



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 4

#### REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

#### CHAPTER 1

##### INDEPENDENT EDUCATIONAL INSTITUTIONS IN ENGLAND

##### *Introductory*

### 92 Independent educational institutions

- (1) For the purposes of this Chapter, “an independent educational institution” means—
- (a) an independent school, or
  - (b) an institution other than an independent school which—
    - (i) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
    - (ii) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.
- (2) For the purposes of this section, an institution provides “part-time” education for a person if it provides education for the person—
- (a) for at least 12.5 hours a week, for at least 28 weeks, during an academic year at the end of which the person is under the age of 12, or
  - (b) for at least 15 hours a week, for at least 28 weeks, during an academic year at the end of which the person is aged 12 or over,
- which does not amount to full-time education.
- (3) Regulations may—

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- (a) provide that a specified institution or an institution of a specified description is not an independent educational institution by virtue of subsection (1)(b);
- (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education is being provided for the purposes of this section;
- (c) amend subsection (2)(a) or (b) so as to substitute a different number of weeks for the number of weeks for the time being mentioned there.

(4) In this section—

“an academic year” means a period of 12 months ending with 31 August;  
“specified” means specified in regulations under this section.

**Commencement Information**

- I1** S. 92 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, **art. 2(2)**
- I2** S. 92(1) in force at 1.9.2009 in so far as not already in force by S.I. 2009/1606, **art. 3**

**93 Application of Chapter to institutions in England only**

- (1) References in this Chapter to an independent educational institution are to an independent educational institution in England.
- (2) For provision regulating independent schools in Wales, see Chapter 1 of Part 10 of the Education Act 2002 (c. 32).

**Commencement Information**

- I3** S. 93 in force at 1.9.2009 in so far as not already in force by S.I. 2009/1606, **art. 3**

*Standards*

**94 Independent educational institution standards**

- (1) The Secretary of State must by regulations prescribe standards for the purposes of this Chapter about the following matters—
  - (a) the quality of education provided at independent educational institutions;
  - (b) the spiritual, moral, social and cultural development of students at independent educational institutions;
  - (c) the welfare, health and safety of students at independent educational institutions;
  - (d) the suitability of proprietors of and staff at independent educational institutions;
  - (e) the premises of and accommodation at independent educational institutions;
  - (f) the provision of information by independent educational institutions;
  - (g) the manner in which independent educational institutions handle complaints;
  - (h) the quality of the leadership in and management of independent educational institutions.
- (2) A standard may be prescribed in relation to—

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- (a) all independent educational institutions,
  - (b) specified independent educational institutions, or
  - (c) independent educational institutions of a specified description.
- (3) In subsection (2) “specified” means specified in regulations made under this section.
- (4) The standards do not apply to early years provision for children who have not attained the age of three (separate requirements as to such provision being imposed by or under Part 3 of the Childcare Act 2006 (c. 21)).
- (5) In this Chapter “independent educational institution standards” means—
- (a) the standards for the time being prescribed under this section, and
  - (b) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see section 39 of the Childcare Act 2006).

#### Commencement Information

**I4** S. 94 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 05/01/2015

#### *Requirement of registration*

#### **95 The register**

- (1) The Secretary of State must keep a register of independent educational institutions.
- (2) The register is to be known as “the register of independent educational institutions in England”.
- (3) The Secretary of State must publish the register in such manner, and at such times, as the Secretary of State considers appropriate.

#### **96 Unregistered independent educational institutions: offence**

- (1) A person must not conduct an independent educational institution unless it is registered.
- (2) A person who conducts an independent educational institution in contravention of subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (3) substitute “six months”.

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## **97 Unregistered independent educational institutions: inspection**

- (1) Where the Chief Inspector has reasonable cause to believe that an offence under section 96 is being committed on any premises, the Chief Inspector may at any reasonable time—
  - (a) enter and inspect the premises, and
  - (b) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (2) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under this section.
- (3) This section does not confer power to inspect or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (legally privileged material etc).
- (4) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### *Registration procedure*

## **98 Applications for registration**

- (1) The proprietor of an independent educational institution may apply to the Secretary of State for the institution to be entered on the register.
- (2) An application to enter an institution in the register must—
  - (a) contain the prescribed information, and
  - (b) be made in the prescribed manner.
- (3) The information prescribed under subsection (2)(a) must include information as to the following matters relating to the institution—
  - (a) whether the institution is—
    - (i) an independent school, or
    - (ii) an institution within section 92(1)(b);
  - (b) the age range of students;
  - (c) the maximum number of students;
  - (d) whether the institution is for male or female students or both;
  - (e) whether the institution provides accommodation for students;
  - (f) whether the institution is specially organised to make special educational provision for students with special educational needs;
  - (g) in the case of an institution within paragraph (f), the type or types of special educational needs for which the institution is specially organised to make special educational provision.
- (4) The Secretary of State must notify the Chief Inspector of an application under this section.

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### Commencement Information

**I5** S. 98 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 01/01/2011

### 99 Determination of applications for registration

- (1) Where the Chief Inspector is notified under section 98(4) that an institution has applied to be entered on the register, the Chief Inspector must—
  - (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution.
- (2) The Secretary of State must then decide, taking into account—
  - (a) the report of the Chief Inspector, and
  - (b) any other evidence relating to the independent educational institution standards,
 whether those standards are likely to be met in relation to the institution once it becomes a registered independent educational institution.
- (3) The Secretary of State must notify the proprietor of the institution of the decision made under subsection (2).
- (4) If the Secretary of State decides under subsection (2) that the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution, the Secretary of State must enter the institution in the register.
- (5) An entry in the register for an independent educational institution must include—
  - (a) the name and address of the institution,
  - (b) the name of the proprietor of the institution, and
  - (c) the information supplied pursuant to section 98(3)(a) to (g).

VALID FROM 05/01/2015

### 100 Institutions no longer required to register: power to deregister

- (1) If the Secretary of State—
  - (a) has reasonable cause to believe that a registered institution has ceased to be an independent educational institution, and
  - (b) does not have reasonable cause to believe that the institution will become an independent educational institution again within the following twelve months,
 the Secretary of State may remove the institution from the register.

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- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

PROSPECTIVE

### *Approval of material changes to registered details*

#### **101 “Material change”**

- (1) This section defines “a material change” in relation to an independent educational institution for the purposes of this Chapter.
- (2) In relation to an institution other than a special institution, “a material change” means a change in respect of any matter referred to in section 98(3)(e) or (f).
- (3) In relation to a special institution, “a material change” means—
  - (a) a change of proprietor,
  - (b) a change of address, or
  - (c) a change in respect of any matter referred to in section 98(3)(a) to (g).
- (4) In this section “a special institution” means an independent educational institution that is specially organised to make special educational provision for students with special educational needs.

#### **102 Requirement to apply for approval for material change**

- (1) Where the proprietor of a registered independent educational institution is aware that a material change is to be made in relation to the institution, the proprietor must make an application to the Secretary of State for approval of the change.
- (2) An application for approval under this section must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor.

#### **103 Inspection and report where applications made for approval**

- (1) Where an application for approval of a material change is made under section 102, the Secretary of State may direct the Chief Inspector to inspect the institution.
- (2) Where such a direction is given, the Chief Inspector must—
  - (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which any relevant standard is likely to continue to be met in relation to the institution if the change is made.
- (3) In this section “any relevant standard” means any independent educational institution standard—

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- (a) specified by the Secretary of State for the purposes of the inspection, or
- (b) considered to be relevant by the Chief Inspector in the circumstances of the case.

#### **104 Determination of applications for approval**

- (1) Where an application for approval of a material change is made under section 102, the Secretary of State must—
  - (a) approve the change, if satisfied that the independent educational institution standards are likely to continue to be met in relation to the institution if the change is made;
  - (b) in any other case refuse to approve it.
- (2) In coming to a decision under subsection (1) the Secretary of State must take into account—
  - (a) any report of the Chief Inspector under section 103, and
  - (b) any other evidence relating to the independent educational institution standards.
- (3) The Secretary of State must notify the proprietor of the institution of any decision under subsection (1).
- (4) A decision under subsection (1) to refuse to approve a material change does not have effect during the period in which—
  - (a) an appeal may be brought under section 125 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

#### **105 Power to deregister institution that makes unapproved material change**

- (1) The Secretary of State may remove an independent educational institution from the register if—
  - (a) there has been a material change in relation to the institution,
  - (b) the change has not been approved under this Chapter, and
  - (c) either—
    - (i) no application has been made under section 102 for approval of the change, or
    - (ii) such an application has been made but has been refused.
- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

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### *Independent inspectorates*

#### **106 Independent inspectorates**

- (1) The Secretary of State may—
  - (a) approve a body or bodies to carry out inspections of registered independent educational institutions;
  - (b) withdraw approval previously given under paragraph (a).
- (2) The Secretary of State may approve a body in relation to—
  - (a) specified registered independent educational institutions, or
  - (b) registered independent educational institutions of a specified description.

In this subsection “specified” means specified by the Secretary of State.

- (3) The power in subsection (2)(b) to specify a description of independent educational institution includes power to specify a description by reference to membership of a body.
- (4) The Secretary of State may by regulations specify matters that must be taken into account in deciding to approve or withdraw approval from a body under this section.
- (5) In this Chapter, “an independent inspectorate” means a body approved under this section.

#### **Commencement Information**

**I6** [S. 106](#) in force at 19.6.2009 for specified purposes by [S.I. 2009/1513](#), [art. 2\(2\)](#)

VALID FROM 08/09/2014

#### **107 Quality assurance of independent inspectorates**

- (1) The Chief Inspector must, at intervals of no more than a year, prepare and send to the Secretary of State a report about independent inspectorates.
- (2) In preparing a report under this section the Chief Inspector must have regard to such matters as the Secretary of State may direct.
- (3) The Secretary of State may in particular give directions about—
  - (a) matters to be taken into account in preparing a report, and
  - (b) the form and contents of a report.

### *Inspections and reports*

#### **108 Duty to inspect certain registered institutions at prescribed intervals**

- (1) The Chief Inspector must—
  - (a) inspect each independent educational institution to which this section applies at such intervals as may be prescribed, and



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- (b) make a report to the Secretary of State, in relation to each inspection, on the extent to which any relevant standard is being met, and is likely to continue to be met, in relation to the institution.
- (2) In this section “any relevant standard”, in relation to an inspection, means any independent educational institution standard that is—
- (a) specified by the Secretary of State for the purposes of the inspection, or
  - (b) considered to be relevant by the Chief Inspector in the circumstances of the case.
- (3) This section does not require the Chief Inspector to carry out an inspection or make a report if the Chief Inspector has been notified by the Secretary of State that the institution is to be inspected instead by an independent inspectorate.
- (4) An interval may be prescribed under subsection (1) by reference to the time of an inspection carried out—
- (a) by the Chief Inspector in compliance with subsection (1), or
  - (b) by an independent inspectorate as mentioned in subsection (3).
- (5) This section applies to any registered independent educational institution that is not—
- (a) an Academy,
  - (b) a city technology college, or
  - (c) a city college for the technology of the arts.

#### Commencement Information

**I7** S. 108 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 05/01/2015

#### **109 Duty to inspect registered institution on direction of Secretary of State**

- (1) The Secretary of State may at any time direct the Chief Inspector to inspect a registered independent educational institution specified in the direction.
- (2) Where such a direction is made the Chief Inspector must—
- (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which any relevant standard is being met in relation to the institution.
- (3) The Secretary of State may at any time arrange for an independent inspectorate—
- (a) to inspect a registered independent educational institution in relation to which it is approved under section 106, and
  - (b) to make a report to the Secretary of State on the extent to which any relevant standard is being met in relation to the institution.
- (4) In this section “any relevant standard” means any independent educational institution standard that is—
- (a) specified by the Secretary of State for the purposes of the inspection, or

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- (b) considered to be relevant by the person carrying out the inspection in the circumstances of the case.

VALID FROM 05/01/2015

### **110 Inspections under this Chapter: power of entry etc**

- (1) This section applies to any inspection of a registered independent educational institution that is carried out by the Chief Inspector under this Chapter.
- (2) The Chief Inspector has at all reasonable times—
  - (a) a right of entry to the premises of the institution for the purposes of the inspection, and
  - (b) a right to inspect and take copies of any records kept by the institution and any other documents containing information relating to the institution that are required for the purposes of the inspection.
- (3) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under subsection (2)(b).
- (4) This section does not confer power to inspect or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (legally privileged material etc).
- (5) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **111 Fees for inspections by Chief Inspector under this Chapter**

- (1) Regulations may require the proprietor of an institution to which this section applies to pay to the Chief Inspector a fee in respect of an inspection of the institution carried out by the Chief Inspector under this Chapter.
- (2) Regulations under this section must make provision for determining—
  - (a) the amount of any fee, and
  - (b) the time at which it must be paid.
- (3) Regulations under this section may make provision—
  - (a) for determining the amount of a fee by reference to circumstances obtaining at a time before the inspection to which it relates takes place;
  - (b) requiring two or more fees to be paid in respect of an inspection under section 108 (inspections at prescribed intervals);
  - (c) requiring a fee to be paid at a time before the inspection to which it relates takes place;
  - (d) prescribing circumstances in which the amount of a fee may be varied or a fee may be waived;
  - (e) conferring a discretion on the Secretary of State.

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- (4) The power in subsection (3)(c)—
- (a) does not include power to make provision requiring a fee in respect of an inspection under section 108 to be paid at any time at which an independent inspectorate is approved in relation to the institution;
  - (b) includes power to make provision as to circumstances in which a fee is not to be refunded (and any requirement to pay a fee is to be unaffected) if the inspection to which it relates does not take place.
- (5) Without prejudice to section 166(6), regulations under this section may make different provision—
- (a) for inspections of different descriptions of institution, or
  - (b) for inspections carried out for different purposes or in different circumstances.
- (6) This section applies to any registered independent educational institution that is not—
- (a) an Academy,
  - (b) a city technology college, or
  - (c) a city college for the technology of the arts.

#### Commencement Information

- I8** S. 111 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2) (with art. 2A) (which transitory provision was inserted (1.7.2009) by S.I. 2009/1606, art. 7)
- I9** S. 111 in force at 1.9.2009 in so far as not already in force by S.I. 2009/1606, art. 3

## 112 Failure to pay fees

- (1) Where the proprietor of an institution fails to pay a fee in accordance with regulations under section 111, the Secretary of State may remove the institution from the register.
- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

#### Commencement Information

- I10** S. 112(1)(2) in force at 1.9.2009 in so far as not already in force by S.I. 2009/1606, art. 3 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

## 113 Publication of inspection reports

- (1) The Chief Inspector must comply with a direction given by the Secretary of State to publish the report of any inspection carried out by the Chief Inspector under this Chapter.
- (2) A report published by virtue of this section must be published in the prescribed manner.

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### Commencement Information

**III** S. 113 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

### *Failure to meet standards*

VALID FROM 05/01/2015

#### **114 Action plans**

- (1) This section applies to a registered independent educational institution if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.
- (2) In subsection (1) “relevant evidence” means—
  - (a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or
  - (b) any other evidence in respect of the institution.
- (3) The Secretary of State may require the proprietor of a registered independent educational institution to which this section applies to submit an action plan to the Secretary of State for approval.
- (4) In this Chapter “an action plan” means a plan specifying—
  - (a) the steps that will be taken to meet a standard or standards, and
  - (b) the time by which each step will be taken.
- (5) Any requirement imposed under this section to submit an action plan must be imposed by serving a notice on the proprietor of the institution in question—
  - (a) identifying the standard or standards that the Secretary of State is satisfied is or are not being met in relation to the institution, and
  - (b) specifying a date by which the action plan must be submitted.
- (6) Where an action plan is submitted in pursuance of a requirement imposed under this section (whether or not by the date specified in the notice), the Secretary of State may—
  - (a) approve it, with or without modifications, or
  - (b) reject it.
- (7) Where the Secretary of State rejects an action plan, the Secretary of State may impose a further requirement under this section to submit an action plan.
- (8) An action plan that has been approved may be varied at any time by the proprietor of the institution in question with the agreement of the Secretary of State.

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VALID FROM 05/01/2015

### 115 Power of Secretary of State to take enforcement action

- (1) This section applies to a registered independent educational institution if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.
- (2) In subsection (1) “relevant evidence” means—
  - (a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or
  - (b) any other evidence in respect of the institution.
- (3) The Secretary of State may take enforcement action under section 116 against the proprietor of a registered independent educational institution to which this section applies if either of the following conditions is met.
- (4) The first condition is that—
  - (a) the Secretary of State has, during the period of three years before the enforcement action is taken, required the proprietor of the institution to submit one or more action plans under section 114, and
  - (b) any action plan required as mentioned in paragraph (a)—
    - (i) has not been submitted, and the date specified by the Secretary of State under section 114(5)(b) has passed,
    - (ii) was submitted but was rejected, or
    - (iii) was approved but was subsequently not complied with.
- (5) The second condition is that—
  - (a) at least two years before the enforcement action is taken the Secretary of State required the proprietor of the institution to submit an action plan,
  - (b) at least one inspection of the institution has been carried out, by the Chief Inspector or an independent inspectorate approved under section 106 in relation to the institution, since that requirement was imposed, and
  - (c) the Secretary of State has not at any time since that requirement was imposed been satisfied that the institution was meeting all of the independent educational institution standards.

VALID FROM 05/01/2015

### 116 Enforcement action available to Secretary of State

- (1) Where the Secretary of State is entitled under section 115(3) to take enforcement action against the proprietor of an institution, the Secretary of State may—
  - (a) impose a relevant restriction on the proprietor, or
  - (b) remove the institution from the register.
- (2) The Secretary of State must notify the proprietor of the institution in question of any decision to take enforcement action under subsection (1).

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (3) A decision to take enforcement action under subsection (1) does not have effect during the period in which—
- (a) an appeal may be brought under section 124 or 125 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

## 117 “Relevant restriction”

- (1) In this Chapter a “relevant restriction” imposed on the proprietor of a registered independent educational institution is a requirement that the proprietor take one or more of the following steps by a specified time or by specified times—
- (a) to cease to use any part of the institution's premises for all purposes or specified purposes;
  - (b) to close any part of the institution's operation;
  - (c) to cease to admit any new students or new students of specified descriptions.
- (2) In subsection (1) “specified” means—
- (a) in the case of a relevant restriction imposed by the Secretary of State under section 116(1)(a), specified by the Secretary of State;
  - (b) in the case of a relevant restriction imposed by an order of a justice of the peace under section 120, specified in the order;
  - (c) in the case of a relevant restriction imposed by an order of the Tribunal under section 124, 125 or 126, specified in the order.

### Commencement Information

**I12** S. 117(1)(2)(c) in force at 12.10.2009 by S.I. 2009/1606, art. 4 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

VALID FROM 05/01/2015

## 118 Relevant restriction imposed by Secretary of State: supplementary

- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by the Secretary of State under section 116(1)(a).
- (2) If the proprietor fails to comply with the relevant restriction the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (2) substitute “six months”.
- (4) The proprietor may apply to the Secretary of State for the restriction to be varied or revoked.
- (5) On an application under subsection (4) the Secretary of State must—

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (a) vary or revoke the restriction as requested in the application, if the Secretary of State is satisfied that it is appropriate to do so because of any change of circumstance, and
  - (b) in any other case, refuse to do so.
- (6) The Secretary of State must notify the proprietor of the decision made under subsection (5).
- (7) A decision to vary or revoke the restriction has effect as from the date on which the proprietor receives notice of it.

### *Unsuitable persons*

## 119 Unsuitable persons

- (1) The Secretary of State may remove an institution from the register if satisfied that a person to whom subsection (2) applies—
- (a) carries out work of a prescribed kind in relation to the institution, or
  - (b) is the proprietor of the institution.
- (2) This subsection applies to any person who is subject to a direction, order or decision of a prescribed description made under any prescribed enactment having effect in any part of the United Kingdom.
- (3) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (4) The Secretary of State's decision does not have effect during the period in which—
- (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.
- (5) The reference in subsection (1) to the proprietor of the institution is—
- (a) in a case in which the proprietor is a company, a reference to any director of the company;
  - (b) in a case in which the proprietor is any other body of persons, whether corporate or unincorporate, a reference to any member of the body.

#### **Commencement Information**

**I13** S. 119 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

**I14** S. 119 in force at 12.10.2009 in so far as not already in force by S.I. 2009/1606, art. 4 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

VALID FROM 05/01/2015

### *Emergencies*

#### **120 Application to justice of the peace for order**

- (1) The Secretary of State may apply to a justice of the peace for—
  - (a) an order imposing a relevant restriction on the proprietor of a registered independent educational institution, or
  - (b) an order that such an institution be removed from the register.
- (2) If it appears to the justice that a student at the institution in question is suffering or is likely to suffer significant harm, the justice may make the order.
- (3) An application under this section may be made without notice.
- (4) An order under this section must be in writing.
- (5) A copy of an order under this section must be served on the proprietor of the institution by the Secretary of State as soon as reasonably practicable after the order is made.
- (6) An order under this section has effect from the time the copy is served on the proprietor (and, accordingly, in the case of an order under subsection (1)(b), the Secretary of State must not remove the institution from the register in pursuance of the order before that time).
- (7) For the purposes of this section, “harm” has the same meaning as in the Children Act 1989 (c. 41) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act.

#### **121 Relevant restriction imposed by justice of the peace: supplementary**

- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by an order of a justice of the peace under section 120(1)(a).
- (2) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (2) substitute “six months”.

#### **122 Order of justice of the peace: notification**

- (1) The Secretary of State must comply with this section as soon as reasonably practicable after an order is made under section 120 against the proprietor of an institution.
- (2) The Secretary of State must serve on the proprietor—



**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (a) a copy of any written statement in support of the application for the order, and
  - (b) notice of the right of appeal conferred by section 126.
- (3) In the case of an order made against the proprietor of a special institution, the Secretary of State must notify the following that the order has been made—
- (a) the <sup>F1</sup>local authority in whose area the institution is situated;
  - (b) any other <sup>F1</sup>local authority that the Secretary of State, after reasonable enquiry, is aware has specified the institution in a statement of special educational needs in respect of a student at the institution.
- (4) In this section “a special institution” means an institution that is specially organised to make special educational provision for students with special educational needs.

#### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 15\(2\)](#)

### *Provision of information by proprietors*

#### **123 Provision of information by proprietors**

- (1) Regulations may make provision for requiring the proprietor of a registered independent educational institution to provide the Secretary of State, on request, with such particulars relating to the institution as may be prescribed.
- (2) Regulations under this section may in particular—
  - (a) require the provision of such information as is needed by the local authority in whose area the institution is situated for the purpose of determining whether the institution is a children's home within the meaning of the Care Standards Act 2000 (c. 14) (see section 1 of that Act);
  - (b) provide for the Secretary of State to remove from the register any institution in respect of which any requirement imposed by or under the regulations is not complied with;
  - (c) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In subsection (2) “specified” means specified in regulations under this section.
- (4) Regulations that include provision by virtue of subsection (2)(b) must include the provision required by subsections (5) and (6).
- (5) The regulations must require the Secretary of State to notify the proprietor of an institution of any decision to remove the institution from the register by virtue of subsection (2)(b).
- (6) The regulations must provide that a decision by the Secretary of State to remove an institution from the register by virtue of subsection (2)(b) does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or

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**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

**Commencement Information**

**I15** S. 123 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

*Appeals*

**124 Appeal by proprietor against decision of Secretary of State to deregister**

- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against a decision of the Secretary of State to remove the institution from the register—
- (a) under section 100 (no longer required to register),
  - (b) under section 105 (unapproved material change),
  - (c) under section 112 (failure to pay fees),
  - (d) under section 116 (failure to meet standards),
  - (e) under section 119 (unsuitable persons), or
  - (f) by virtue of section 123 (failure to provide information).
- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under this section the Tribunal may—
- (a) confirm the decision,
  - (b) direct that the decision is of no effect, or
  - (c) in the case of an appeal under subsection (1)(b), (d) or (e), direct that the decision is of no effect and make an order imposing a relevant restriction on the proprietor of the institution.
- (4) Where the Tribunal confirms the decision, the Secretary of State must remove the institution from the register on such date as the Tribunal may specify or, if it does not specify a date, from such date as the Secretary of State may determine.
- (5) In this Chapter “the Tribunal” means the First-tier Tribunal.

**Commencement Information**

**I16** S. 124 in force at 12.10.2009 for specified purposes by S.I. 2009/1606, art. 4 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

VALID FROM 05/01/2015

**125 Appeal by proprietor against other decisions of Secretary of State**

- (1) The proprietor of an institution may appeal to the Tribunal against a decision of the Secretary of State in relation to the institution under—
- (a) section 99(2) (standards not likely to be met on registration),

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- (b) section 104(1) (refusal to approve a material change),
  - (c) section 116(1)(a) (imposition of relevant restriction on proprietor), or
  - (d) section 118(5)(b) (refusal to vary or revoke a relevant restriction).
- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under subsection (1)(a), the Tribunal may—
- (a) confirm the decision, or
  - (b) require the Secretary of State to reconsider the decision, taking into account, amongst other things, the findings of the Tribunal on the appeal.
- (4) Section 99(3) and (4) applies in relation to the Secretary of State's decision on reconsideration under subsection (3)(b) above as it applies to a decision made under section 99(2).
- (5) On an appeal under subsection (1)(b) the Tribunal may—
- (a) confirm the decision, or
  - (b) itself approve the change.
- (6) On an appeal under subsection (1)(c), the Tribunal may—
- (a) confirm the decision,
  - (b) direct that the relevant restriction is to cease to have effect, or
  - (c) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.
- (7) On an appeal under subsection (1)(d), the Tribunal may—
- (a) confirm the refusal, or
  - (b) if the Tribunal is satisfied that it is appropriate to do so because of a change of circumstance since the restriction in question was imposed—
    - (i) direct that the relevant restriction is to cease to have effect, or
    - (ii) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.

VALID FROM 05/01/2015

## 126 Appeal by proprietor against order of justice of the peace

- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against the making of an order under section 120 (order of justice of the peace in an emergency).
- (2) On an appeal under this section the Tribunal may—
- (a) confirm the making of the order,
  - (b) direct that the order is to cease to have effect, or
  - (c) direct that the order is to cease to have effect and make an order—
    - (i) imposing a relevant restriction on the proprietor of the institution, or
    - (ii) requiring the Secretary of State to remove the institution from the register on such date as the Tribunal may specify or, if it does

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

not specify a date, from such date as the Secretary of State may determine.

- (3) Subsection (4) applies where—
- (a) an appeal is brought under this section against an order that the institution be removed from the register, and
  - (b) the Tribunal directs that the order is to cease to have effect.
- (4) The institution—
- (a) must be restored to the register by the Secretary of State, and
  - (b) is to be treated as if it had not been removed from the register in pursuance of the order.

### **127 Relevant restriction imposed by Tribunal: supplementary**

- (1) This section applies where the Tribunal makes an order under section 124, 125 or 126 imposing a relevant restriction on the proprietor of an institution.
- (2) The order in question has effect from the time the proprietor receives notice of it in accordance with Tribunal Procedure Rules or from the Secretary of State.
- (3) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (3) substitute “six months”.
- (5) The proprietor may apply to the Tribunal for the relevant restriction to be varied or revoked.
- (6) On an application under subsection (5) the Tribunal must—
  - (a) vary or revoke the relevant restriction as requested in the application, if the Tribunal is satisfied that it is appropriate to do so because of any change of circumstance, and
  - (b) in any other case, refuse to do so.

#### **Commencement Information**

**I17** S. 127 in force at 12.10.2009 by S.I. 2009/1606, art. 4 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

### *Prohibition on participation in management of independent educational institutions*

### **128 Prohibition on participation in management**

- (1) The appropriate authority may direct that a person—
  - (a) may not take part in the management of an independent educational institution;
  - (b) may take part in the management of such an institution only in circumstances specified in the direction;

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (c) may take part in the management of such an institution only if conditions specified in the direction are satisfied.
- (2) A direction under this section may be given in respect of a person only on one or more prescribed grounds connected with the suitability of persons to take part in the management of an independent educational institution.
- (3) Regulations may prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).
- (4) The appropriate authority may vary or revoke a direction under this section in prescribed cases.
- (5) Regulations may prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (4).
- (6) In this section and sections 129 to 131, “the appropriate authority” means—
  - (a) the Secretary of State, or
  - (b) such other public authority as may be prescribed.

#### Commencement Information

**I18** S. 128 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

### 129 Directions under section 128: appeals

- (1) A person in respect of whom a direction has been given under section 128 may appeal to the Tribunal—
  - (a) against the decision to give the direction;
  - (b) against a decision not to vary or revoke the direction.
- (2) Regulations may—
  - (a) provide that the Tribunal may not entertain an appeal under this section insofar as the appellant's case is inconsistent with the appellant having been convicted of an offence;
  - (b) prescribe circumstances in which the Tribunal must allow an appeal under this section;
  - (c) prescribe the powers available to the Tribunal on allowing an appeal under this section.

#### Commencement Information

**I19** S. 129 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 08/09/2014

### 130 Directions under section 128: information

- (1) Where the appropriate authority is a public authority other than the Secretary of State, the Secretary of State may provide to that authority any information relating to a

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person which appears to the Secretary of State to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.

- (2) The Welsh Ministers may provide to the appropriate authority any information relating to a person which is held by them in connection with their functions under Chapter 1 of Part 10 of the Education Act 2002 (c. 32).
- (3) The Chief Inspector may provide to the appropriate authority any information relating to a person which appears to the Chief Inspector to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.
- (4) The [<sup>F2</sup>Independent Safeguarding Authority] may provide to the appropriate authority any information relating to a person which is held by [<sup>F3</sup>the Authority] in connection with its functions and which appears to it to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.
- (5) The appropriate authority may provide to the [<sup>F2</sup>Independent Safeguarding Authority], the General Teaching Council for England, the General Teaching Council for Wales, the Chief Inspector, the Welsh Ministers or, where the appropriate authority is a public authority other than the Secretary of State, the Secretary of State, any information relating to a person which is held by the appropriate authority in connection with its functions under section 128.

#### Textual Amendments

- F2** Words in s. 130 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\), ss., 81\(2\)\(3\)\(p\), 116\(5\)\(a\)](#)
- F3** Words in s. 130(4) substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\), ss. 81\(4\)\(b\), 116\(5\)\(a\)](#)

VALID FROM 08/09/2014

#### **131 Directions under section 128: notification**

Where the appropriate authority gives a direction under section 128(1), or varies or revokes any such direction, it must notify—

- (a) the Secretary of State (unless the appropriate authority is the Secretary of State), and
- (b) the Welsh Ministers and (if different) the appropriate authority for the purposes of sections 167A to 167D of the Education Act 2002 (c. 32) (prohibition on participation in management of independent schools in Wales).

*Independent colleges for 16 to 18 year olds*

#### **132 Providers of independent education or training for 16 to 18 year olds**

- (1) Regulations may provide for any provision of this Chapter to apply in relation to an independent post-16 college as it applies in relation to an independent educational institution, subject to such modifications as may be prescribed.

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (2) For this purpose, “an independent post-16 college” means an institution in England—
- (a) at which relevant education or training is provided for—
    - (i) five or more persons who are not under compulsory school age, including at least one who is over compulsory school age but is under the age of 18, or
    - (ii) at least one student to whom subsection (4) applies who is over compulsory school age but is under the age of 18,
  - (b) which is not—
    - (i) an independent educational institution,
    - (ii) a school maintained by a local education authority,
    - (iii) a special school not so maintained, or
    - (iv) an institution in receipt of funding from the Learning and Skills Council for England, and
  - (c) which is outside the further education and higher education sectors.
- (3) In subsection (2)(a), “relevant education or training” provided for a person means education or training which—
- (a) is provided for the person for at least 16 hours a week, for at least 4 weeks, during an academic year, and
  - (b) is not education or training provided in connection with facilities for adventure activities (within the meaning of section 1 of the Activity Centres (Young Persons' Safety) Act 1995 (c. 15) (adventure activities: licensing)).
- (4) This subsection applies to a person—
- (a) for whom a statement is maintained by a local education authority under section 324 of the Education Act 1996 (c. 56) (statement of special educational needs), or
  - (b) for whom a statement was so maintained immediately before—
    - (i) the person ceased to be a pupil at his or her last school, or
    - (ii) the institution started providing relevant education or training for the person.
- (5) Regulations may—
- (a) provide that a specified institution or an institution of a specified description is not an independent post-16 college;
  - (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education or training is provided for the purposes of this section;
  - (c) amend subsection (3)(a) so as to substitute a different number of hours or weeks for the number of hours or weeks for the time being mentioned there.
- (6) In this section—
- “an academic year” means a period of 12 months ending with 31 August;
- “specified” means specified in regulations under this section.

#### Commencement Information

**I20** S. 132 in force at 19.6.2009 for specified purposes by [S.I. 2009/1513](#), [art. 2\(2\)](#)

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

### 133 Regulations under section 132: supplementary

- (1) Regulations under section 132(1) applying—
- (a) section 120, or
  - (b) any of the provisions mentioned in—
    - (i) section 124(1), or
    - (ii) section 125(1),

in relation to an independent post-16 college must also apply any provision conferring a right of appeal against a decision or order made under that provision.

- (2) No draft of any regulations under section 132(1) may be laid before Parliament unless the Secretary of State has first consulted—
- (a) the Chief Inspector, and
  - (b) such other persons as the Secretary of State considers appropriate, about the proposal to make the regulations.

#### Commencement Information

**I21** S. 133 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

### *Supplementary*

### 134 Proceedings for offences

No proceedings for an offence under this Chapter may be instituted except by or with the consent of the Secretary of State.

#### Commencement Information

**I22** S. 134 in force at 12.10.2009 by S.I. 2009/1606, art. 4

### 135 Offences by bodies corporate

- (1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- that person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to a director of a body corporate.



**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

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#### Commencement Information

**I23** S. 135 in force at 12.10.2009 by S.I. 2009/1606, art. 4

### 136 Offences by unincorporated bodies

- (1) Proceedings for an offence alleged to have been committed under this Chapter by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Chapter is to be paid out of the funds of that body.
- (3) If an unincorporated body is charged with an offence under this Chapter, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation) apply as they do in relation to a body corporate.
- (4) Where an offence under this Chapter committed by an unincorporated body other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that person (as well as the body) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) Where an offence under this Chapter committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

#### Commencement Information

**I24** S. 136 in force at 12.10.2009 by S.I. 2009/1606, art. 4

### 137 Service of notice etc

For the purposes of this Chapter, any notice, order or other document required to be given to or served on the proprietor of a registered independent educational institution may be given to or served on the proprietor by delivering it to the registered address of the institution.

#### Commencement Information

**I25** S. 137 in force at 1.9.2009 in so far as not already in force by S.I. 2009/1606, art. 3 (with art. 5) (which transitional provisions in art. 5 are revoked (22.12.2014) by S.I. 2014/3364, art. 3(3), Sch.)

### 138 Interpretation of Chapter

- (1) In this Chapter—  
“an action plan” has the meaning given by section 114(4);

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

“the Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills;

“early years provision” has the meaning given by section 96(2) of the Childcare Act 2006 (c. 21);

“independent educational institution standards” has the meaning given by section 94;

“an independent inspectorate” has the meaning given by section 106;

“a material change”, in relation to an independent educational institution, has the meaning given by section 101;

“proprietor”, in relation to an institution, means the person or body of persons responsible for the management of the institution;

“the register” means the register of independent educational institutions in England (see section 95);

“registered” means entered in the register;

“relevant restriction” has the meaning given by section 117;

“student” means—

(a) in relation to an independent school, a pupil (for the meaning of “pupil” see section 3 of the Education Act 1996 (c. 56));

(b) in relation to an institution within section 92(1)(b), a person for whom the institution provides part-time education within the meaning of that provision or full-time education;

“the Tribunal” has the meaning given by section 124(5).

- (2) In section 98 the reference to the proprietor of an independent educational institution includes the proprietor of an institution that it is proposed should become an independent educational institution (and accordingly the information required by subsection (3) of that section, in the case of such a proprietor, is information about the institution as it is proposed to be).

#### Commencement Information

**I26** S. 138(1) in force at 1.9.2009 for specified purposes by [S.I. 2009/1606, art. 3](#)

**I27** S. 138(1) in force at 12.10.2009 for specified purposes by [S.I. 2009/1606, art. 4](#)

#### *Transitional provision*

VALID FROM 05/01/2015

#### **139 Continuity of the law**

(1) This section applies where—

(a) by virtue of one or more amendments made by paragraphs 15 to 24 of Schedule 1, a provision of or made under Chapter 1 of Part 10 of the Education Act 2002 (c. 32) (“the old provision”) that applied in relation to independent schools in England has ceased so to apply, and

(b) a provision of or made under this Chapter (“the new provision”) re-enacts, with or without modification, the old provision as it so applied.

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

- (2) The amendment or amendments mentioned in subsection (1)(a) and the re-enactment mentioned in subsection (1)(b) do not affect the continuity of the law.
- (3) Anything done (including any subordinate legislation made), or having effect as if done, under or for the purposes of the old provision that—
  - (a) could have been done under or for the purposes of the new provision (had the new provision then been in force), and
  - (b) is in force or effective immediately before the coming into force of the new provision,
 has effect from that time as if done under or for the purposes of the new provision.
- (4) Any reference (express or implied) in this Chapter or any other enactment, instrument or document to the new provision is to be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the old provision had effect, a reference to the old provision.
- (5) Any reference (express or implied) in any enactment, instrument or document to the old provision is to be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the new provision has effect, as being or (according to the context) including a reference to the new provision.
- (6) This section has effect subject to any specific transitional provision of or made under this Act.
- (7) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## 140 The register and fees

- (1) On the coming into force of section 95, the register of independent schools in England becomes the register of independent educational institutions in England.
- (2) The power in section 111(3)(d) to make provision prescribing circumstances in which the amount of a fee may be waived includes power to make such provision in relation to a fee (or any part of a fee) payable by virtue of section 162B(6) of the Education Act 2002 (fees payable to Chief Inspector).

### Commencement Information

**I28** S. 140 in force at 19.6.2009 for specified purposes by [S.I. 2009/1513](#), [art. 2\(2\)](#)

**I29** S. 140(2) in force at 1.9.2009 in so far as not already in force by [S.I. 2009/1606](#), [art. 3](#)

## 141 Prohibition on participation in management

- (1) A person falls within this subsection if—
  - (a) immediately before the relevant day the person is subject to a direction under section 142 of the Education Act 2002 (c. 32) given on grounds prescribed for the purposes of this section, and
  - (b) prescribed conditions (which may include conditions relating to decisions taken on or after the relevant day by the Independent Barring Board under the

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Safeguarding Vulnerable Groups Act 2006 (c. 47)) are satisfied in relation to the person.

- (2) Regulations may provide that, as from a time specified in or determined in accordance with the regulations, persons who fall within subsection (1) are to be treated for prescribed purposes as if the direction given under section 142 of the Education Act 2002 were a direction given by the appropriate authority under section 128 of this Act.
- (3) Regulations under this section may make provision in connection with the determination of any appeal under subsection (1) of section 144 of the Education Act 2002, or application for review under subsection (2) of that section, which is pending on the relevant day.
- (4) Regulations made by virtue of subsection (3) may, in particular, provide for an appeal, or application for review, under section 144 of the Education Act 2002 to be treated as an appeal under section 129 of this Act.
- (5) In this section—
  - “appropriate authority” has the same meaning as in sections 128 to 131 (see section 128(6));
  - “the relevant day” means the day on which section 128 comes into force.

#### **Commencement Information**

**I30** S. 141 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

## **CHAPTER 2**

### SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

VALID FROM 30/03/2010

#### *Non-maintained special schools in England*

#### **142 Interpretation**

- (1) For section 337 of the Education Act 1996 (c. 56) (special schools) and the italic heading preceding it substitute—

*“Interpretation*

#### **337 Special schools**

A school is a special school if—

- (a) it is specially organised to make special educational provision for pupils with special educational needs, and
- (b) in the case of a school that is not maintained by a local education authority, it is approved under section 342.

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

### 337A Interpretation of Chapter

In this Chapter—

“a non-maintained special school” means a school that is approved under section 342;

“the appropriate national authority” means—

- (a) in relation to a school in England, the Secretary of State;
- (b) in relation to a school in Wales, the Welsh Ministers.”

(2) Section 342 of that Act (approval of non-maintained special schools) is amended as follows.

(3) In subsection (1)—

- (a) for “Secretary of State” substitute “ appropriate national authority ”;
- (b) omit “his”.

(4) In subsection (5)(a) for “Secretary of State” substitute “ appropriate national authority ”.

### 143 Right of sixth-form pupils to opt out of religious worship

(1) Section 342 of the Education Act 1996 is amended as follows.

(2) After subsection (5) insert—

“(5A) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in England that is approved under this section—

- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil's parent, and
- (b) attends religious worship unless withdrawn from attendance at such worship—
  - (i) in the case of a sixth-form pupil, in accordance with the pupil's own wishes, and
  - (ii) in any other case, in accordance with the wishes of the pupil's parent.

(5B) In subsection (5A) “a sixth-form pupil” means a pupil who—

- (a) has ceased to be of compulsory school age, and
- (b) is receiving education suitable to the requirements of pupils over compulsory school age.”

(3) In subsection (6) for “special school” substitute “ school in Wales that is ”.

### 144 Protection of pupils in an emergency

After section 342 of the Education Act 1996 (c. 56) insert—

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

*“Non-maintained special schools in England: protection of pupils in an emergency*

### **342A Application to justice of the peace: power to make regulations**

- (1) Regulations may make provision conferring power on a justice of the peace, on the application of the Secretary of State, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342.
- (2) Regulations under this section may in particular make provision corresponding, with or without modifications, to that made in—
  - (a) section 120(2) to (7) of the Education and Skills Act 2008 (emergency orders in relation to registered independent educational institutions), or
  - (b) section 122 of that Act (notification).”

## **145 Appeals**

After section 342A of the Education Act 1996 (inserted by section 144) insert—

*“Non-maintained special schools in England: appeals*

### **342B Appeal against decision of Secretary of State**

- (1) Regulations may make provision for an appeal against a decision of the Secretary of State—
  - (a) to withdraw approval from a non-maintained special school in England by virtue of section 342(4)(b) (failure to comply with prescribed requirement) otherwise than at the request of the proprietor;
  - (b) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school.
- (2) In subsection (1)(b) “relevant arrangements” means arrangements that require the approval of the Secretary of State by virtue of section 342(5)(a).
- (3) Regulations under this section must provide that an appeal brought by virtue of this section—
  - (a) lies to the First-tier Tribunal, and
  - (b) must be brought by the proprietor of the school in question.
- (4) The regulations may in particular make provision, in the case of an appeal brought by virtue of subsection (1)(a), prohibiting the Secretary of State from acting on a decision to withdraw approval during the period in which—
  - (a) an appeal against the decision could be brought, or
  - (b) where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

### 342C Appeal against order of justice of peace

- (1) Regulations may make provision for an appeal against the making of an order by virtue of section 342A (order by justice of peace in an emergency).
- (2) The regulations must provide that an appeal brought by virtue of this section—
  - (a) lies to the First-tier Tribunal, and
  - (b) must be brought by the proprietor of the school in question.”

### *Independent schools in England*

#### 146 Abolition of requirement of approval for independent schools: England

- (1) Section 347 of the Education Act 1996 (c. 56) (approval of independent schools) is amended as follows.
- (2) In subsection (1) —
  - (a) for “The Secretary of State” substitute “ The Welsh Ministers ”;
  - (b) after “independent school” insert “ in Wales ”.
- (3) In subsection (3) for “the Secretary of State sees” substitute “ the Welsh Ministers see ”.
- (4) In subsection (4) for “the Secretary of State may withdraw his” substitute “ the Welsh Ministers may withdraw their ”.
- (5) In subsection (5)—
  - (a) for “a child with special educational needs” substitute “ a relevant child ”;
  - (b) in paragraph (a) for “the Secretary of State” substitute “ the Welsh Ministers ”;
  - (c) in paragraph (b), for “the Secretary of State is” substitute “ the Welsh Ministers are ”, and for “consents” substitute “ consent ”.
- (6) After subsection (5) insert—
 

“(5ZA) In subsection (5) “a relevant child” means a child with special educational needs—

  - (a) for whom a local education authority in Wales maintain a statement under section 324, or
  - (b) for whom no local education authority maintain such a statement and who is in the area of a local education authority in Wales.”
- (7) In subsection (5A)—
  - (a) for “But that” substitute “ Subsection (5) ”;
  - (b) after “local education authority” insert “ in Wales ”.

#### Commencement Information

I31 S. 146 in force at 1.9.2009 by S.I. 2009/1513, art. 3

*Status: Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)*

## 147 Approval of independent schools: consequential amendments

- (1) Section 349 of the Education Act 1996 (c. 56) (variation of trust deeds by order) is amended as follows.
- (2) In subsection (1)—
  - (a) for “The Secretary of State” substitute “ The appropriate national authority ”;
  - (b) for “him” substitute “ it ”;
  - (c) omit “or 347”.
- (3) After that provision insert—
 

“(1A) The Welsh Ministers may by order make such modifications of any trust deed or other instrument relating to a school in Wales as, after consultation with the governing body or other proprietor of the school, appear to them to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 347.”
- (4) Section 483A of that Act (city colleges and academies: special educational needs) is amended as follows.
- (5) For subsection (3)(a) and (b) substitute—
  - “(a) the statement is maintained by a local education authority in England, or
  - (b) the statement is maintained by a local education authority in Wales and the Welsh Ministers consent to the child being educated at the school.”
- (6) In subsection (4) of that section for “The Secretary of State” substitute “ The appropriate national authority ”.
- (7) At the end of that section add—
 

“(6A) In subsection (4) “the appropriate national authority” means—

  - (a) in relation to a school in England, the Secretary of State;
  - (b) in relation to a school in Wales, the Welsh Ministers.”
- (8) In section 59(3) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) (vulnerable adults)—
  - (a) in paragraph (b), for the words following “which” substitute—
    - “(i) is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act), or
    - (ii) is in Wales and is approved by the Welsh Ministers under section 347 of that Act;”;
  - (b) in paragraph (c), for “the Secretary of State” substitute “ the Welsh Ministers ”.

### Commencement Information

**I32** S. 147 in force at 1.9.2009 by S.I. 2009/1513, art. 3



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**Status:** Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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)

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## 148 Approval of independent schools: transitional provision

- (1) This section applies where, immediately before the coming into force of section 146, a relevant child is being educated in an independent school in England and—
  - (a) the school is for the time being approved by the Secretary of State under section 347 of the Education Act 1996 (c. 56), or
  - (b) the Secretary of State has consented to the child being educated there under subsection (5)(b) of that section.
- (2) In subsection (1) “a relevant child” means a child with special educational needs—
  - (a) for whom a local education authority in Wales maintains a statement under section 324 of the Education Act 1996 (statement of special educational needs), or
  - (b) for whom no local education authority maintains such a statement and who is in the area of a local education authority in Wales.
- (3) On the coming into force of section 146 the Welsh Ministers are deemed to have consented, under section 347(5)(b) of the Education Act 1996, to the child being educated at the school.
- (4) The Welsh Ministers may withdraw consent deemed to have been given under subsection (3) as if it had in fact been given.
- (5) In this section “child” has the same meaning as in Part 4 of the Education Act 1996 (see section 312(5) of that Act).

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### Commencement Information

**I33** S. 148 in force at 1.9.2009 by S.I. 2009/1513, art. 3

**Status:**

Point in time view as at 12/10/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Education and Skills Act 2008, Part 4 is up to date with all changes known to be in force on or before 17 June 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.