

2009 No. 1606 (C. 84)

EDUCATION, ENGLAND AND WALES

**The Education and Skills Act 2008 (Commencement No. 4,
Commencement No. 3 (Amendment), Transitory and Saving
Provisions) Order 2009**

Made - - - -

1st July 2009

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by section 173(4) and (8) of the Education and Skills Act 2008(a):

Citation and interpretation

1.—(1) This Order may be cited as the Education and Skills Act 2008 (Commencement No. 4, Commencement No. 3 (Amendment), Transitory and Saving Provisions) Order 2009.

(2) In this Order—

“the Act” means the Education and Skills Act 2008;

“the 2002 Act” means the Education Act 2002(b).

Provisions coming into force on 1st August 2009

2. Section 86 of the Act comes into force on 1st August 2009 so far as not already in force.

Provisions coming into force on 1st September 2009

3. The following provisions of the Act come into force on 1st September 2009—

section 92(1) (independent educational institutions);

section 93 (application of Chapter 1 of Part 4 to institutions in England only);

section 111 (fees for inspections by Chief Inspector under Chapter 1 of Part 4) so far as not already in force;

section 112(1) and (2) (failure to pay fees);

section 137 (service of notice etc);

section 138(1) (interpretation of Chapter 1 of Part 4) so far as necessary for the interpretation of provisions brought into force by this article or made under such provisions;

section 140(2) (the register and fees) so far as not already in force;

paragraphs 13 and 18 of Schedule 1 (minor and consequential amendments), so far as they repeal subsections (6) and (7) of section 162B of the 2002 Act(a), and section 169(1) so far as it relates to that repeal;

Schedule 2 (repeals and revocations) so far as it repeals subsections (6) and (7) of section 162B of the 2002 Act, and section 169(2) so far as it relates to that repeal.

Provisions coming into force on 12th October 2009

4. The following provisions of the Act come into force on 12th October 2009—
- section 117(1) and (2)(c) (meaning of “relevant restriction”);
 - section 119 (unsuitable persons) so far as not already in force;
 - section 124 (appeal by proprietor against decision of Secretary of State to deregister) for the purposes of appeals to the Tribunal against a decision of the Secretary of State to remove an institution from the register under section 119;
 - section 127 (relevant restriction imposed by Tribunal: supplementary);
 - sections 134 to 136 (offences);
 - section 138(1) so far as not already in force and so far as necessary for the interpretation of provisions brought into force by this article or made under such provisions.

Transitory provisions in connection with the commencement of sections 112, 117, 119, 124, 127 and 137 of the Act

5.—(1) Until the coming into force of section 95(1) of the Act for all purposes in relation to independent schools, sections 112(1) and (2), 117(1), 119, 124, 127 and 137 of the Act have effect subject to the following modifications.

(2) Sections 112(1) and (2), 119 and 124 of the Act have effect as if references in each of them to the register kept under section 95 of the Act were to the register referred to in section 158(1)(a) of the 2002 Act.

(3) Sections 112(1) and (2), 117(1), 119, 124, 127 and 137 of the Act have effect as if references in each of them to a proprietor of a registered independent educational institution were to a proprietor of an independent school entered in the register referred to in section 158(1)(a) of the 2002 Act.

Saving

6. Despite the repeal of subsections (6) and (7) of section 162B of the 2002 Act, on and after 1st September 2009 the Secretary of State may remove a school from the register referred to in section 158(1)(a) of that Act where the proprietor fails to pay a fee in respect of which the liability to pay accrued before 1st September 2009.

Amendment of the Education and Skills Act 2008 (Commencement No. 3) Order 2009: transitory provisions

7.—(1) The Education and Skills Act 2008 (Commencement No. 3) Order 2009(b) is amended as follows.

- (2) After article 2 insert—

(a) Section 162B was inserted by paragraph 2 of Schedule 8 to the Education Act 2005 (c.18) and amended by paragraph 74 of Schedule 14 to the Education and Inspections Act 2006 (c.40).

(b) S.I. 2009/1513 (C.78).

“Transitory provisions

2A.—(1) Section 111 of the Act has effect, during the period before sections 108 and 109 of the Act come into force for all purposes in relation to independent schools, subject to the modifications in paragraphs (2) to (5).

(2) Subsection (1) has effect as if the reference to an inspection carried out under Chapter 1 of Part 4 of the Act included a reference to an inspection carried out under section 162A(1)(a) of the 2002 Act.

(3) Subsection (3)(b) has effect as if the reference to an inspection under section 108 included a reference to an inspection under section 162A(1)(a) of the 2002 Act.

(4) Subsection (4)(a) has effect as if—

(a) the reference to an inspection under section 108 included a reference to an inspection under section 162A(1)(a) of the 2002 Act; and

(b) the reference to a time at which an independent inspectorate is approved in relation to an independent educational institution included a reference to any time at which arrangements are in place for the inspection of an independent school by a body approved by the Secretary of State for the purposes of section 162A(1)(b) of the 2002 Act.

(5) Subsection (6) has effect as if the reference to an independent educational institution entered in the register kept under section 95 of the Act included a reference to an independent school entered in the register referred to in section 158(1)(a) of the 2002 Act.

(6) In this article “the 2002 Act” means the Education Act 2002.”.

Diana Johnson

Parliamentary Under Secretary of State
Department for Children, Schools and Families

1st July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This is the fourth commencement order made by the Secretary of State under the Education and Skills Act 2008 (“the Act”).

Article 2 commences, on 1st August 2009, section 86 so far as not already in force. Section 86 makes amendments to the Learning and Skills Act 2000 which impose additional duties on the Learning and Skills Council (“LSC”) (established by section 1 of that Act). Three new sections are inserted. Section 4A requires the LSC to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain qualifications which are designed to equip them with basic and intermediate skills for work and everyday living. Section 4B places a duty on the LSC to ensure that tuition fees are waived for certain descriptions of education and training leading to particular qualifications (the qualifications being qualifications specified in regulations made by the Secretary of State). There are supplementary provisions in section 4C.

Article 3 commences, on 1st September 2009, provisions in Chapter 1 of Part 4 of the Act (regulation and inspection of independent educational provision in England) that relate to the charging of fees for the inspection of an independent educational institution in England (“institution”) where the inspection is carried out by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”). One of the provisions brought into force is the power of the Secretary of State to remove an institution from the register where the fees are not paid.

Article 4 brings into force, on 12th October 2009, provisions that relate to the ability of the Secretary of State to remove an institution from the register kept by the Secretary of State if the

institution is employing a person who is unsuitable to work with children (or vulnerable adults, if the institution provides education to vulnerable adults). The power to remove an institution from the register also arises if the proprietor is unsuitable to work with such persons.

Article 5 contains transitory provisions which will have effect until the register of independent educational institutions is in place in relation to independent schools. Until that time references to the register of independent educational institutions are to the register of independent schools kept under the Education Act 2002 (“the 2002 Act”), and references to the proprietors of such institutions are references to proprietors of registered independent schools.

Article 6 contains a saving provision in relation to any liability of an independent school for a fee payable to the Chief Inspector that has arisen under provisions of the 2002 Act repealed by virtue of this Order.

Article 7 contains an amendment to the Education and Skills Act 2008 (Commencement No. 3) Order 2009 (S.I. 2009/1513 (C.78)) to include transitory provisions in that Order. The transitory provisions deal with the time between the making of this Order and the coming into force for all purposes in relation to independent schools of the powers of the Chief Inspector under sections 108 and 109 of the Act to inspect institutions. The transitory provisions provide for a reference in section 111 of the Act to the inspection of an institution to include a reference to the inspection of an independent school under the 2002 Act.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Act have been or will be brought into force in England by commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 68 to 78	26th January 2009	2008/3077
Section 79 (partially)	26th January 2009	2008/3077
Section 81	1st September 2009	2009/1513
Section 82	28th February 2009	2009/387
Sections 83 and 84	7th March 2009	2009/387
Section 85	28th February 2009	2009/387
Section 86 (partially)	19th June 2009	2009/1513
Sections 87 to 91	26th January 2009	2008/3077
Section 92 (partially)	19th June 2009	2009/1513
Section 94 (partially)	19th June 2009	2009/1513
Section 98 (partially)	19th June 2009	2009/1513
Section 106 (partially)	19th June 2009	2009/1513
Section 108 (partially)	19th June 2009	2009/1513
Section 111 (partially)	19th June 2009	2009/1513
Section 119 (partially)	19th June 2009	2009/1513
Section 123 (partially)	19th June 2009	2009/1513
Section 128 (partially)	19th June 2009	2009/1513
Section 129 (partially)	19th June 2009	2009/1513
Section 132 (partially)	19th June 2009	2009/1513
Section 133 (partially)	19th June 2009	2009/1513
Section 140 (partially)	19th June 2009	2009/1513
Section 141 (partially)	19th June 2009	2009/1513
Section 146	1st September 2009	2009/1513
Section 147	1st September 2009	2009/1513
Section 148	1st September 2009	2009/1513
Section 150	26th January 2009	2008/3077

Section 151 (partially)	2nd December 2008	2008/3077
Section 151 (remainder)	26th January 2009	2008/3077
Sections 152 and 153	26th January 2009	2008/3077
Section 159	28th February 2009	2009/387
Section 161(1), (2), (3)(a) and (5) to (9)	28th February 2009	2009/387
Section 165	26th January 2009	2008/3077
Section 169(1) (partially)	2nd December 2008 and 26th January 2009	2008/3077
Section 169(2) (partially)	2nd December 2008 and 26th January 2009	2008/3077
Section 169(2) (partially)	1st September 2009	2009/1513
Schedule 1, paragraphs 53 (partially), 54(5) to (7), 57, 58, 61 to 64 and 68 to 73	2nd December 2008	2008/3077
Schedule 1, paragraphs 44 to 47, 53 (remainder), 54 (remainder), 55, 56, 59, 60, 65 to 67, 78, 81 to 85 and 89	26th January 2009	2008/3077
Schedule 2 (partially)	26th January 2009	2008/3077
Schedule 2 (partially)	1st September 2009	2009/1513

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STATUTORY INSTRUMENTS

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