

2014 No. 3364 (C. 158)

EDUCATION, ENGLAND

**The Education and Skills Act 2008 (Commencement No. 11 and
Saving and Transitory Provisions) Order 2014**

Made - - - - *22nd December 2014*

The Secretary of State for Education 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. 11 and Saving and Transitory Provisions) Order 2014.

(2) In this Order—

“the 2002 Act” means the Education Act 2002(b); and

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

Provisions coming into force on 5th January 2015

2. Subject to articles 3 to 5, the following provisions of the 2008 Act come into force on 5th January 2015—

- (a) section 94 (independent educational institution standards)(c);
- (b) section 95 (the register);
- (c) section 96 (unregistered independent educational institutions: offence);
- (d) section 97 (unregistered independent educational institutions: inspection);
- (e) section 100 (institutions no longer required to register: power to deregister);
- (f) section 109 (duty to inspect registered institution on direction of Secretary of State);
- (g) section 110 (inspections under Chapter 1 of Part 4 of the 2008 Act: power of entry etc);
- (h) section 112(3) (failure to pay fees);
- (i) section 113(1) (publication of inspection reports);
- (j) section 114 (action plans);
- (k) section 115 (power of Secretary of State to take enforcement action);
- (l) section 116 (enforcement action available to Secretary of State);
- (m) section 117(2)(a) and (b) (relevant restriction);

(a) 2008 c.25

(b) 2002 c.32

(c) See the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283), made under section 94, which come into force on 5th January 2015.

- (n) section 118 (relevant restriction imposed by Secretary of State: supplementary);
- (o) section 120 (application to justice of the peace for order);
- (p) section 121 (relevant restriction imposed by justice of the peace: supplementary);
- (q) section 122 (order of justice of the peace: notification);
- (r) section 124, except subsection (1)(b) (appeal by proprietor against decision of Secretary of State to deregister);
- (s) section 125, except subsection (1)(b) (appeal by proprietor against other decisions of Secretary of State);
- (t) section 126 (appeal by proprietor against order of justice of the peace);
- (u) section 127 (relevant restriction imposed by Tribunal: supplementary);
- (v) section 138 (interpretation of Chapter 1 of Part 4 of the 2008 Act);
- (w) section 139 (continuity of law);
- (x) section 140(1) (the register and fees);
- (y) section 141 (prohibition on participation in management);
- (z) paragraphs 15 to 25, 28 to 38, 40 and 41 of Schedule 1 (minor and consequential amendments) and section 169(1) in so far as it relates to those amendments; and
- (aa) Schedule 2 (repeals and revocations) so far as it repeals provisions in the 2002 Act, the word “and” at the end of section 59(1)(d) of, and paragraphs 2 and 4 of Schedule 8 to, the Education Act 2005(a), and section 169(2) in so far as it relates to those repeals.

Saving and transitory provisions

3.—(1) Section 95 of the 2008 Act comes into force for the purposes of requiring the Secretary of State to keep a register of independent educational institutions within the meaning of section 92(1)(a) of the 2008 Act(b).

(2) A reference to an independent educational institution in Chapter 1 of Part 4 of the 2008 Act is to be construed as a reference to an independent educational institution within the meaning of section 92(1)(a) of the 2008 Act.

(3) The instruments listed in column (1) of the Schedule are revoked to the extent specified in column (3).

4. Despite the amendments to the 2002 Act made by Schedule 1 to the 2008 Act, Part 10 of the 2002 Act remains in force for the purposes of enabling section 162 (changes to registered details) of that Act to have effect in England, and references in that Part to—

- (a) “the Chief Inspector” are to be construed as references to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills”;
- (b) “independent school standards” are to be construed as references to the standards prescribed by the Secretary of State under section 94(1) of the 2008 Act;
- (c) “proprietor” are to be construed as references to a proprietor within the meaning of section 138(1) of the 2008 Act;
- (d) “the registration authority” are to be construed as references to the Secretary of State; and
- (e) “the register” are to be construed as references to the register kept by the Secretary of State under section 95 of the 2008 Act.

(a) 2005 c.18.

(b) An independent educational institution within the meaning of section 92(1)(a) is an independent school – see section 463 of the Education Act 1996 (c. 56). Section 463 was substituted by section 172 of the Education Act 2002. Section 463 was amended by section 82 and paragraphs 1 and 43(a) and (b) of Part 1 of Schedule 3 to the Children and Families Act 2014 and article 5(1) and paragraph 7(1) and (2) of Part 1 to Schedule 2 to the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158).

5. For the purposes of giving effect to regulations made under section 111 of the 2008 Act, an inspection carried out by the Chief Inspector under section 109 of that Act is an inspection under section 162A of the 2002 Act.

22nd December 2014

Nick Boles
Minister of State
Department for Education

SCHEDULE

Article 3(3)

Revocations

Table

<i>Column 1</i> <i>Instrument revoked</i>	<i>Column 2</i> <i>References</i>	<i>Column 3</i> <i>Extent of Revocation</i>
The Education and Skills Act 2008 (Commencement No. 4, Commencement No. 3 (Amendment), Transitory and Saving Provisions) Order 2009	S.I. 2009/1606	Article 5
The Education and Skills Act 2008 (Commencement No. 7 and Transitory Provisions) Order 2010	S.I. 2010/2906	Article 3
The Education and Skills Act 2008 (Commencement No. 10 and Transitory Provisions) Order 2014	S.I. 2014/2379	Article 3

EXPLANATORY NOTE

(This note is not part of the Order)

This commencement order is made under the Education and Skills Act 2008 (“the 2008 Act”).

Article 2 brings into force a number of provisions in the 2008 Act (in Part 4 and Schedules 1 and 2) on 5th January 2015. Part 4 of the 2008 Act provides for the regulation and inspection of independent educational provision in England, and replaces Chapter 1 of Part 10 of the Education Act 2002 (“the 2002 Act”).

As originally enacted, the 2008 Act provided for the regulation of independent educational institutions, including providers of part-time education. However, article 3 ensures that the provisions of the 2008 Act are brought into force in relation to independent schools only (referred to in the Order as independent educational institutions within the meaning of section 92(1)(a) of the 2008 Act). It is not intended to regulate independent part-time providers of education at this stage.

A number of key provisions are brought into force. Section 95 of the 2008 Act requires the Secretary of State to maintain a register, which replaces the register of independent schools in England currently kept by the Secretary of State under section 158 of the 2002 Act.

Section 94 of the 2008 Act requires the Secretary of State to prescribe standards by regulations. These are the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283) which

come into force on 5th January 2015. This Order has the effect of repealing section 157 (independent school standards) of the 2002 Act in England, and so the Education (Independent School Standards) (England) Regulations 2010 (S.I. 2010/1997) (which were made under section 157) no longer have effect.

Section 120 of the 2008 Act is also brought into force. It is a new power enabling the Secretary of State to apply to a justice of the peace for an emergency order imposing an immediate restriction on, or deregistering, an independent school, where a pupil at the school is suffering or is at risk of suffering significant harm.

Section 139 of the 2008 Act allows for the continuity of law between the 2002 Act and the 2008 Act, so that regulatory functions may be exercised without a break. Accordingly, independent schools which were previously registered under section 158 of the 2002 Act are automatically registered under section 95 of the 2008 Act. Regulatory functions which would previously have been exercised under section 165 of the 2002 Act may now be exercised under the new provisions (in particular, sections 114 to 118).

A number of provisions in the 2008 Act have already been brought into force, subject to transitory provisions (to ensure that those provisions applied to independent schools registered under the 2002 Act). Article 3(3) and the revocations in the Schedule remove the transitory provisions so that those provisions which have already been commenced now apply to independent schools registered under the 2008 Act.

Articles 4 and 5 make saving provisions in relation to the 2002 Act. Article 4 ensures that section 162 of that Act continues to apply and the Secretary of State may remove an independent school from the register if it makes a material change which is not approved. Article 5 provides for the continuity of law in relation to any fee payable by an independent school to Her Majesty's Chief Inspector of Education, Children's Services and Skills for an inspection under the 2008 Act.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1 (with substitution)	28th June 2013	2013/1204
Section 1 (remainder)	26th June 2015	2013/1204
Sections 2 to 8	28th June 2013	2013/1204
Sections 10 to 14	28th June 2013	2013/1204
Sections 16 to 18	28th June 2013	2013/1204
Section 39(1) and (2)	28th June 2013	2013/1204
Section 62(1), (2), (5) and (6)	28th June 2013	2013/1204
Section 64(1), (2) and (5)	28th June 2013	2013/1204
Section 66	28th June 2013	2013/1204
Sections 68 to 78	26th January 2009	2008/3077
Section 79 (partially)	26th January 2009	2008/3077
Section 79 (partially)	12th January 2010	2009/3316
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
Section 86 (remainder)	1st August 2009	2009/1606
Sections 87 to 91	26th January 2009	2008/3077
Section 92 (partially)	19th June 2009	2009/1513
Section 92 (partially)	1st September 2009	2009/1606

Section 93	1st September 2009	2009/1606
Sections 94 to 97 (partially)	19th June 2009	2009/1513
Sections 98 and 99 (partially)	19th June 2009	2009/1513
Sections 98 and 99 (remainder)	1st January 2011	2010/2906
Sections 100 to 105 (partially)	19th June 2009	2009/1513
Sections 106 and 107 (partially)	19th June 2009	2009/1513
Sections 106 and 107 (remainder)	8th September 2014	2014/2379
Sections 108 to 110 (partially)	19th June 2009	2009/1513
Section 111 (partially)	19th June 2009	2009/1513
Section 111 (remainder)	1st September 2009	2009/1606
Section 112 (partially)	1st September 2009	2009/1606
Sections 113 to 116	19th June 2009	2009/1513
Section 117 (partially)	12th October 2009	2009/1606
Section 118 (partially)	19th June 2009	2009/1513
Section 119 (partially)	19th June 2009	2009/1513
Section 119 (remainder)	12th October 2009	2009/1606
Sections 120 to 123 (partially)	19th June 2009	2009/1513
Section 123 (remainder)	1st January 2011	2010/2906
Section 124 (partially)	12th October 2009	2009/1606
Section 124 (partially)	1st January 2011	2010/2906
Sections 125 and 126	19th June 2009	2009/1513
Section 127	12th October 2009	2009/1606
Sections 128 to 133 (partially)	19th June 2009	2009/1513
Sections 128 to 131 (remainder)	8th September 2014	2014/2379
Sections 134 to 136 (partially)	19th June 2009	2009/1513
Sections 134 to 136	12th October 2009	2009/1606
Section 137	1st September 2009	2009/1606
Section 138 (partially)	1st September 2009	2009/1606
Section 138 (partially)	12th October 2009	2009/1606
Section 138 (partially)	1st January 2011	2010/2906
Section 138 (partially)	8th September 2014	2014/2379
Section 139 (partially)	19th June 2009	2009/1513
Section 140 (partially)	19th June 2009	2009/1513
Section 140 (partially)	1st September 2009	2009/1606
Section 141 (partially)	19th June 2009	2009/1513
Section 142	30th March 2010	2010/1093
Section 143	30th March 2010	2010/1093
Section 144	30th March 2010	2010/1093
Section 145	30th March 2010	2010/1093
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 154 (partially)	30th March 2010	2010/1093
Section 154 (remainder)	1st September 2010	2010/1093
Section 155	3rd September 2012	2012/2197
Section 159	28th February 2009	2009/387
Section 161(1), (2), (3)(a) and (5) to (9)	28th February 2009	2009/387

Section 162(1), (2), (3)(a) and (b) and (4) to (10)	31st March 2009	2009/784
Section 162(3)(c)	31st October 2009	2009/784
Section 165	26th January 2009	2008/3077
Section 169(1) (partially)	2nd December 2008 and 26th January 2009	2008/3077
Section 169(1) (partially)	1st September 2009	2009/1606
Section 169(1) (partially)	30th March 2010	2010/1093
Section 169(1) (partially)	8th September 2014	2014/2379
Section 169(2) (partially)	2nd December 2008 and 26th January 2009	2008/3077
Section 169(2) (partially)	1st September 2009	2009/1513
Section 169(2) (partially)	1st September 2009	2009/1606
Section 169(2) (partially)	30th March 2010	2010/1093
Schedule 1, paragraphs 13 and 18 (partially)	1st September 2009	2009/1606
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 1, paragraph 74	30th March 2010	2010/1093
Schedule 1, paragraphs 43, 48 (partially), 50, 51, 52 and 80	3rd September 2012	2012/2197
Schedule 1, paragraph 12	8th September 2014	2014/2379
Schedule 2 (partially)	26th January 2009	2008/3077
Schedule 2 (partially)	1st September 2009	2009/1513
Schedule 2 (partially)	1st September 2009	2009/1606
Schedule 2 (partially)	30th March 2010	2010/1093

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