

**ELIZABETH II**



**1970 CHAPTER 52**

An Act to make provision, as respects England and Wales, for discontinuing the classification of handicapped children as unsuitable for education at school, and for purposes connected therewith.

[23rd July 1970]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) As from such day ("the appointed day") as the Secretary of State may appoint by order made by statutory instrument— Mentally handicapped children.

- (a) no further use shall be made of the powers conferred by section 57 of the Education Act 1944 (that is to say the section having effect as section 57 by virtue of the Mental Health Act 1959) for classifying children suffering from a disability of mind as children unsuitable for education at school; and
- (b) a local health authority shall not, under section 12 of the Health Services and Public Health Act 1968 have the power or be subject to a duty to make arrangements for training children who suffer from a disability of mind and who are for purposes of the Education Act 1944 of compulsory school age;

and, where immediately before the appointed day a decision under section 57 of the Education Act 1944 was in force with respect to a child, section 34(4) to (6) of that Act shall apply as if the decision had been made, and the examination in consequence of which it was made had been carried out, under section 34.

(2) The Secretary of State shall by order make such provision as appears to him to be necessary or expedient in consequence of subsection (1) above—

- (a) for the transfer to the employment of local education authorities of persons employed by local health authorities (not being also local education authorities) or by regional hospital boards; and
- (b) for the protection of the interests of persons who before the appointed day have been employed for the purpose of functions of local health authorities (including those functions of authorities which are also local education authorities) or functions of regional hospital boards; and
- (c) for the transfer to local education authorities of property, rights and liabilities of local health authorities or regional hospital boards.

(3) The provision to be made under subsection (2)(b) above shall include provision—

- (a) for the payment by a Secretary of State, local health authority or local education authority, subject to such exceptions or conditions as may be prescribed by the order, of compensation to or in respect of any such persons as are referred to in subsection (2)(b) who suffer loss of employment or loss or diminution of emoluments which is attributable to the provisions of this section; and
- (b) as respects any person so referred to who on the appointed day is in consequence of this section employed for the purpose of functions of a local education authority, for securing that, so long as he continues in that authority's employment for the purpose of those functions—
  - (i) he shall enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before that date, except as regards the scale of his salary or remuneration if on that date or afterwards he ceases to be engaged in duties reasonably comparable to those in which he was engaged immediately before that date; and
  - (ii) in the event of his ceasing to be so engaged, the scale of his salary or remuneration shall also be not less favourable so long as he has not been served with a statement in writing of new terms and conditions of employment.

A written statement given in accordance with section 4 of the Contracts of Employment Act 1963 shall not be regarded

as a statement of new terms and conditions of employment for the purposes of paragraph (b) above unless the statement indicates that it is to be.

(4) An order under subsection (2) above may include provision—

- (a) for the determination of questions arising under any such order and as to the manner in which and persons to whom claims for compensation are to be made;
- (b) for applying, with or without modifications, any provision made by or under any enactment and relating to the transfer of staff between authorities;

and the provision made under subsection (2)(b) shall have effect notwithstanding, and may amend or repeal, any provision made by or under any enactment and relating to the remuneration of teachers or to superannuation.

(5) Any order under subsection (2) above may be varied or revoked by a subsequent order of the Secretary of State, and the power of the Secretary of State to make orders under that subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by a Secretary of State in the payment of compensation under any provision made in accordance with subsection (3)(a) above; and
- (b) any increase attributable to this section in the sums payable out of moneys so provided by way of rate support grant.

2.—(1) This Act may be cited as the Education (Handicapped Children) Act 1970, and shall be included among the Acts which may be cited as the Education Acts 1944 to 1970. Citation, repeal and extent.

(2) As from the appointed day, the enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Nothing in this Act extends to Scotland or to Northern Ireland.

## Section 2.

SCHEDULE  
ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
7 & 8 Geo. 6. c. 31.	The Education Act 1944.	Sections 57 to 57B (as inserted by the Mental Health Act 1959). In section 116 the words from "to any", where first occurring, down to (but not including) the same words where last occurring.
7 & 8 Eliz. 2. c. 72.	The Mental Health Act 1959.	Sections 11 to 13. Schedule 2. Schedule 6, paragraph 2. In Schedule 7, the entry for the Education Act 1944.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, in Part I, the entries for the Education Act 1944 section 57(2) and for the Mental Health Act 1959 section 12(3), except as respects offences committed before the appointed day.
1968 c. 46.	The Health Services and Public Health Act 1968.	In Schedule 3, in the second paragraph of the entry for the Mental Health Act 1959, the words "and 12(1)".
1970 c. 42.	The Local Authority Social Services Act 1970.	In Schedule 1, in the entry for the Mental Health Act 1959, paragraph (a).

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