



# Education Act 2002

## 2002 CHAPTER 32

### PART 11 **E+W**

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **210 Orders and regulations **E+W****

- (1) Subject to subsection (2), any power of the Secretary of State or [<sup>F1</sup>the Welsh Ministers] to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) Subsection (1) does not apply to any order under—
  - (a) section 165 or 192, or
  - (b) paragraph 3(6) or 5 of Schedule 1.
- (3) No order shall be made by the Secretary of State under—
  - (a) section 80(3),
  - (b) section 82(4)(b),
  - <sup>F2</sup>(c) .....
  - (d) section 84(6),
  - (e) section 86, or
  - (f) section 125(4),unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subject to subsections (5) and (6), a statutory instrument which contains any order or regulations made under this Act by the Secretary of State and is not subject to the requirement in subsection (3) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) Subsection (4) does not apply to an order under—
- (a) section 7(2),
  - (b) section [F387(3)(c)] ,
  - (c) section 128(2), or
  - (d) section 216.
- (6) If an order under section 122 contains only provisions which in the opinion of the Secretary of State give effect without significant modification to recommendations of the School Teachers' Review Body—
- (a) the order shall contain a statement to that effect, and
  - (b) subsection (4) shall not apply.
- [F4(6A) Any statutory instrument containing regulations [F5 or an order] made under section [F632C(5)]<sup>F7</sup>... [F8 or Part 7] by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales [F9 unless the instrument contains an order mentioned in subsection (6AB)] .
- [ No order shall be made by the Welsh Ministers under section 101(3), 103(4)(b),<sup>F10</sup>(6AB) 105(6), 107, 116F(5), 116H(5) or 116L unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.]
- (6B) Paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006 make provision about the National Assembly for Wales procedures that apply to any statutory instrument containing regulations or an order made in exercise of functions conferred upon the National Assembly for Wales by this Act that have been transferred to the Welsh Ministers by virtue of paragraph 30 of that Schedule.]
- (7) Any power of the Secretary of State or [F11the Welsh Ministers] to make an order or regulations under this Act includes power—
- (a) to make different provisions for different cases or areas,
  - (b) to make provision generally or only in relation to specific cases, and
  - (c) to make such incidental, supplemental, saving or transitional provisions as the Secretary of State or [F12the Welsh Ministers think] fit.
- (8) Nothing in this Act shall be regarded as affecting the generality of subsection (7).

#### Textual Amendments

- F1** Words in s. 210(1) substituted (6.3.2009) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 21(3)(a)**, 28(2); S.I. 2009/371, art. 2(1), Sch. Pt. 1
- F2** S. 210(3)(c) repealed (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), Sch. 1 para. 16(a), **Sch. 3 Pt. 1**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F3** Words in s. 210(5)(b) substituted (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 1 para. 16(b)**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F4** S. 210(6A)(6B) inserted (6.3.2009) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 21(3)(b)**, 28(2); S.I. 2009/371, art. 2(1), Sch. Pt. 1
- F5** Words in s. 210(6A) inserted (7.12.2009) by [Learning and Skills \(Wales\) Measure 2009 \(nawm 1\)](#), **ss. 20(2)(a)**, 49(2); S.I. 2009/3174, art. 2(1)(j)
- F6** Word in s. 210(6A) substituted (14.7.2014) by [Education \(Wales\) Act 2014 \(anaw 5\)](#), s. 50(4), **Sch. 3 para. 1(6)**; S.I. 2014/1605, art. 2(d)

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- F7** Words in s. 210(6A) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 16 para. 21**; S.I. 2012/924, art. 2
- F8** Words in s. 210(6A) inserted (7.12.2009) by Learning and Skills (Wales) Measure 2009 (nawm 1), **ss. 20(2)(b)**, 49(2); S.I. 2009/3174, art. 2(1)(j)
- F9** Words in s. 210(6A) inserted (7.12.2009) by Learning and Skills (Wales) Measure 2009 (nawm 1), **ss. 20(2)(c)**, 49(2); S.I. 2009/3174, art. 2(1)(j)
- F10** S. 210(6AB) inserted (7.12.2009) by Learning and Skills (Wales) Measure 2009 (nawm 1), **ss. 20(3)**, 49(2); S.I. 2009/3174, art. 2(1)(j)
- F11** Words in s. 210(7) substituted (6.3.2009) by Learner Travel (Wales) Measure 2008 (nawm 2), **ss. 21(3)(c)(i)**, 28(2); S.I. 2009/371, art. 2(1), Sch. Pt. 1
- F12** Words in s. 210(7)(c) substituted (6.3.2009) by Learner Travel (Wales) Measure 2008 (nawm 2), **ss. 21(3)(c)(ii)**, 28(2); S.I. 2009/371, art. 2(1), Sch. Pt. 1

## 211 Wales **E+W**

- (1) Subsection (2) applies where—
- this Act confers a function (in this section referred to as “the new function”) on the Secretary of State by amendment of another Act, and
  - any functions under that Act have before the passing of this Act been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38) (transfer of Ministerial functions).
- (2) The new function, so far as exercisable in relation to Wales, is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 and, accordingly, the transfer may be varied or revoked by an Order in Council under that section.
- (3) For the purposes of section 22 of the Government of Wales Act 1998, an Order in Council made by virtue of subsection (2) or section 208(3) is to be treated as if it were revoking or varying a previous Order in Council.
- (4) Subsection (2) does not apply in relation to the amendment made by section 208(1).

## 212 General interpretation **E+W**

- (1) In this Act, unless the context otherwise requires—
- “contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996 (c. 18);
- [<sup>F13</sup>“local authority” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);]
- “the [<sup>F14</sup>local authority]”, in relation to a school [maintained (or proposed to be maintained) by a [<sup>F14</sup>local authority], means that authority;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made under this Act by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales).
- (2) Subject to subsection (4), 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.

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- (3) The provisions of this Act referred to in subsection (2) are—
- (a) Part 1 (provision for new legal frameworks),
  - (b) Part 2 (financial assistance for education and childcare),
  - (c) Part 3 (maintained schools),
  - (d) Part 5 (school organisation), except section 72 and Schedule 9,
  - (e) Parts 6 and 7 (the curriculum),
  - (f) in Part 8, sections 119 to 146,
  - (g) in Part 9, section 153,
  - (h) Part 10 (independent schools), and
  - (i) in this Part, sections 175 and 176, sections 181 to 185, sections 190 to 198 and section 207.
- (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 (c. 56), the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Unless the context otherwise requires, any reference in this Act or in any Act amended by 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).

#### Textual Amendments

- F13** Words in s. 212(1) inserted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 11(12)**
- F14** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 11(2)**

### 213 Financial provisions **E+W**

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State 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 by virtue of this Act shall be paid into the Consolidated Fund.

### 214 Transitional provisions etc. **E+W**

- (1) Regulations may at any time make such incidental, consequential, transitional or supplementary provision as appears to the Secretary of State, or as the case may be the National Assembly for Wales, to be necessary or expedient for the general purposes, or any particular purposes, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for any provision of this Act which comes into force before—
    - (i) another such provision has come into force, or

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- (ii) anything falling to be done under another such provision has been done,  
to have effect, until that other provision has come into force or (as the case may be) that thing has been done, with such modifications as are specified in the regulations;
- (b) for amending, repealing or revoking (with or without savings) any statutory provision passed or made before the passing of this Act, for applying any such provision (with or without modification) and for making savings or additional savings from the effect of any amendment or repeal made by this Act.
- (3) The amendments that may be made under subsection (2)(b) shall be in addition (and without prejudice) to those made by any other provision of this Act.
- (4) Nothing in this Act shall be read as prejudicing the generality of subsection (1).
- (5) In this section “statutory provision” has the same meaning as in Chapter 1 of Part 3.

## 215 Minor and consequential amendments and repeals **E+W**

- (1) Schedule 21 (which contains minor and consequential amendments) shall have effect.
- (2) The enactments specified in the first column of Schedule 22 (which include spent provisions) are repealed to the extent specified in the second column.

### Commencement Information

- I1** S. 215 partly in force; s. 215 not in force at Royal Assent, see s. 216; s. 215(2) in force for certain purposes for E. at 26.7.2002 by [S.I. 2002/2002, art. 3](#); s. 215 in force for certain further purposes for E. at 2.9.2002 by [S.I. 2002/2002, art. 4](#); s. 215 in force for certain purposes at 1.10.2002 by [S.I. 2002/2439, arts. 2, 3](#) (with [Sch.](#)); s. 215 in force for certain further purposes for E. at 20.1.2003 by [S.I. 2002/2952, art. 2](#) (with [art. 3, Sch.](#)); s. 215(1) in force for certain purposes for W. and s. 215(2) in force for certain purposes at 19.12.2002 by [S.I. 2002/3185, art. 4, Sch. Pt. I](#) (with [art. 7](#))
- I2** S. 215 in force at 20.1.2003 for specified purposes except in relation to W. by [S.I. 2002/2952, art. 2](#)
- I3** S. 215 in force at 31.3.2003 for specified purposes for W. by [S.I. 2002/3185, art. 5, Sch. Pt. II](#)
- I4** S. 215 in force at 1.4.2003 for specified purposes except in relation to W. by [S.I. 2003/124, art. 4](#)
- I5** S. 215 in force at 1.6.2003 for specified purposes except in relation to W. by [S.I. 2003/1115, art. 3](#)
- I6** S. 215 in force at 1.8.2003 for specified purposes by [S.I. 2003/1667, art. 2](#)
- I7** S. 215 in force at 1.8.2003 for specified purposes except in relation to W. by [S.I. 2003/1667, art. 3](#)
- I8** S. 215 in force at 1.9.2003 for specified purposes for W. by [S.I. 2003/1718, art. 5, Sch. Pt. II](#)
- I9** S. 215 in force at 1.9.2003 for specified purposes except in relation to W. by [S.I. 2003/1667, art. 4](#)
- I10** S. 215 in force at 1.10.2003 for specified purposes except in relation to W. by [S.I. 2003/1667, art. 5](#)
- I11** S. 215 in force at 4.12.2003 for specified purposes for W. by [S.I. 2003/2961, art. 5, Sch. Pt. II](#)
- I12** S. 215 in force at 1.1.2004 for specified purposes for W. by [S.I. 2003/2961, art. 6, Sch. Pt. III](#)
- I13** S. 215 in force at 9.1.2004 for specified purposes for W. by [S.I. 2003/2961, art. 7, Sch. Pt. IV](#)
- I14** S. 215 in force at 31.3.2004 for specified purposes for W. by [S.I. 2004/912, art. 4, Sch. Pt. 1](#)
- I15** S. 215 in force at 1.8.2004 for specified purposes for W. by [S.I. 2004/912, art. 5, Sch. Pt. 2](#)
- I16** S. 215 in force at 1.9.2004 for specified purposes for W. by [S.I. 2004/1728, art. 5, Sch. Pt. 2](#)
- I17** S. 215 in force at 31.5.2005 for specified purposes for W. by [S.I. 2005/1395, art. 4, Sch.](#)
- I18** S. 215 in force at 31.10.2005 for specified purposes for W. by [S.I. 2005/2910, art. 4, Sch.](#)
- I19** S. 215 in force at 1.4.2006 for specified purposes for W. by [S.I. 2006/879, art. 4, Sch.](#)
- I20** S. 215 in force at 6.11.2006 for specified purposes except in relation to W. by [S.I. 2006/2895, art. 2](#)
- I21** S. 215 in force at 2.1.2008 for specified purposes for W. by [S.I. 2007/3611, art. 4\(1\), Sch. Pt. 1](#)

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| <b>I22</b> | S. 215 in force at 1.8.2008 in so far as relating to the provisions of Schedules 21 and 22 for specified purposes for W. by <a href="#">S.I. 2008/1728, art. 3, Sch. Pt. 2</a> |
| <b>I23</b> | S. 215(1) in force at 1.3.2003 for specified purposes except in relation to W. by <a href="#">S.I. 2003/124, art. 2</a>  |
| <b>I24</b> | S. 215(1) in force at 1.8.2004 for specified purposes for W. by <a href="#">S.I. 2004/1728, art. 4, Sch. Pt. 1</a>   |
| <b>I25</b> | S. 215(2) in force at 6.4.2003 for specified purposes except in relation to W. by <a href="#">S.I. 2003/124, art. 5</a>  |
| <b>I26</b> | S. 215(2) in force at 1.8.2003 for specified purposes for W. by <a href="#">S.I. 2003/1718, art. 4, Sch. Pt. I</a>   |
| <b>I27</b> | S. 215(2) in force at 1.9.2003 for specified purposes by <a href="#">S.I. 2002/3185, art. 6, Sch. Pt. III</a>  |
| <b>I28</b> | S. 215(2) in force at 1.2.2006 for specified purposes for W. by <a href="#">S.I. 2006/172, art. 4, Sch.</a>  |
| <b>I29</b> | S. 215(2) in force at 31.3.2008 for specified purposes for W. by <a href="#">S.I. 2007/3611, art. 4(2), Sch. Pt. 2</a>   |
| <b>I30</b> | <a href="#">S. 215(2)</a> in force at 1.9.2011 for specified purposes for W. by <a href="#">S.I. 2011/1952, art. 2(b)</a>  |

## 216 Commencement **E+W**

- (1) The following provisions shall come into force on the day on which this Act is passed—
  - section 13,
  - section 52(7) to (10),
  - section 147,
  - section 186,
  - section 190,
  - sections 210 to 214, and
  - this section and section 217.
- (2) The following provisions shall come into force in accordance with provision made by the Secretary of State by order—
  - sections 65 to 69 and Schedule 7,
  - section 70 and Schedule 8,
  - section 71,
  - section 73,
  - Part 6,
  - sections 119 to 130 and Schedule 11,
  - section 209,
  - [<sup>F15</sup>paragraphs 1 to 4 and 9 of Schedule 17, and section 189 so far as relating to those paragraphs,]
  - paragraphs 14, 17, 18, 56, 91 and 119 of Schedule 21, and section 215(1) so far as relating to those paragraphs, and
  - Part 1 of Schedule 22, and section 215(2) so far as relating to that Part.
- (3) The following provisions shall come into force in accordance with provision made by the National Assembly for Wales by order—
  - Part 7,
  - section 139,
  - sections 191 to 198 and Schedule 18,
  - paragraphs 5 to 8 of Schedule 17, and section 189 so far as relating to those paragraphs, and
  - Part 2 of Schedule 22, and section 215(2) so far as relating to that Part.
- (4) Subject to subsections (1) to (3), this Act shall come into force—

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- (a) except in relation to Wales, in accordance with provision made by the Secretary of State by order, and
  - (b) in relation to Wales, in accordance with provision made by the National Assembly for Wales by order.
- (5) An order under this section may—
- (a) make provision generally or for specified purposes only,
  - (b) make different provision for different purposes, and
  - (c) contain such transitional provisions and savings as the person making the order thinks fit.

#### Subordinate Legislation Made

**P1** S. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {[S.I. 2002/2002](#)}, arts. 2-4 (as amended by [S.I. 2002/2018](#)); s. 216(4) power partly exercised 1.10.2002 appointed for specified provisions and certain purposes by [S.I. 2002/2439](#), [arts. 2, 3](#) (with transitional and saving provisions in [Sch.](#)); s. 216(4) power partly exercised: 20.1.2003 appointed for specified provisions and certain purposes by {[S.I. 2002/2952](#)}, art. 2 (with transitional and saving provisions in [Sch.](#)); s. 216(4) power partly exercised: different dates appointed for specified provisions and certain purposes by {[S.I. 2002/3185](#)}, arts. 4-6, [Sch.](#) (with transitional provisions and savings in art. 7)

#### Textual Amendments

**F15** Words in s. 216(2) repealed (1.4.2010 for E., 1.11.2010 for W.) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 16 Pt. 4](#); [S.I. 2010/1151](#), art. 2, [Sch. 1](#); [S.I. 2010/2413](#), art. 2(a)

## 217 Short title and extent **E+W**

- (1) This Act may be cited as the Education Act 2002.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).
- (3) Any amendment or repeal in this Act has the same extent as the provision amended or repealed.
- (4) Except as provided by subsection (3), this Act extends to England and Wales only.



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