



# Education Act 2005

## 2005 CHAPTER 18

### PART 5

#### GENERAL

#### **119 Functions to be exercisable by National Assembly for Wales**

- (1) Any function conferred on the Secretary of State by the amendments made by the provisions mentioned in subsection (2), so far as exercisable in relation to Wales, is to be taken to have been transferred to the Assembly by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38).
- (2) Those provisions are—
  - section 45 (power to direct closure of school);
  - section 70 (proposals for discontinuance of rural primary school);
  - section 71 (proposals relating to maintained special school);
  - section 106 (admission arrangements to make special provision for looked-after children);
  - Schedule 7 (inspection of child minding, day care and nursery education);
  - Schedule 16 (funding of maintained schools);
  - Schedule 17 (restrictions on disposal of land);
  - Schedule 18 (further amendments related to Part 4).

#### **120 Subordinate legislation: general provisions**

- (1) Any power to make an order or regulations conferred by this Act on the Secretary of State or the Assembly is exercisable by statutory instrument.
- (2) Any power of the Secretary of State or the Assembly to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases or areas,
  - (b) to make provision generally or in relation to specific cases, and

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- (c) to make such incidental, supplementary, saving or transitional provision as the Secretary of State or the Assembly thinks fit.
- (3) Regulations under Part 1 may, in particular, include provision for the designation by the Secretary of State or the Assembly, in accordance with the regulations, of particular schools or categories of school for the purposes of the application of particular provisions of the regulations in relation to such schools.
- (4) Any power conferred by this Act to give directions includes power, exercisable in the same manner and subject to the same conditions or limitations, to revoke or vary directions previously given.

## **121 Parliamentary control of subordinate legislation**

- (1) Any statutory instrument containing regulations or an order made by the Secretary of State under any provision of this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
  - (a) regulations to which subsection (3) applies, or
  - (b) an order made under section 125 (commencement).
- (3) A statutory instrument which contains (whether alone or with other provisions) regulations made by the Secretary of State under section 124 which amend or repeal any part of the text 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.

## **122 General interpretation**

- (1) In this Act “the Assembly” means the National Assembly for 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 read as if those provisions were contained in that Act.
- (3) The provisions of this Act referred to in subsection (2) are—
  - (a) Part 1 (school inspections);
  - (b) Part 2 (school organisation);
  - (c) section 102 (LEA targets: England);
  - (d) section 108 (supply of information: education maintenance allowances);
  - (e) section 110 (supply of information: free school lunches, etc.);
  - (f) section 114 (supply of information about school workforce).
- (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).

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## 123 Repeals

Schedule 19 contains repeals.

### Commencement Information

- II** S. 123 partly in force; s. 123 partly in force at 1.9.2005, see s. 125(3); s. 123 in force for E. for certain purposes at 1.9.2005, 3.10.2005 and 1.11.05 by S.I. 2005/2034, arts. {4}, {6}, {8} and in force for E.W. for certain purposes at 1.9.2005 by the said S.I. 2005/2405, art. 5; s. 123 in force for certain purposes for W. at 1.9.2006 by S. I. 2006/1338, art. 3, Sch. 1 and in force for certain purposes for E.W. at 1.9.2006 and at 1.4.2007 by the said S.I. 2006/1338, arts. {4}, {5}, Schs. 2, 3

## 124 Power to make further supplementary and consequential provision etc.

- (1) The Secretary of State may at any time by regulations make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitional, transitory or saving provision,
- as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of Parts 1 to 4 of this Act.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) amending or repealing any enactment passed before, or in the same Session as, this Act, and
  - (b) amending or revoking any subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made before the passing of this Act.
- (3) In relation to Wales, the power to make regulations under subsection (1) is also exercisable by the Assembly.
- (4) Nothing in this Act is to be regarded as limiting the generality of subsection (1).

## 125 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) in Part 1, sections 62 and 63;
  - (b) in Part 3—
    - section 75(5),
    - section 78(3),
    - sections 96 and 97,
    - section 100, and
    - paragraph 3 of Schedule 15 (and section 99 so far as relating to that paragraph);
  - (c) in this Part—
    - sections 119 to 122,
    - section 124,
    - this section, and
    - sections 126 to 128.

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- (2) The following provisions of Part 4 come into force at the end of the period of two months beginning with the day on which this Act is passed—  
section 102,  
sections 107 to 114, and  
Schedule 17.
- (3) The following provisions come into force on 1st September 2005 or, if this Act is passed after 1st July 2005, at the end of the period of two months beginning with the day on which it is passed—
- (a) Part 3 (including Schedules 13 to 15), except the provisions specified in subsection (1)(b), and
  - (b) Part 3 of Schedule 19 (and section 123 so far as relating to that Part of that Schedule).
- (4) The remaining provisions of this Act come into force in accordance with provision made by the appropriate authority (as defined in section 126) by order.

#### Subordinate Legislation Made

- P1** S. 125(4) power partly exercised: different dates appointed for specified provisions by {S.I. 2005/2034}, arts. 2-9 (with transitional and saving provisions in art. 10, Sch.)
- P2** S. 125(4) power partly exercised: different dates appointed for specified provisions by {S.I. 2006/1338}, arts. 3-5 (with transitional provisions and savings in art. 6, Sch. 4)
- S. 125(4) power partly exercised: different dates appointed for specified provisions by {S.I. 2006/2129}, arts. 3-5 (with transitional provisions and savings in arts. 6, 7)

#### 126 The appropriate authority by whom commencement order is made

- (1) This section has effect for determining who is the appropriate authority for the purposes of section 125(4).
- (2) In relation to Part 1, the appropriate authority is—
- (a) the Secretary of State, for the following provisions—  
Chapters 1 and 2 (including Schedule 1);  
sections 48 and 49;  
paragraphs 1 to 4 of Schedule 7 (and section 53 so far as relating to those paragraphs);  
paragraphs 1 to 5, 23 and 26 of Schedule 9 (and section 61 so far as relating to those paragraphs),
  - (b) the Assembly, for the following provisions—  
Chapters 3 and 4 (including Schedules 2 to 4);  
section 50 (including Schedule 6);  
section 52;  
sections 55 to 57;  
paragraph 5 of Schedule 7 (and section 53 so far as relating to that paragraph);  
paragraphs 6, 7, 22, 24, 25 and 27 of Schedule 9 (and section 61 so far as relating to those paragraphs), and
  - (c) for the other provisions of the Part—

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- (i) in relation to England, the Secretary of State, and
  - (ii) in relation to Wales, the Assembly.
- (3) In relation to Part 2, the appropriate authority is—
  - (a) for sections 70 and 71 and paragraph 9 of Schedule 12 (and section 72 so far as relating to that paragraph)—
    - (i) in relation to England, the Secretary of State, and
    - (ii) in relation to Wales, the Assembly, and
  - (b) for the other provisions of the Part, the Secretary of State.
- (4) In relation to Part 4, the appropriate authority is—
  - (a) the Secretary of State, for the following provisions—
    - sections 103 and 104;
    - paragraph 8 of Schedule 16 (and section 101 so far as relating to that paragraph);
    - paragraphs 2 to 4 of Schedule 18 (and section 117 so far as relating to those paragraphs), and
  - (b) for the other provisions of the Part—
    - (i) in relation to England, the Secretary of State, and
    - (ii) in relation to Wales, the Assembly.
- (5) In relation to section 123 and Schedule 19, the appropriate authority is—
  - (a) the Secretary of State, for a repeal contained in Part 2 of the Schedule, and
  - (b) for a repeal contained in Part 1 or 4 of the Schedule, the appropriate authority for the purposes of section 125(4) in relation to the provision on which the repeal is consequential.

## **127 Extent**

- (1) Subject to subsections (2) and (3), this Act extends to England and Wales only.
- (2) The following provisions extend also to Scotland and Northern Ireland—
  - sections 108 and 109 (supply of information: education maintenance allowances),
  - section 124, so far as relating to those sections, and
  - the other provisions of this Part except sections 119, 122 and 123.
- (3) Any amendment or repeal made by this Act has the same extent as the enactment amended or repealed.

## **128 Short title, etc.**

- (1) This Act may be cited as the Education Act 2005.
- (2) This Act shall be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

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