



# Education Act 2002

## 2002 CHAPTER 32

### PART 10

#### INDEPENDENT SCHOOLS

#### CHAPTER 1

##### REGULATION OF INDEPENDENT SCHOOLS

##### *Standards*

#### [<sup>F1</sup>156AA] **Application of Chapter to alternative provision Academies that are not independent schools**

- (1) This Chapter applies to alternative provision Academies that are not independent schools as it applies to independent schools in England.
- (2) Accordingly, references in this Chapter to independent schools (apart from those that are independent schools in Wales) are to be read as including references to alternative provision Academies that are not independent schools.]

#### **Textual Amendments**

- F1** S. 156AA inserted (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012 \(S.I. 2012/976\)](#), art. 1, **Sch. para. 13** (with art. 3)

#### [<sup>F2</sup>156A] **Application of Chapter to schools in Wales only**

- (1) References in this Chapter to an independent school are to an independent school in Wales.

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- (2) For provision regulating independent schools in England, see Chapter 1 of Part 4 of the Education and Skills Act 2008.]

**Textual Amendments**

- F2** S. 156A inserted (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 15** (with s. 139); S.I. 2014/3364, art. 2(z) (with art. 4)

**157 Independent school standards**

- (1) For the purposes of this Chapter, regulations shall prescribe standards about the following matters—
- (a) the quality of education provided at independent schools;
  - (b) the spiritual, moral, social and cultural development of pupils at independent schools;
  - (c) the welfare, health and safety of pupils at independent schools;
  - (d) the suitability of proprietors of and staff at independent schools;
  - (e) the premises of and accommodation at independent schools;
  - (f) the provision of information by independent schools;
  - (g) the manner in which independent schools handle complaints.

<sup>F3</sup>(1A) .....

[<sup>F4</sup>(2) In this Chapter “independent school standards” means—

- (a) the standards for the time being prescribed under this section, <sup>F5</sup> ...]
- <sup>F6</sup>(b) .....

**Textual Amendments**

- F3** S. 157(1A) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 16**, **Sch. 2** (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F4** S. 157(2) substituted (1.9.2008) by [Childcare Act 2006 \(c. 21\)](#), **ss. 47(2)**, 109(2); S.I. 2008/2261, art. 2 (with Sch. 1)
- F5** Word in s. 157(2) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 2**; S.I. 2014/3364, art. 2(aa) (with art. 4)
- F6** S. 157(2)(b) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 16**, **Sch. 2** (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)

**Commencement Information**

- I1** S. 157 in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, **art. 4**
- I2** S. 157 in force at 1.1.2004 for W. by S.I. 2003/2961, art. 6, **Sch. Pt. III**

*Requirement of registration*

**158 The registers**

- (1) There shall continue to be—
- <sup>F7</sup>(a) .....

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(b) a register of independent schools in Wales.

<sup>F8</sup>(2) .....

(3) The register of independent schools in Wales shall be kept by [<sup>F9</sup>the Welsh Ministers].

[<sup>F10</sup>(4) The Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales, as amended from time to time.

(5) If the Welsh Ministers have been provided with the necessary information by the proprietor of the school, the published list must specify the type or types of additional learning provision made by a school on the list for pupils with additional learning needs (if any).]

#### Textual Amendments

- F7** S. 158(1)(a) repealed (5.1.2015) by Education and Skills Act 2008 (c. 25), s. 173(4), Sch. 1 para. 17(a), Sch. 2 (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F8** S. 158(2) repealed (5.1.2015) by Education and Skills Act 2008 (c. 25), s. 173(4), Sch. 1 para. 17(a), Sch. 2 (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F9** Words in s. 158(3) substituted (5.1.2015) by Education and Skills Act 2008 (c. 25), s. 173(4), Sch. 1 para. 17(b) (with s. 139); S.I. 2014/3364, art. 2(z) (with art. 4)
- F10** S. 158(4)(5) inserted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), ss. 54(2), 100(3); S.I. 2020/1182, reg. 3(1)(e); S.I. 2021/373, art. 8(c)

#### Commencement Information

- I3** S. 158 in force at 1.1.2004 for W. by S.I. 2003/2961, art. 6, Sch. Pt. III
- I4** S. 158(1)(2) in force at 1.9.2003 except in relation to W. by S.I. 2003/1667, art. 4
- I5** S. 158(3) in force at 6.11.2006 except in relation to W. by S.I. 2006/2895, art. 2

## 159 Unregistered schools

(1) A person who conducts an independent school which is not a registered school is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—

- (a) a fine not exceeding level 5 on the standard scale, or  
(b) imprisonment for a term not exceeding six months,  
or to both.

<sup>F11</sup>(3) .....

(4) Where the Chief Inspector has reasonable cause to believe that an offence under subsection (1) is being committed on any premises, he may at any reasonable time—

- (a) enter and inspect the premises, and  
(b) inspect and take copies of any records or other documents which he has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.

(5) [<sup>F12</sup>Section 58 of the Education Act 2005] (computer records) applies in relation to the inspection of records or other documents under subsection (4)(b).

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- (6) It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions under subsection (4).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

- F11** S. 159(3) repealed (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 172(3), 188(2), [Sch. 18 Pt. 2](#)
- F12** Words in s. 159(5) substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 9 para. 29](#); [S.I. 2005/2034](#), art. 4; [S.I. 2006/1338](#), art. 3, [Sch. 1](#)

#### Commencement Information

- I6** S. 159 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)
- I7** S. 159 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), art. 6, [Sch. Pt. III](#)

### *Registration procedure*

#### 160 Applications for registration

- (1) An application to enter an independent school in the register must—
- (a) contain the prescribed information, and
  - (b) be made to the registration authority by the proprietor of the school in the prescribed manner.
- (2) The information prescribed under subsection (1)(a) shall include information as to the following matters relating to the school—
- (a) the age range of pupils;
  - (b) the maximum number of pupils;
  - (c) whether the school is for male or female pupils or both;
  - (d) whether the school provides accommodation for pupils;
  - [<sup>F13</sup>(e) the type or types of additional learning provision made by the school for pupils with additional learning needs (if any).]
- (3) Where the proprietor of an independent school makes an application to the registration authority under this section, the authority shall notify the Chief Inspector.
- (4) The Chief Inspector shall then inspect the school and report to the registration authority on the extent to which the independent school standards are met, and are likely to continue to be met, in relation to the school.

#### Textual Amendments

- F13** S. 160(2)(e) substituted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), ss. 54(3), 100(3); [S.I. 2020/1182](#), reg. 3(1)(e); [S.I. 2021/373](#), art. 8(c)

#### Commencement Information

- I8** S. 160 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

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**19** S. 160 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), art. 6, **Sch. Pt. III**

## **161 Determination of applications for registration**

- (1) Where a school has been inspected under section 160, the registration authority shall, taking into account—
  - (a) the report of the Chief Inspector under that section, and
  - (b) any other evidence relating to the independent school standards,determine whether those standards are met, and are likely to continue to be met, in relation to the school.
- (2) The registration authority shall notify the proprietor of a school of any determination made by the authority under this section in relation to the school.
- (3) If the registration authority determines under this section that the independent school standards are met, and are likely to continue to be met, in relation to a school, the authority shall enter the school in the register.
- (4) An entry in the register for a school shall include —
  - (a) the name and address of the school,
  - (b) the name of the proprietor of the school, and
  - (c) the information supplied pursuant to section 160(2)(a) to (e).

### **Commencement Information**

- I10** S. 161 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), art. 4
- I11** S. 161 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), art. 6, **Sch. Pt. III**

### *Enforcement of standards after registration*

## **162 Changes to registered details**

- (1) The registration authority may remove a school from the register if—
  - (a) there is a material change in relation to the school, and
  - (b) the change has not been approved under this section or section 167.
- (2) For the purposes of subsection (1), “material change”, in relation to a school, means—
  - (a) a change of proprietor,
  - (b) a change of address, or
  - (c) a change to the school in respect of any of the matters referred to in section 160(2)(a) to (e).
- (3) Applications 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.
- (4) Where an application for approval is made under this section, the registration authority may require the Chief Inspector to—
  - (a) inspect the school, and
  - (b) report to the authority on the extent to which, if the change is made, any relevant standard is likely to continue to be met in relation to the school.

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- (5) In subsection (4), “relevant standard” means any of the independent schools standards specified by the authority for the purposes of that subsection.
- (6) The registration authority shall, where an application for approval is made under this section—
- (a) approve the change, if the condition in subsection (7) is satisfied, and
  - (b) in any other case, refuse to approve it.
- (7) The condition in this subsection is that the authority is satisfied that, taking into account—
- (a) any report under subsection (4), and
  - (b) any other evidence relating to the independent school standards,
- those standards will continue to be met in relation to the school.

**Modifications etc. (not altering text)**

- C1** S. 162 modified (1.1.2004) by [The Independent Schools \(Provision of Information\) \(Wales\) Regulations 2003 \(S.I. 2003/3230\)](#), regs. 1(1), **9**

**Commencement Information**

- I12** S. 162 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4**
- I13** S. 162 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6**, **Sch. Pt. III**

**<sup>F14</sup>162A Power to inspect registered schools in England**

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**Textual Amendments**

- F14** S. 162A repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 18, **Sch. 2** (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)

**<sup>F15</sup>162B Inspections under section 162A: supplementary**

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**Textual Amendments**

- F15** S. 162B repealed (1.9.2009 for specified purposes, 5.1.2015 in so far as not already in force) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 18, **Sch. 2** (with s. 139); [S.I. 2009/1606](#), art. 3 (with art. 6); [S.I. 2014/3364](#), art. 2(z) (with art. 4)

**<sup>F17</sup>163 Power to inspect registered schools<sup>F16</sup>...**

- (1) The registration authority may at any time—
- (a) require the Chief Inspector<sup>F18</sup>... to inspect any registered school<sup>F18</sup>..., or to secure its inspection by one or more registered inspectors, or

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- (b) arrange for the inspection of any registered school by a body approved by the registration authority for the purposes of this subsection.
- (2) The inspection of a school under this section shall relate to—
- (a) such of the independent school standards as are, at the time of the inspection, specified by the registration authority for the purposes of this section in relation to any category of school into which that school falls, or
  - (b) if the registration authority so determines, such of the independent school standards as the registration authority may specify in relation to that school.
- (3) A person who conducts an inspection under this section shall—
- (a) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates, and
  - (b) if the registration authority so requires, arrange for the publication of the report in the prescribed manner.
- (4) A report published under subsection (3) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice (but without prejudice to any privilege subsisting apart from this subsection).
- (5) In this section and section 164—
- F19  
...
- “registered inspector” means a person registered under section 25 of the Education Act 2005.

#### Textual Amendments

- F16** Words in s. 163 title omitted (5.1.2015) by virtue of [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 19\(a\)](#) (with s. 139); S.I. 2014/3364, art. 2(z) (with art. 4)
- F17** Ss. 163, 164 substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 8 para. 3](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F18** Words in s. 163(1)(a) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 19\(b\)](#), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F19** Words in s. 163(5) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 19\(c\)](#), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)

## 164 Inspections under section 163: supplementary

- (1) This section applies to the inspection of a school which is conducted by the Chief Inspector<sup>F20</sup>... or a registered inspector under section 163(1)(a).
- (2) If the inspection is conducted by a registered inspector—
- (a) he may, by agreement with the Chief Inspector<sup>F21</sup>..., be assisted by the Chief Inspector<sup>F21</sup>..., and
  - (b) he may be assisted by such one or more persons enrolled in the list kept under paragraph 4 of Schedule 4 to the Education Act 2005 as he may determine, subject to paragraph 3(5) of that Schedule and subsection (3) below.
- (3) If the Chief Inspector<sup>F22</sup>... so requires, a registered inspector shall be assisted by at least one person enrolled in the list referred to in subsection (2)(b)—
- (a) who is without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in

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- any other voluntary capacity, and disregarding any experience which it is reasonable to regard as insignificant), and
- (b) whose primary function in the inspection is not that of providing financial or business expertise.
- (4) If the inspection is conducted by a registered inspector, it may be monitored by the Chief Inspector<sup>F23</sup>....
- (5) The person conducting the inspection, any person assisting him pursuant to subsection (2) or (3) and any person monitoring the inspection shall have at all reasonable times—
- (a) a right of entry to the premises of the school, and
- (b) a right to inspect and take copies of any records kept by the school and any other documents containing information relating to the school which are required for the purposes of the inspection.
- (6) Section 58 of the Education Act 2005 (computer records) applies in relation to the inspection of records or other documents under subsection (5)(b).
- (7) It is an offence intentionally to obstruct a person in the exercise of his functions in relation to the inspection.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) The proprietor of the school shall pay the Chief Inspector<sup>F24</sup>..., in respect of the inspection, a fee of such amount, and by such time, as may be specified in or determined under regulations.
- (10) Where the proprietor fails to comply with subsection (9), the registration authority may remove the school from the register.
- (11) The Chief Inspector<sup>F25</sup>... shall pay the amount of any fee received under subsection (9) into the Consolidated Fund.
- (12) Subsection (11) has effect subject to paragraph 4 of Schedule 6 to the Government of Wales Act 1998 (Treasury power to direct that requirement for payment into Consolidated Fund not to apply in relation to specified sums received by the Chief Inspector<sup>F26</sup>...)].

#### Textual Amendments

- F17** Ss. 163, 164 substituted (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 8 para. 3](#); [S.I. 2005/2034](#), art. 4; [S.I. 2006/1338](#), art. 3, Sch. 1
- F20** Words in s. 164(1) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 20](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)
- F21** Words in s. 164(2)(a) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 20](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)
- F22** Words in s. 164(3) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 20](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)
- F23** Words in s. 164(4) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 20](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)
- F24** Words in s. 164(9) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 20](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)



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- F25** Words in s. 164(11) repealed (5.1.2015) by Education and Skills Act 2008 (c. 25), s. 173(4), Sch. 1 para. 20, Sch. 2 (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F26** Words in s. 164(12) repealed (5.1.2015) by Education and Skills Act 2008 (c. 25), s. 173(4), Sch. 1 para. 20, Sch. 2 (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)

## 165 Failure to meet standards

- (1) This section applies where, taking into account—
  - (a) a report under section <sup>F27</sup>... 163 in respect of a registered school, or
  - (b) any other evidence in respect of a registered school,the registration authority is satisfied that any one or more of the independent school standards is or are not being met in relation to the school.
- (2) If the registration authority considers that there is a risk of serious harm to the welfare of pupils at the school, the authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (3) Where the registration authority does not make a determination under subsection (2), it shall serve a notice on the proprietor of the school—
  - (a) identifying the standard or standards in question, and
  - (b) requiring the proprietor to submit an action plan to the authority before the date specified in the notice (or such later date as the authority may specify after service of the notice).
- (4) For the purposes of this section, an action plan is 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) Where an action plan is submitted in accordance with subsection (3) the registration authority may—
  - (a) reject it, or
  - (b) approve it, with or without modifications.
- (6) Where an action plan is required under subsection (3) but is not submitted in accordance with that subsection, or is so submitted but rejected, the registration authority may—
  - (a) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine, or
  - (b) make an order under subsection (8).
- (7) Where an action plan has been approved under subsection (5), but any step specified in the plan is not taken by the date specified in the plan (whether as originally approved or as varied under paragraph (a)), the registration authority may—
  - (a) substitute a later date for the taking of that step,
  - (b) make an order under subsection (8), or
  - (c) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (8) An order under this subsection is an order requiring the proprietor of the school to do one or more of the following no later than such date after the appeal period as may be specified in the order—

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- (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school’s operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (9) If the proprietor of a school fails to comply with an order under subsection (8)—
- (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and
  - (b) the registration authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (10) Where the proprietor of a school in respect of which an order is made under subsection (8) applies to the registration authority for the order to be varied or revoked, the authority shall—
- (a) vary or revoke the order as requested in the application, if it 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.
- (11) The variation or revocation of an order under subsection (10) shall take effect as from the date on which the proprietor of the school is notified of it.
- (12) Where the registration authority has made a determination under this section to remove a school from the register on a particular date and no appeal is made against the determination under section 166, the authority shall remove the school from the register on that date.
- (13) For the purposes of this Chapter, the “appeal period” in relation to a determination or order is the period within which an appeal against it may be made under section 166.

#### Textual Amendments

**F27** Words in s. 165(1)(a) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 21](#), [Sch. 2](#) (with s. 139); [S.I. 2014/3364](#), art. 2(z)(aa) (with art. 4)

#### Modifications etc. (not altering text)

**C2** S. 165 restricted (19.11.2003) by [The Education Act 2002 \(Transitional Provisions and Consequential Amendments\) \(No.2\) \(Wales\) Regulations 2003 \(S.I. 2003/2959\)](#), regs. 1(1), **8(1)**

#### Commencement Information

**I14** S. 165 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4** (with [Sch. para. 6](#))

**I15** S. 165 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6**, **Sch. Pt. III**

## 166 Appeals

- (1) The proprietor of a registered school may appeal to the [<sup>F28</sup>First-tier Tribunal] against—
- (a) a refusal under section 162 to approve a material change,
  - (b) a determination under section 165 to remove the school from the register,
  - (c) an order under section 165(8) requiring the taking of specified action, or

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- (d) a refusal under section 165(10) to vary or revoke such an order.
- (2) An appeal under subsection (1) must be made within the period of 28 days beginning with the day on which notice of the refusal, determination or order is served on the proprietor.
- (3) Where an appeal is made under subsection (1)(b) against a determination under section 165—
  - (a) if the appeal is withdrawn or otherwise disposed of before it is determined by the tribunal under section 167, the registration authority may remove the school from the register on such date after the appeal period as it may determine, and
  - (b) in any other case the registration authority may only remove the school pursuant to the determination in accordance with section 167.
- (4) Where an appeal is made under subsection (1)(c) against an order under section 165(8), the order shall not have effect in relation to any time before the appeal is determined by the tribunal under section 167 or withdrawn or otherwise disposed of.
- (5) In the case of an appeal against a determination under section 165(2), if at any time the tribunal considers that there is a risk of serious harm occurring to the welfare of pupils before the determination of the appeal, it may by order provide that the school is to be regarded as not registered for the purposes of section 159 until the tribunal determines the appeal under section 167 (or revokes the order before so determining the appeal).

#### Textual Amendments

**F28** Words in s. 166(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), [Sch. 3 para. 194](#)

#### Commencement Information

**I16** S. 166 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), art. 4

**I17** S. 166 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), art. 6, [Sch. Pt. III](#)

## 167 Determination of appeals

- (1) This section applies where an appeal is made under section 166 to the [<sup>F29</sup>First-tier Tribunal].
- (2) In the case of an appeal against a refusal under section 162 to approve a material change, the tribunal may—
  - (a) uphold the refusal to approve, or
  - (b) itself approve the change.
- (3) In the case of an appeal against a determination under section 165 to remove the school from the register, the tribunal may—
  - (a) uphold the determination, or
  - (b) revoke the determination.
- (4) Where under subsection (3)(a) the tribunal upholds a determination, the registration authority shall remove the school from the register on such date as the tribunal may specify or, if it does not specify a date, on such date as the registration authority may determine.

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- (5) Where under subsection (3)(b) the tribunal revokes a determination, it may order the proprietor of the school to do one or more of the following by such time as may be specified in the order—
- (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school’s operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (6) In the case of an appeal against an order under section 165(8) requiring the taking of specified action, the tribunal may—
- (a) uphold the order,
  - (b) vary the order, or
  - (c) strike down the order.
- (7) In the case of an appeal against a refusal under section 165(10) to vary or revoke an order under section 165(8), the tribunal may—
- (a) uphold the refusal, or
  - (b) if in any case it is satisfied that it is appropriate to do so because of any change of circumstance after the making of the order—
    - (i) vary the order in such manner as it thinks fit, or
    - (ii) revoke the order.
- (8) The tribunal may, on the application of the proprietor of a registered school, vary or revoke any order made by it under subsection (5) in relation to the school where it is satisfied that it is appropriate to do so because of any change of circumstance.
- (9) If the proprietor of a school fails to comply with an order of the tribunal under subsection (5)—
- (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and
  - (b) the tribunal may, on the application of the registration authority, authorise the registration authority to remove the school from the register on such date as the tribunal may determine.

#### **Textual Amendments**

**F29** Words in s. 167(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), [Sch. 3 para. 195](#)

#### **Commencement Information**

**I18** S. 167 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), art. 4

**I19** S. 167 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), art. 6, [Sch. Pt. III](#)

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### <sup>F30</sup>Prohibition on participation in management of independent schools

#### Textual Amendments

**F30** Ss. 167A-167D and cross-heading inserted (12.10.2009 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 169**, 188(3); S.I. 2009/2545, art. 3(1)(a)

## 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.
- (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—
  - <sup>F31</sup>(a) .....
  - (b) <sup>F32</sup>... the registration authority or such other public authority as may be prescribed.

#### Textual Amendments

**F31** S. 167A(6)(a) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 22(a), **Sch. 2** (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)

**F32** Words in s. 167A(6)(b) repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 22(b), **Sch. 2** (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)

## 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 [<sup>F33</sup>First-tier Tribunal]—
  - (a) against the decision to give the direction;
  - (b) against a decision not to vary or revoke the direction.
- (2) Regulations may—

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- (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.

**Textual Amendments**

**F33** Words in s. 167B substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833, art. 1(1), **Sch. 3 para. 196**)

**[<sup>F34</sup>167C Directions under section 167A: information**

- (1) Where the appropriate authority is a public authority other than the Welsh Ministers, the Welsh Ministers may provide to that authority any information relating to a person which is held by the Welsh Ministers in connection with the Welsh Ministers' functions under this Chapter.
- (2) The Secretary of State may provide to the appropriate authority any information relating to a person which is held by the Secretary of State and which appears to the Secretary of State to be relevant to the exercise of the appropriate authority's functions under section 167A or by virtue of section 167B.
- (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 167A or by virtue of section 167B.
- (4) 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 of the appropriate authority's functions under section 167A or by virtue of section 167B.
- (5) The appropriate authority may provide to the Independent Barring Board, the General Teaching Council for Wales, the Chief Inspector, the Secretary of State or, where the appropriate authority is a public authority other than the Welsh Ministers, the Welsh Ministers, any information relating to a person which is held by the appropriate authority in connection with its functions under section 167A.]

**Textual Amendments**

**F34** S. 167C substituted (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), **Sch. 1 para. 23** (with s. 139); S.I. 2014/3364, art. 2(z) (with art. 4)

**[<sup>F35</sup>167DD Directions under section 167A: notification**

Where the appropriate authority gives a direction under section 167A(1), or varies or revokes any such direction, it must notify—

- (a) the registration authority (unless the appropriate authority is the registration authority), and

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- (b) the Secretary of State and (if different) the appropriate authority for the purposes of sections 128 to 131 of the Education and Skills Act 2008 (prohibition on participation in management of independent educational institutions in England).]]

#### Textual Amendments

**F35** S. 167D substituted (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 23](#) (with s. 139); [S.I. 2014/3364](#), [art. 2\(z\)](#) (with [art. 4](#))

### Supplementary

#### 168 Provision of information

- (1) Regulations may make provision for requiring the proprietor of a registered school to provide the registration authority, when the authority so requests, with such particulars relating to the school as may be prescribed.
- (2) Regulations under this section may in particular—
- [<sup>F36</sup>(a) require the provision of such information as is required for the purposes of determining whether the school is—
- (i) a children’s home in England (within the meaning of the Care Standards Act 2000), or
  - (ii) a provider of a care home service (within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016);]

(b) provide for the registration authority to remove from the register any school 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.

#### Textual Amendments

**F36** S. 168(2)(a) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), regs. 2(1), [18](#)

#### Commencement Information

**I20** S. 168 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)

**I21** S. 168 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), [art. 6](#), [Sch. Pt. III](#)

#### [<sup>F37</sup>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.

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#### Textual Amendments

**F37** Ss. 168A-168C inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. **172(2)**, 188(2) (with s. 172(4))

### 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—
  - (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.

#### Textual Amendments

**F37** Ss. 168A-168C inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. **172(2)**, 188(2) (with s. 172(4))

### 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.]



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#### Textual Amendments

**F37** Ss. 168A-168C inserted (8.1.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 172(2)**, 188(2) (with s. 172(4))

### 169 Unsuitable persons

The registration authority may remove a registered school from the register where it is satisfied that any person who, in relation to the school, carries out [<sup>F38</sup>any work to which section 142 applies—

[<sup>F38</sup>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.]

#### Textual Amendments

**F38** Words in s. 169 substituted (12.10.2009 for W.) by [Education and Inspections Act 2006 \(c. 40\)](#), **ss. 170(1)**, 188(3); [S.I. 2009/2545](#), **art. 3(1)(b)**

#### Commencement Information

**I22** S. 169 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4**

**I23** S. 169 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6**, **Sch. Pt. III**

### 170 Service of notice etc.

(1) The registration authority must serve on the proprietor of a registered school notice of—

- (a) any decision made by the authority under section 162 in relation to the school;
- (b) any determination or order made by the authority under section 165 in relation to the school;
- (c) any decision made by the authority under subsection (10) of that section in relation to the school.

(2) 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 school may be given to or served on him by delivering it to the registered address of the school.

#### Commencement Information

**I24** S. 170 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4**

**I25** S. 170 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6**, **Sch. Pt. III**

### 171 Interpretation of Chapter 1

In this Chapter—

“appeal period” has the meaning given by section 165;

“Chief Inspector” means—

- (a) <sup>F39</sup> ...

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- (b) <sup>F40</sup> ... Her Majesty’s Chief Inspector of Education and Training in Wales;  
<sup>F41</sup> ...  
 “independent school standards” has the meaning given by section 157;  
 “the register” means—
- (a) <sup>F42</sup> ...  
 (b) <sup>F43</sup> ... the register of independent schools in Wales;  
 “registered” means entered in the register;  
<sup>F44</sup> ...  
 “registration authority” means [<sup>F45</sup> the Welsh Ministers].

#### Textual Amendments

- F39** Words in s. 171 repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 24(2)(a), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F40** Words in s. 171 repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 24(2)(b), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F41** Words in s. 171 repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 24(3), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F42** Words in s. 171 repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 24(4)(a), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F43** Words in s. 171 repealed (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), Sch. 1 para. 24(4)(b), [Sch. 2](#) (with s. 139); S.I. 2014/3364, art. 2(z)(aa) (with art. 4)
- F44** Words in s. 171 repealed (1.9.2005 for E., 1.9.2006 for W.) by [Education Act 2005 \(c. 18\)](#), s. 125(4), Sch. 8 para. 5, [Sch. 19 Pt. 1](#); S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch. 1
- F45** Words in s. 171 substituted (5.1.2015) by [Education and Skills Act 2008 \(c. 25\)](#), s. 173(4), [Sch. 1 para. 24\(5\)](#) (with s. 139); S.I. 2014/3364, art. 2(z) (with art. 4)

#### Commencement Information

- I26** S. 171 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), [art. 4](#)
- I27** S. 171 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), [art. 6](#), [Sch. Pt. III](#)

## CHAPTER 2

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### 172 Alteration to definition of “independent school”

For section 463 of the Education Act 1996 (c. 56) (meaning of “independent school”) there is substituted—

##### “463 Meaning of “independent school”

- (1) In this Act “independent school” means any school at which full-time education is provided for—
- (a) five or more pupils of compulsory school age, or
  - (b) at least one pupil of that age for whom a statement is maintained under section 324, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989),

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and which is not a school maintained by a [<sup>F46</sup>local authority] or a special school not so maintained.

(2) For the purposes of subsection (1)(a) and (b) it is immaterial if full-time education is also provided at the school for pupils under or over compulsory school age.”

**Textual Amendments**

**F46** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

**Commencement Information**

**I28** S. 172 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4**  
**I29** S. 172 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6, Sch. Pt. III**

**173 Right of access of [<sup>F46</sup>local authority]**

In section 327 of the Education Act 1996 (c. 56) ( [<sup>F46</sup>local authority] to have access to certain schools to monitor provision made for child with special educational needs), in subsection (1)(b) (schools to which section applies), at the end there is inserted “or at an independent school”.

**Textual Amendments**

**F46** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **art. 1, Sch. 2 para. 11(2)**

**Commencement Information**

**I30** S. 173 in force at 1.9.2003 except in relation to W. by [S.I. 2003/1667](#), **art. 4**  
**I31** S. 173 in force at 1.1.2004 for W. by [S.I. 2003/2961](#), **art. 6, Sch. Pt. III**

<sup>F47</sup>**174 Consent to placement**

.....

**Textual Amendments**

**F47** S. 174 omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 9(3)**; [S.I. 2021/373](#), **art. 8(j)(xxi)**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1 by [S.I. 2004/571 Sch.](#)
- specified provision(s) amendment to earlier commencing SI 2003/1667 Sch. para. 1A and 2 by [S.I. 2005/2570 art. 2](#)

**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. 27(1A) inserted by [2010 c. 26 s. 4\(1\)](#)
- s. 29(2A)-(2D) inserted by [2009 c. 22 s. 260\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 250 omitted (1.9.2012) by virtue of 2011 c. 21, s. 29(9)(d); S.I. 2012/1087, art. 3)
- s. 29B inserted by [2008 c. 25 s. 157](#)
- s. 8585A substituted for s. 85 by [2006 c. 40 s. 74\(1\)](#)
- s. 85A amendment to earlier affecting provision 2006 c. 40 s. 74(1) by [2011 c. 21 s. 31\(2\)](#)
- s. 85A(5) words substituted by [2009 c. 22 Sch. 12 para. 34](#)
- s. 86(1) s. 86 renumbered as s. 86(1) by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 86(2) inserted by [2006 c. 40 s. 74\(2\)\(c\)](#)
- s. 88(2)-(7) inserted by [2006 c. 40 s. 74\(3\)](#)
- s. 88(7) repealed by [S.I. 2010/1080 Sch. 1 para. 45Sch. 2 Pt. 1](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 88(2)-(7) by 2006 c. 40, s 74(3) was repealed without ever being brought into force.)
- s. 142(9)(b) words substituted by [S.I. 2010/1158 Sch. 2 para. 11\(10\)\(b\)](#)
- s. 210A inserted by [2008 c. 25 Sch. 1 para. 79](#)