

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 9: Miscellaneous

Section 172: Offences relating to independent schools.

679. **Section 172** amends Part 10 of the 2002 Act (Independent Schools). *Subsection (2)* inserts new sections dealing with offences committed in connection with independent schools.
680. Section 168A provides for the consent of the registration authority for independent schools (the Secretary of State in the case of England, or the National Assembly for Wales) to be obtained before any proceedings for offences committed under Part 10 of the 2002 Act are brought. Alternatively, the registration authority may institute such proceedings. *Subsection (3)* of section 172 repeals the requirement contained in section 159(3) of the 2002 Act to obtain the registration authority's consent before proceedings are brought.
681. Section 168B provides that proceedings may be brought against senior officers of a body corporate where an offence has been committed by the body under Part 10 of the 2002 Act and certain other requirements are met. In particular, *subsection (1)* provides that where it can be shown that any director, manager, secretary, or person holding a similar position (or person purporting to act in such a capacity) consented or connived in the commission of the offence, or where the offence can be attributed to an act of negligence on the part of such a person, the person in question is also guilty of the offence and may be prosecuted accordingly. *Subsection (2)* provides that subsection (1) applies in relation to the acts and omissions of a body corporate's members where the body corporate is managed by its members.
682. Section 168C provides for the prosecution of offences committed by an unincorporated body. *Subsection (1)* provides that any proceedings against such a body are to be brought in the name of the body (and not its individual members) and, for the purposes of the proceedings, the court rules are to apply as if the body were a corporation. Accordingly, members are not to be served individually. *Subsection (3)* also provides that certain statutory provisions which may apply in connection with such proceedings are to apply as if the body were a corporation. *Subsection (2)* provides that any fine imposed as a result of such proceedings are to be paid out of the funds of the unincorporated body.
683. *Subsection (4)* makes similar provisions to those contained in section 168B in connection with the officers or members of an unincorporated body where an offence is committed by that body. Therefore, where it can be shown the offence was committed with the consent or connivance of the person, or where the offence is attributable to an act of negligence by that person, he may also be guilty of the offence. *Subsection (4)* makes similar provisions in respect of partners where an offence is committed by a partnership.

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

684. *Subsection (4)* of section 172 provides that sections 168B and 168C do not apply in relation to offences committed before section 172 comes into force.