

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 5: Miscellaneous and general

Chapter 3: General

Section 167: Functions exercisable by Welsh Ministers

211. This section ensures that the functions conferred on the Secretary of State by sections 150, 152 or 165, so far as exercisable in relation to Wales, are taken to have been transferred to the Welsh Ministers by Order in Council under section 58 of the Government of Wales Act 2006. Section 167 also makes provision so that amendments to sections 89 to 90 of the 1998 Act in Schedules 1 and 2 are not to be taken to affect the application of those sections, or anything done under them, in relation to Wales. For the avoidance of any doubt, this section also ensures that the substitution of the references to the Secretary of State in sections 89 to 90 of the 1998 Act with references to the Welsh Ministers do not change the application of those sections in relation to Wales.

Section 168: General interpretation

212. *Section 168* provides that the sections in Part 1, Chapter 1 of Part 4, and sections 148 and 173(10) are to be construed as if they were contained in the 1996 Act unless a different meaning is given in the sections in the Act in which case that meaning prevails. This means, in particular, that the general interpretation in section 579 of the 1996 Act, provision about guidance and notices in sections 571 and 572, and the Secretary of State's intervention powers in sections 496 and 497 apply to those sections. *Subsection (5)* provides that sections 561 and 562 of the 1996 Act — which provide that the Act does not apply to a person in the service of the Crown or persons detained under order of a court — do not apply for the purposes of Part 1 of the Act. Section 62 makes special provision about Crown employment in relation to Part 1 of this Act.

Section 170: Power to make consequential and transitional provision etc

213. *Section 170* enables the Secretary of State to make supplementary, incidental, consequential, transitory, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. Where such regulations amend or repeal primary legislation they are subject to the affirmative resolution procedure.