



Education and Inspections Act 2006

2006 CHAPTER 40

PART 9

MISCELLANEOUS

Independent schools

169 Prohibition on participation in management of independent school

After section 167 of EA 2002 insert—

“Prohibition on participation in management of independent schools

167A Prohibition on participation in management of independent schools

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

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- (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 167B to 167D, “appropriate authority” means—
 - (a) in relation to England, the registration authority or such other public authority as may be prescribed;
 - (b) in relation to Wales, the registration authority or such other public authority as may be prescribed.

167B Directions under section 167A: appeals

- (1) A person in respect of whom a direction has been given under section 167A may appeal to the Tribunal established under section 9 of the Protection of Children Act 1999—
 - (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 his having been convicted of an offence;
 - (b) prescribe circumstances in which the Tribunal shall allow an appeal under this section;
 - (c) prescribe the powers available to the Tribunal on allowing an appeal under this section.

167C Directions under section 167A: information

- (1) The Secretary of State may provide to the appropriate authority any information relating to a person which is held by the Secretary of State in connection with his functions—
 - (a) under the Protection of Children Act 1999, except section 9 (the Tribunal);
 - (b) under Part 7 of the Care Standards Act 2000;
 - (c) under sections 142 to 144 of this Act;
 - (d) as registration authority under this Part.
- (2) The National Assembly for Wales may provide to the appropriate authority any information relating to a person which is held by the Assembly in connection with its functions as registration authority under this Part.
- (3) The Independent Barring Board may provide to the appropriate authority any information relating to a person which is held by the Board in connection with its functions and which appears to it to be relevant to the exercise by the appropriate authority of its functions under sections 167A to 167C.
- (4) The appropriate authority may provide to the Independent Barring Board, the General Teaching Council for England, the General Teaching Council for Wales, the Secretary of State or the National Assembly for Wales any information relating to a person which is held by the appropriate authority in connection with its functions under section 167A.

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167D Directions under section 167A: notification

- (1) Where the appropriate authority in relation to England gives a direction under section 167A(1), or varies or revokes any such direction, it must notify—
 - (a) the registration authority in relation to England (unless the appropriate authority is the registration authority), and
 - (b) the registration authority in relation to Wales and (if different) the appropriate authority in relation to Wales.
- (2) Where the appropriate authority in relation to Wales gives a direction under section 167A(1), or varies or revokes any such direction, it must notify—
 - (a) the registration authority in relation to Wales (unless the appropriate authority is the registration authority), and
 - (b) the registration authority in relation to England and (if different) the appropriate authority in relation to England.”

Commencement Information

- I1** S. 169 in force at 12.10.2009 for W. by [S.I. 2009/2545](#), [art. 3\(1\)\(a\)](#)

170 Prohibition on participation in management: supplementary

- (1) In section 169 of EA 2002 (unsuitable persons), for the words from “any work” onwards substitute “ work of a prescribed kind 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 ”.
- (2) In section 113BA of the Police Act 1997 (c. 50) (suitability information relating to children), at the end of subsection (2) insert—
 - “(e) whether the applicant is subject to a direction under section 167A of the Education Act 2002 (prohibition on participation in management of independent school).”
- (3) In section 9 of the Protection of Children Act 1999 (c. 14) (the Tribunal), in subsection (2) after paragraph (b) insert—
 - “(ba) on an appeal under section 167B of the Education Act 2002;”.

Commencement Information

- I2** S. 170 in force at 12.10.2009 for W. by [S.I. 2009/2545](#), [art. 3\(1\)\(b\)](#)
I3 [S. 170\(2\)](#) in force at 8.9.2014 by [S.I. 2014/2380](#), [art. 2](#)

171 Prohibition on participation in management: transitional provision

- (1) A person falls within this subsection if—
 - (a) immediately before the relevant day he is subject to a direction under section 142 of EA 2002 given on grounds prescribed for the purposes of this section, and

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- (b) prescribed conditions (which may include conditions relating to decisions taken on or after the relevant day by the [^{F1}Disclosure and Barring Service] under the Safeguarding Vulnerable Groups Act 2006) are satisfied in relation to him.
- (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 EA 2002 were a direction given by the appropriate authority under section 167A of that Act.
- (3) Regulations may make provision in connection with the determination of any appeal under subsection (1) of section 144 of EA 2002, or application for review under subsection (2) of that section, which is pending on the relevant day.
- (4) Regulations under subsection (3) may, in particular, provide for an appeal, or application for review, under section 144 of EA 2002 to be treated as an appeal under section 167B of that Act.
- (5) In this section—
- “appropriate authority” has the same meaning as in section 167A of EA 2002;
 - “prescribed” means prescribed by regulations under this section;
 - “regulations” means regulations made [^{F2}by the Welsh Ministers;]
 - “the relevant day” means the day on which section 167A of EA 2002 comes into force.

Textual Amendments

- F1** Words in s. 171(1)(b) substituted (1.12.2012) by [The Protection of Freedoms Act 2012 \(Disclosure and Barring Service Transfer of Functions\) Order 2012 \(S.I. 2012/3006\)](#), arts. 1(1), **13(1)(2)(f)** (with Pt. 4)
- F2** Words in s. 171(5) substituted (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 40(2)**; S.I. 2014/3364, art. 2(z)

Commencement Information

- I4** S. 171 in force at 12.10.2009 for W. by [S.I. 2009/2545](#), **art. 3(1)(c)**

172 Offences relating to independent schools

- (1) Part 10 of EA 2002 (independent schools) is amended as follows.
- (2) After section 168 insert—

“168A Proceedings for offences

No proceedings for an offence under this Chapter shall be instituted except by or with the consent of the registration authority.

168B 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—

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- (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,
- he (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 his functions of management as it applies to a director of a body corporate.

168C 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 and Schedule 3 to the Magistrates' Courts Act 1980 (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, he 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, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.”
- (3) In section 159 (unregistered schools), omit subsection (3).
- (4) Sections 168B and 168C of EA 2002 do not have effect in relation to offences committed before the commencement of this section.

Commencement Information

I5 S. 172 in force at 8.1.2007, see s. 188(2)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2006/2990 art. 4 by [S.I. 2008/54 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2007/935 art. 7(n) by [S.I. 2007/1271 art. 4](#)
- specified provision(s) transitional provisions for earlier commencing SI 2007/935 by [S.I. 2007/1271 art. 5](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11A inserted by [2010 c. 26 s. 7](#)
- s. 88(A1) inserted by [2015 c. 20 Sch. 16 para. 1\(2\)](#)
- s. 93A inserted by [2009 c. 22 s. 246](#)
- s. 93A(7) words inserted by [S.I. 2016/413 reg. 235](#) (This amendment comes into force on the day that section 93A of the Education and Inspections Act 2006 (c. 40) comes into force. That provision is still prospective)
- s. 162(5A)(aa) inserted by [2010 nawm 1 Sch. 1 para. 20\(a\)](#)