

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 10: General

695. This Part contains general provision including those relating to the functions of the National Assembly for Wales, subordinate legislation, general interpretation, repeals, commencement and extent.

Section 178: Framework power relating to Wales

696. The purpose of this section has its foundation in the principles set out in the Wales Office's White Paper: *Better Governance for Wales (Cm 6582)*, which was presented to Parliament on 15th June 2005. The White Paper contains the Government's proposals for developing the devolution settlement in Wales. It confirms that the Government intends immediately in drafting primary legislation relating to Wales "...to delegate to the Assembly maximum discretion in making its own provisions using secondary legislative powers" (see paragraph 1.24).
697. This section permits the National Assembly for Wales to make regulations applying to Wales in respect of: categories of maintained school; establishment, discontinuance and alteration of maintained schools; school admissions; the curriculum in maintained schools; attendance, discipline and exclusion; entitlement to education and training, and services to encourage, support or assist young people with regards to education and training; travel of persons receiving education and training; and food and drink provided for children.
698. *Subsection (1) (a) to (j)* permits the National Assembly for Wales to make regulations for a range of matters which are relevant to education and training in Wales. The scope of the powers is broad to allow the Assembly to determine arrangements that are most relevant to its policies and plans for education and training in Wales.
699. *Subsection (1)(a) and (b)* permits the Assembly to make provision about the organisation of maintained schools and *subsection (1)(c)* permits the Assembly to make provision about the admission of pupils to maintained schools.
700. *Subsection (1)(d)* permits the Assembly to make provision about the curriculum in maintained schools.
701. *Subsection (1)(e) and (f)* permits the Assembly to make provision about a range of matters relating to school attendance, discipline and behaviour and putting in place educational provision for excluded pupils.
702. *Subsection (1)(g)* permits the Assembly to make provision about entitlement to education and training and *subsection (1)(h)* permits provision to be made for services to encourage people to participate effectively in education and training, take advantage of employment opportunities and participate effectively in their communities.

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

703. *Subsection (1)(i)* permits the Assembly to make provision about travel for persons receiving primary, secondary, or further education or training, to and from schools or other places where they receive education or training.
704. *Subsection (1)(j)* permits the Assembly to make provision about food and drink consumed by children in schools and day care.
705. *Subsection (4)* establishes that regulations made by the National Assembly for Wales under this Section may include any provision that could be made by an Act of Parliament. *Subsection (5)* ensures that the provision made by the regulations could include the amendment or repeal of provisions of the Act relating to Wales.

Section 179: Restrictions on framework power conferred by section 178

706. This section places restrictions on section 178.
707. *Subsection (1)* places a number of restrictions on the National Assembly for Wales in exercising its power under section 178. The Assembly cannot:
- make any provision imposing or increasing taxation;
 - give any of the provisions in the regulations retrospective effect;
 - sub-delegate the power to legislate;
 - create any new criminal offence, other than summary offences in relation to the matters mentioned in section 178(1)(e);
 - make provision extending otherwise than to England and Wales; or
 - make any provision which applies to England, without the consent of the Secretary of State.
708. *Subsection (2)* authorises the modification of existing delegated powers to legislate despite the restriction on the sub-delegation of power in *subsection (1)(c)*. *Subsection (3)* provides that a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of *subsection (1)(c)*. *Subsection (4)* authorises the modification of existing offences despite the restriction on the creation of new offences in paragraphs (d) and (e) of *subsection (1)*. *Subsections (5) and (6)* place restrictions on the powers in *subsections (1)(e) and (1)(h)* of section 178 so that the consent of the Secretary of State is required before the Assembly can make regulations about the specified matters (which are the general responsibility of the Home Office in relation to Wales). *Subsection (7)* places a restriction on the power conferred on the National Assembly by *subsection (1)(i)* the effect of which is that it cannot make regulations about matters for which the Department for Transport is currently responsible in relation to Wales.

Section 180: Functions to be exercisable by National Assembly for Wales

709. Most of the functions of the Secretary of State under education legislation have, so far as they relate to Wales, been transferred to the National Assembly for Wales by Order in Council under section 22 of the [Government of Wales Act 1998 \(c. 38\)](#). Textual amendments to reflect this have not always been made to the legislation. Some legislation therefore continues to refer to the Secretary of State only, but references to the Secretary of State have to be read, in relation to Wales, as references to the National Assembly for Wales.
710. This section ensures that any functions conferred on the Secretary of State under the sections listed in *subsection (2)* so far as exercisable in relation to Wales are taken to have been transferred to the Assembly by such an Order.

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Section 183: Power to make consequential and transitional provision etc.

711. This provision enables the Secretary of State by regulations to make such supplementary, incidental, consequential, transitional or saving provision as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Act.
712. Where such regulations made by the Secretary of State amend or repeal primary legislation, they require approval by resolution of each House of Parliament (see section 182(3)(c)).