires, any reference in this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

169 Minor and consequential amendments, repeals and revocations

- (1) Schedule 1 has effect to make minor and consequential amendments.
- (2) The provisions mentioned in Schedule 2 are repealed or revoked to the extent specified.

Commencement Information

- I1** S. 169 partly in force; s. 169 in force for certain purposes at Royal Assent see s. 173(1)(g)(h)
- I2** S. 169(1) in force at 2.12.2008 for specified purposes by [S.I. 2008/3077](#), [art. 2\(b\)](#)
- I3** S. 169(1) in force at 2.12.2008 for specified purposes for E. by [S.I. 2008/3077](#), [art. 3\(a\)](#)
- I4** S. 169(1) in force at 26.1.2009 for E. by [S.I. 2008/3077](#), [art. 5\(c\)](#) (with [art. 6](#))
- I5** S. 169(1) in force at 26.1.2009 for specified purposes by [S.I. 2008/3077](#), [art. 4\(e\)](#)
- I6** S. 169(1) in force at 31.3.2009 for specified purposes for W. by [S.I. 2009/784](#), [art. 3\(b\)](#) (with [art. 4](#))
- I7** S. 169(1) in force at 1.9.2009 for specified purposes by [S.I. 2009/1606](#), [art. 3](#) (with [art. 6](#))
- I8** S. 169(1) in force at 30.3.2010 for specified purposes by [S.I. 2010/1093](#), [art. 2\(b\)](#)
- I9** [S. 169\(1\)](#) in force at 8.9.2014 for specified purposes by [S.I. 2014/2379](#), [art. 2\(h\)](#)
- I10** [S. 169\(1\)](#) in force at 5.1.2015 for specified purposes by [S.I. 2014/3364](#), [art. 2\(z\)](#)
- I11** S. 169(2) in force at 2.12.2008 for specified purposes by [S.I. 2008/3077](#), [art. 2\(c\)](#)
- I12** S. 169(2) in force at 26.1.2009 for specified purposes by [S.I. 2008/3077](#), [art. 4\(f\)](#)
- I13** S. 169(2) in force at 26.1.2009 for E. by [S.I. 2008/3077](#), [art. 5\(d\)](#) (with [art. 6](#))
- I14** S. 169(2) in force at 31.3.2009 for specified purposes for W. by [S.I. 2009/784](#), [art. 3\(c\)](#) (with [art. 4](#))
- I15** S. 169(2) in force at 1.9.2009 for specified purposes by [S.I. 2009/1606](#), [art. 3](#) (with [art. 6](#))
- I16** S. 169(2) in force at 1.9.2009 for specified purposes by [S.I. 2009/1513](#), [art. 3](#)
- I17** S. 169(2) in force at 30.3.2010 for specified purposes by [S.I. 2010/1093](#), [art. 2\(c\)](#)
- I18** [S. 169\(2\)](#) in force at 5.1.2015 for specified purposes by [S.I. 2014/3364](#), [art. 2\(aa\)](#)

170 Power to make consequential and transitional provision etc.

- (1) The Secretary of State may by regulations make—
- such supplementary, incidental or consequential provision, or
 - such transitory, transitional or saving provision,
- as the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Regulations under this section may in particular—
- provide for any provision of this Act which comes into force before another provision (of this or any other Act or in subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications;
 - amend, repeal or revoke any provision of—
 - an Act passed before or in the same Session as this Act, or
 - subordinate legislation made before the passing of this Act.
- (3) Nothing in this section limits the powers conferred by section 166(6)(c) or 173(8)(c).

Changes to legislation: Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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

- (4) The amendments that may be made by virtue of subsection (2)(b) are in addition to those that are made by any other provision of this Act.
- (5) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

171 Financial provisions

- (1) There are to be paid out of money provided by Parliament—
 - (a) any expenditure incurred by the Secretary of State or the Office for Standards in Education, Children's Services and Skills by virtue of this Act, and
 - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.
- (2) Any sums received by the Secretary of State or Her Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of this Act are to be paid into the Consolidated Fund.

172 Extent

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) Sections 87 to 91 extend to England and Wales and Scotland.
- (3) The following provisions extend to England and Wales, Scotland and Northern Ireland—
 - (a) section 166;
 - (b) section 170;
 - (c) this section;
 - (d) sections 173 and 174.
- (4) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

173 Commencement

- (1) The following provisions of this Act come into force on the day on which it is passed—
 - (a) section 80;
 - (b) section 156;
 - (c) sections 166 to 168;
 - (d) sections 170 to 172;
 - (e) this section;
 - (f) section 174;
 - (g) paragraphs 75 to 77 and 86 to 88 of Schedule 1 (and section 169 so far as relating to those paragraphs);
 - (h) the repeal in Schedule 2 relating to section 140 of the Learning and Skills Act 2000 (c. 21) (and section 169 so far as relating to that repeal).
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
 - (a) section 149;

Changes to legislation: Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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

- (b) section 151(1) and (4), so far as relating to sections 88P and 88Q of the School Standards and Framework Act 1998 (c. 31);
 - (c) section 164.
- (3) The following provisions, so far as they apply in relation to Wales, come into force in accordance with provision made by the Welsh Ministers by order—
 - (a) sections 150, 152 and 153;
 - (b) sections 157 and 158(b) and (c);
 - (c) sections 160 and 162;
 - (d) section 165;
 - (e) the following paragraphs of Schedule 1—
 - (i) paragraphs 54, 55, 59(7), 66 and 67, and, so far as relating to those paragraphs, paragraph 53, and
 - (ii) paragraph 79,(and section 169 so far as relating to those provisions);
 - (f) the repeals and revocations in Schedule 2 so far as relating to—
 - (i) sections 86 and 94 of the School Standards and Framework Act 1998,
 - (ii) section 99(4) of the Learning and Skills Act 2000,
 - (iii) section 176 of and Schedules 4 and 17 to the Education Act 2002 (c. 32),
 - (iv) paragraphs 19 and 20 of Schedule 1 to the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239),(and section 169 so far as relating to those repeals and revocations).
- (4) Subject to subsections (1) to (3), the provisions of this Act come into force in accordance with provision made by the Secretary of State by order.
- (5) Before making an order under subsection (4) containing provision for the coming into force of section 67, the Secretary of State must consult the Welsh Ministers.
- (6) Before making an order under subsection (4) containing provision for the coming into force of sections 87 to 91, the Secretary of State must consult the Scottish Ministers and the Welsh Ministers.
- (7) Before making an order under subsection (4) containing provision for the coming into force of section 161(4) or 163, the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.
- (8) An order under this section may—
 - (a) make provision generally or for specified purposes only;
 - (b) make different provision for different purposes and in relation to different areas; and
 - (c) contain such transitory and transitional provisions and savings as the person making the order thinks fit.
- [^{F1}(9) An order under subsection (4) may provide for the following provisions to come into force with the substitution of “ the first anniversary of the date on which the person ceased to be of compulsory school age ” for “the age of 18”
 - (a) section 1(b) (persons to whom Part 1 applies);

Changes to legislation: Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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

- (b) section 29(1)(b) (employer to enable participation in education or training: extension for persons reaching 18).
- (10) The Secretary of State must—
- (a) exercise the powers conferred by subsections (4) and (9) so as to secure that sections 1 to 10 are in force with the substitution in section 1(b) mentioned in subsection (9) no later than the day after the day which is the school leaving date for 2013, and
 - (b) exercise the power conferred by subsection (4) so as to secure that sections 1 to 10 are in force without that substitution no later than the day after the day which is the school leaving date for 2015,
- subject, in each case, to any provision made by virtue of subsection (8).]

Textual Amendments

F1 S. 173(9)(10) substituted (1.2.2012) by Education Act 2011 (c. 21), ss. 74, 82(3); S.I. 2012/84, art. 3

174 Short title

- (1) This Act may be cited as the Education and Skills Act 2008.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

Changes to legislation:

Education and Skills Act 2008, Chapter 3 is up to date with all changes known to be in force on or before 07 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.

[View outstanding changes](#)

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. 91(3)(c) inserted by [2022 asc 1 Sch. 4 para. 22\(3\)](#)