



Education Act 1993

1993 CHAPTER 35

PART III

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Introductory

156 Meaning of “special educational needs” and “special educational provision” etc

- (1) For the purposes of the Education Acts, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) For the purposes of this Act, subject to subsection (3) below, a child has a “learning difficulty” if—
 - (a) he has a significantly greater difficulty in learning than the majority of children of his age,
 - (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority, or
 - (c) he is under the age of five years and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when over that age.
- (3) A child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.
- (4) In the Education Acts, “special educational provision” means—
 - (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority (other than special schools) or grant-maintained schools in their area, and

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- (b) in relation to a child under that age, educational provision of any kind.
- (5) In this Part of this Act, “child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

Code of practice

157 Code of Practice

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice giving practical guidance in respect of the discharge by local education authorities and the governing bodies of maintained or grant-maintained schools, or grant-maintained special schools, of their functions under this Part of this Act.
- (2) It shall be the duty of—
 - (a) local education authorities, and such governing bodies, exercising functions under this Part of this Act, and
 - (b) any other person exercising any function for the purpose of the discharge by local education authorities, and such governing bodies, of functions under this Part of this Act,
 to have regard to the provisions of the code.
- (3) On any appeal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.
- (4) The Secretary of State shall publish the code as for the time being in force.

158 Making and approval of code

- (1) Where the Secretary of State proposes to issue or revise a code of practice, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay it before both Houses of Parliament.
- (4) If the draft is approved by resolution of each House, the Secretary of State shall issue the code in the form of the draft and the code shall come into effect on such day as the Secretary of State may by order appoint.

Special educational provision: general

159 Review of arrangements

A local education authority shall keep under review the arrangements made by them for special educational provision and, in doing so, shall, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult the funding authority and the governing bodies of county, voluntary, maintained special and grant-maintained schools in their area.

160 Qualified duty to secure education of children with special educational needs in ordinary schools

- (1) Any person exercising any functions under this Part of this Act in respect of a child with special educational needs who should be educated in a school shall secure that, if the conditions mentioned in subsection (2) below are satisfied, the child is educated in a school which is not a special school unless that is incompatible with the wishes of his parent.
- (2) The conditions are that educating the child in a school which is not a special school is compatible with—
 - (a) his receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.

161 Duties of governing body etc. in relation to pupils with special educational needs

- (1) The governing body, in the case of a county, voluntary or grant-maintained school, and the local education authority, in the case of a maintained nursery school, shall—
 - (a) use their best endeavours, in exercising their functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision which his learning difficulty calls for is made,
 - (b) secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
 - (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.
- (2) In subsection (1)(b) above, “the responsible person” means—
 - (a) in the case of a county, voluntary or grant-maintained school, the head teacher or the appropriate governor (that is, the chairman of the governing body or, where the governing body have designated another governor for the purposes of this paragraph, that other governor), and
 - (b) in the case of a nursery school, the head teacher.
- (3) To the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs—
 - (a) the governing bodies of county, voluntary and grant-maintained schools shall, in exercising functions relating to the provision for such children, consult the local education authority, the funding authority and the governing bodies of other such schools, and
 - (b) in relation to maintained nursery schools, the local education authority shall, in exercising those functions, consult the funding authority and the governing bodies of county, voluntary and grant-maintained schools.
- (4) Where a child who has special educational needs is being educated in a county, voluntary or grant-maintained school or a maintained nursery school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—

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- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated, and
- (c) the efficient use of resources,

that the child engages in the activities of the school together with children who do not have special educational needs.

- (5) The annual report for each county, voluntary, maintained special or grant-maintained school shall include a report containing such information as may be prescribed about the implementation of the governing body's policy for pupils with special educational needs; and in this subsection "annual report" means the report prepared under the articles of government for the school in accordance with section 30 of the Education (No. 2) Act 1986 or, as the case may be, paragraph 8 of Schedule 6 to this Act.

162 Provision of goods and services in connection with special educational needs

- (1) A local education authority may for the purpose only of assisting—
 - (a) the governing bodies of county, voluntary or grant-maintained schools in their or any other area in the performance of the governing bodies' duties under section 161(1)(a) of this Act, or
 - (b) the governing bodies of maintained or grant-maintained special schools in their or any other area in the performance of the governing bodies' duties,
 supply goods or services to them.
- (2) The terms on which goods or services are supplied by local education authorities to the governing bodies of grant-maintained schools or grant-maintained special schools, or to the governing bodies of county, voluntary or maintained special schools in any other area, under this section may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed.
- (3) This section is without prejudice to the generality of any other power of local education authorities to supply goods or services.

163 Special educational provision otherwise than in schools

- (1) Where a local education authority are satisfied that it would be inappropriate for the special educational provision (or any part of the special educational provision) which a learning difficulty of a child in their area calls for to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.
- (2) Before making an arrangement under this section, a local education authority shall consult the child's parent.

164 Provision outside England and Wales for certain children

- (1) A local education authority may make such arrangements as they think fit to enable a child for whom they maintain a statement under section 168 of this Act to attend an institution outside England and Wales which specialises in providing for children with special needs.

- (2) In subsection (1) above, “children with special needs” means children who have particular needs which would be special educational needs if those children were in England and Wales.
- (3) Where a local education authority make arrangements under this section in respect of a child, those arrangements may in particular include contributing to or paying—
 - (a) fees charged by the institution,
 - (b) expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it,
 - (c) his travelling expenses, and
 - (d) expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.
- (4) This section is without prejudice to any other powers of a local education authority.

Identification and assessment of children with special educational needs

165 General duty of local education authority towards children for whom they are responsible

- (1) A local education authority shall exercise their powers with a view to securing that, of the children for whom they are responsible, they identify those to whom subsection (2) below applies.
- (2) This subsection applies to a child if—
 - (a) he has special educational needs, and
 - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part of this Act, a local education authority are responsible for a child if he is in their area and—
 - (a) he is a registered pupil at a maintained, grant-maintained or grant-maintained special school,
 - (b) education is provided for him at a school which is not a maintained, grant-maintained or grant-maintained special school at the expense of the authority or the funding authority,
 - (c) he does not come within paragraph (a) or (b) above but is a registered pupil at a school and has been brought to the authority’s attention as having (or probably having) special educational needs, or
 - (d) he is not a registered pupil at a school, is not under the age of two years or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

166 Duty of District Health Authority or local authority to help local education authority

- (1) Where it appears to a local education authority that any District Health Authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part of this Act, they may request the help of the authority, specifying the action in question.

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- (2) An authority whose help is so requested shall comply with the request unless—
 - (a) they consider that the help requested is not necessary for the purpose of the exercise by the local education authority of those functions, or
 - (b) subsection (3) below applies.
- (3) This subsection applies—
 - (a) in the case of a District Health Authority, if that authority consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the National Health Service Act 1977, it is not reasonable for them to comply with the request, or
 - (b) in the case of a local authority, if that authority consider that the request is not compatible with their own statutory or other duties and obligations or unduly prejudices the discharge of any of their functions.
- (4) Regulations may provide that, where an authority are under a duty by virtue of subsection (2) above to comply with a request to help a local education authority in the making of an assessment under section 167 of this Act or a statement under section 168 of this Act, they must, subject to prescribed exceptions, comply with the request within the prescribed period.
- (5) In this section, “local authority” means a county council, a metropolitan district council, a London borough council or the Common Council of the City of London.

167 Assessment of educational needs

- (1) Where a local education authority are of the opinion that a child for whom they are responsible falls, or probably falls, within subsection (2) below, they shall serve a notice on the child’s parent informing him—
 - (a) that they propose to make an assessment of the child’s educational needs,
 - (b) of the procedure to be followed in making the assessment,
 - (c) of the name of the officer of the authority from whom further information may be obtained, and
 - (d) of the parent’s right to make representations, and submit written evidence, to the authority within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this subsection if—
 - (a) he has special educational needs, and
 - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
 - (a) a local education authority have served a notice under subsection (1) above and the period specified in the notice in accordance with subsection (1)(d) above has expired, and
 - (b) the authority remain of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (2) above,
 they shall make an assessment of his educational needs.

- (4) Where a local education authority decide to make an assessment under this section, they shall give notice in writing to the child's parent of that decision and of their reasons for making it.
- (5) Schedule 9 to this Act (which makes provision in relation to the making of assessments under this section) shall have effect.
- (6) Where, at any time after serving a notice under subsection (1) above, a local education authority decide not to assess the educational needs of the child concerned they shall give notice in writing to the child's parent of their decision.

168 Statement of special educational needs

- (1) If, in the light of an assessment under section 167 of this Act of any child's educational needs and of any representations made by the child's parent in pursuance of Schedule 10 to this Act, it is necessary for the local education authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs.
- (2) The statement shall be in such form and contain such information as may be prescribed.
- (3) In particular, the statement shall—
 - (a) give details of the authority's assessment of the child's special educational needs, and
 - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by subsection (4) below.
- (4) The statement shall—
 - (a) specify the type of school or other institution which the local education authority consider would be appropriate for the child,
 - (b) if they are not required under Schedule 10 to this Act to specify the name of any school in the statement, specify the name of any school or institution (whether in the United Kingdom or elsewhere) which they consider would be appropriate for the child and should be specified in the statement, and
 - (c) specify any provision for the child for which they make arrangements under section 163 of this Act and which they consider should be specified in the statement.
- (5) Where a local education authority maintain a statement under this section—
 - (a) unless the child's parent has made suitable arrangements, the authority—
 - (i) shall arrange that the special educational provision specified in the statement is made for the child, and
 - (ii) may arrange that any non-educational provision specified in the statement is made for him in such manner as they consider appropriate, and
 - (b) if the name of a maintained, grant-maintained or grant-maintained special school is specified in the statement, the governing body of the school shall admit the child to the school.
- (6) Subsection (5)(b) above does not affect any power to exclude from a school a pupil who is already a registered pupil there.

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- (7) Schedule 10 to this Act (which makes provision in relation to the making and maintenance of statements under this section) shall have effect.

169 Appeal against decision not to make statement

- (1) If, after making an assessment under section 167 of this Act of the educational needs of any child for whom no statement is maintained under section 168 of this Act, the local education authority do not propose to make such a statement, they shall give notice in writing of their decision, and of the effect of subsection (2) below, to the child's parent.
- (2) In such a case, the child's parent may appeal to the Tribunal against the decision.
- (3) On an appeal under this section, the Tribunal may—
- (a) dismiss the appeal,
 - (b) order the local education authority to make and maintain such a statement, or
 - (c) remit the case to the authority for them to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to determine the special educational provision which any learning difficulty the child may have calls for.

170 Appeal against contents of statement

- (1) The parent of a child for whom a local education authority maintain a statement under section 168 of this Act may—
- (a) when the statement is first made,
 - (b) where the description in the statement of the authority's assessment of the child's special educational needs, or the special educational provision specified in the statement, is amended, or
 - (c) where, after conducting an assessment of the educational needs of the child under section 167 of this Act, the local education authority determine not to amend the statement,
- appeal to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement or, if no school is named in the statement, that fact.
- (2) Subsection (1)(b) above does not apply where the amendment is made in pursuance of paragraph 8 or 11(3)(b) of Schedule 10 to this Act or directions under section 197 of this Act; and subsection (1)(c) above does not apply to a determination made following the service of notice under paragraph 10 of Schedule 10 to this Act of a proposal to amend the statement.
- (3) On an appeal under this section, the Tribunal may—
- (a) dismiss the appeal,
 - (b) order the authority to amend the statement, so far as it describes the authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal think fit, or
 - (c) order the authority to cease to maintain the statement.
- (4) On an appeal under this section the Tribunal shall not order the local education authority to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—

- (a) the parent has expressed a preference for the school in pursuance of arrangements under paragraph 3 of Schedule 10 to this Act, or
 - (b) in the proceedings the parent, the local education authority or both have proposed the school.
- (5) Before determining any appeal under this section the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

171 Access for local education authority to certain schools

- (1) This section applies where—
- (a) a local education authority maintain a statement for a child under section 168 of this Act, and
 - (b) in pursuance of the statement education is provided for the child at—
 - (i) a school maintained by another local education authority,
 - (ii) a grant-maintained school, or
 - (iii) a grant-maintained special school.
- (2) Any person authorised by the local education authority shall be entitled to have access at any reasonable time to the premises of any such school for the purpose of monitoring the special educational provision made in pursuance of the statement for the child at the school.

172 Reviews of educational needs

- (1) Regulations may prescribe the frequency with which assessments under section 167 of this Act are to be repeated in respect of children for whom statements are maintained under section 168 of this Act.
- (2) Where—
- (a) the parent of a child for whom a statement is maintained under section 168 of this Act asks the local education authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
 - (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
 - (c) it is necessary for the authority to make a further assessment under that section, the authority shall comply with the request.
- (3) If in any case where subsection (2)(a) and (b) above applies the authority determine not to comply with the request—
- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child's parent, and
 - (b) the parent may appeal to the Tribunal against the determination.
- (4) On an appeal under subsection (3) above the Tribunal may—
- (a) dismiss the appeal, or
 - (b) order the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act.
- (5) A statement under section 168 of this Act shall be reviewed by the local education authority—

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- (a) on the making of an assessment in respect of the child concerned under section 167 of this Act, and
 - (b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.
- (6) Regulations may make provision—
- (a) as to the manner in which reviews of such statements are to be conducted,
 - (b) as to the participation in such reviews of such persons as may be prescribed, and
 - (c) in connection with such other matters relating to such reviews as the Secretary of State considers appropriate.

173 Assessment of educational needs at request of child’s parent

- (1) Where—
- (a) the parent of a child for whom a local education authority are responsible but for whom no statement is maintained under section 168 of this Act asks the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act,
 - (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
 - (c) it is necessary for the authority to make an assessment under that section,
- the authority shall comply with the request.
- (2) If in any case where subsection (1)(a) and (b) above applies the authority determine not to comply with the request—
- (a) they shall give notice of that fact and of the effect of paragraph (b) below to the child’s parent, and
 - (b) the parent may appeal to the Tribunal against the determination.
- (3) On an appeal under subsection (2) above the Tribunal may—
- (a) dismiss the appeal, or
 - (b) order the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act.

174 Assessment of educational needs at request of governing body of grant-maintained school

- (1) Where in the case of a child for whom a local education authority are responsible but for whom no statement is maintained under section 168 of this Act—
- (a) a grant-maintained school is specified in a direction in respect of the child under section 13 of this Act,
 - (b) the governing body of the school ask the authority to arrange for an assessment to be made in respect of the child under section 167 of this Act, and
 - (c) such an assessment has not been made within the period of six months ending with the date on which the request is made,
- the local education authority shall serve a notice under subsection (2) below on the child’s parent.
- (2) The notice shall inform the child’s parent—

- (a) that the local education authority propose to make an assessment of the child's educational needs,
 - (b) of the procedure to be followed in making the assessment,
 - (c) of the name of the officer of the authority from whom further information may be obtained, and
 - (d) of the parent's right to make representations, and submit written evidence, to the authority within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (3) Where—
- (a) a local education authority have served a notice under subsection (2) above and the period specified in the notice in accordance with subsection (2)(d) above has expired, and
 - (b) the authority are of the opinion, after taking into account any representations made and any evidence submitted to them in response to the notice, that the child falls, or probably falls, within subsection (4) below,
- they shall make an assessment of his educational needs under section 167 of this Act.
- (4) A child falls within this subsection if—
- (a) he has special educational needs, and
 - (b) it is necessary to determine the special educational provision which any learning difficulty he may have calls for.
- (5) Where a local education authority decide in pursuance of this section to make an assessment under that section, they shall give notice in writing to the child's parent, and to the governing body of the grant-maintained school, of that decision and of their reasons for making it.
- (6) Where, at any time after serving a notice under subsection (2) above, a local education authority decide not to assess the educational needs of the child concerned, they shall give notice in writing to the child's parent and to the governing body of the grant-maintained school of their decision.

175 Assessment of educational needs of children under two

- (1) Where a local education authority are of the opinion that a child in their area who is under the age of two years falls, or probably falls, within subsection (2) below—
- (a) they may, with the consent of his parent, make an assessment of the child's educational needs, and
 - (b) they shall make such an assessment at the request of his parent.
- (2) A child falls within this subsection if—
- (a) he has special educational needs, and
 - (b) it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) An assessment under this section shall be made in such manner as the authority consider appropriate.
- (4) After making an assessment under this section, the authority—
- (a) may make a statement of the child's special educational needs, and

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(b) may maintain that statement,
in such manner as they consider appropriate.

176 Duty of District Health Authority or National Health Service trust to notify parent etc

- (1) This section applies where a District Health Authority or a National Health Service trust, in the course of exercising any of their functions in relation to a child who is under the age of five years, form the opinion that he has (or probably has) special educational needs.
- (2) The health authority or trust shall—
 - (a) inform the child’s parent of their opinion and of their duty under this section, and
 - (b) after giving the parent an opportunity to discuss that opinion with an officer of the health authority or trust, bring it to the attention of the appropriate local education authority.
- (3) If the health authority or trust are of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, they shall inform the parent accordingly.

Special Educational Needs Tribunal

177 Constitution of Tribunal

- (1) There shall be established a tribunal, to be known as the Special Educational Needs Tribunal (referred to in this Part of this Act as “the Tribunal”), to exercise the jurisdiction conferred on it by this Part of this Act.
- (2) There shall be appointed—
 - (a) a President of the Tribunal (referred to in this Part of this Act as “the President”),
 - (b) a panel of persons (referred to in this Part of this Act as “the chairmen’s panel”) who may serve as chairman of the Tribunal, and
 - (c) a panel of persons (referred to in this Part of this Act as “the lay panel”) who may serve as the other two members of the Tribunal apart from the chairman.
- (3) The President and the members of the chairmen’s panel shall each be appointed by the Lord Chancellor.
- (4) The members of the lay panel shall each be appointed by the Secretary of State.
- (5) Regulations may—
 - (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as may be determined from time to time by the President, and
 - (b) make such other provision in connection with the establishment and continuation of the Tribunal as the Secretary of State considers necessary or desirable.
- (6) The Secretary of State may, with the consent of the Treasury, provide such staff and accommodation as the Tribunal may require.

178 The President and members of the panels

- (1) No person may be appointed President or member of the chairmen's panel unless he has a seven year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).
- (2) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed.
- (3) If, in the opinion of the Lord Chancellor, the President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.
- (4) Each member of the chairmen's panel or lay panel shall hold and vacate office under the terms of the instrument under which he is appointed.
- (5) The President or a member of the chairmen's panel or lay panel—
 - (a) may resign office by notice in writing to the Lord Chancellor or (as the case may be) the Secretary of State, and
 - (b) is eligible for re-appointment if he ceases to hold office.

179 Remuneration and expenses

- (1) The Secretary of State may pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and allowances as he may, with the consent of the Treasury, determine.
- (2) The Secretary of State may defray the expenses of the Tribunal to such amount as he may, with the consent of the Treasury, determine.

180 Tribunal procedure

- (1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part of this Act and the initiation of such an appeal.
- (2) The regulations may, in particular, include provision—
 - (a) as to the period within which, and the manner in which, appeals are to be instituted,
 - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
 - (i) for determining by which tribunal any appeal is to be heard, and
 - (ii) for the transfer of proceedings from one tribunal to another,
 - (c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,
 - (d) for the holding of hearings in private in prescribed circumstances,
 - (e) for hearings to be conducted in the absence of any member, other than the chairman,
 - (f) as to the persons who may appear on behalf of the parties,
 - (g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
 - (h) requiring persons to attend to give evidence and produce documents,
 - (i) for authorising the administration of oaths to witnesses,

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- (j) for the determination of appeals without a hearing in prescribed circumstances,
 - (k) as to the withdrawal of appeals,
 - (l) for the award of costs or expenses,
 - (m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),
 - (n) for the registration and proof of decisions and orders, and
 - (o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.
- (3) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may with the consent of the Treasury determine.
- (4) The Arbitration Act 1950 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Act.
- (5) Any person who without reasonable excuse fails to comply with—
- (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of subsection (2)(g) above, or
 - (b) any requirement imposed by the regulations by virtue of subsection (2)(h) above,
- is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

181 Supervision of and appeals from Tribunal

- (1) In paragraph 15 of Part I of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under direct supervision of Council on Tribunals), after sub-paragraph (d) there is inserted—
- “(e) the Special Educational Needs Tribunal constituted under section 177 of the Education Act 1993”.
- (2) In section 11(1) of that Act (appeals from certain tribunals), for “15(a) or (d)” there is substituted “15(a), (d) or (e)”.

Special schools and independent schools

182 Special schools

- (1) A school which is specially organised to make special educational provision for pupils with special educational needs and is for the time being approved by the Secretary of State under section 188 of this Act shall be known as a special school.
- (2) A special school maintained by a local education authority shall be known as a maintained special school.
- (3) A special school conducted by a governing body incorporated in pursuance of proposals for the purpose—
- (a) made by the funding authority under section 183 of this Act, or

(b) made under section 186 of this Act,
shall be known as a grant-maintained special school.

(4) Schedule 11 to this Act (which provides for the government and conduct of grant-maintained special schools) shall have effect.

183 Establishment, etc. of maintained or grant-maintained special schools

(1) The funding authority may establish in the area of any local education authority a school which is specially organised to make special educational provision for pupils with special educational needs if—

- (a) an order under section 12(1) of this Act applies to the area, and
- (b) the school is intended to provide relevant education for pupils in the area, whether or not it also provides other education or education for pupils from outside the area.

(2) Where a local education authority intend—

- (a) to establish a school which is specially organised to make special educational provision for pupils with special educational needs,
- (b) to make any prescribed alteration to a maintained special school, or
- (c) to discontinue such a school,

they shall serve under subsection (6) below notice of their proposals.

(3) Where the funding authority—

- (a) intend to establish a school which is specially organised to make special educational provision for pupils with special educational needs,
- (b) are of the opinion that any prescribed alteration should be made to a grant-maintained special school, or
- (c) are of the opinion that such a school should be discontinued,

and an order under section 12(1) of this Act applies to the area concerned, they shall serve under subsection (6) below notice of their proposals.

(4) Where the governing body of a grant-maintained special school intend—

- (a) to make any prescribed alteration to the school, or
- (b) to discontinue the school,

they shall serve under subsection (6) below notice of their proposals.

(5) Except in pursuance of proposals under this section approved under section 184 of this Act—

- (a) a local education authority or the funding authority may not establish a school which is specially organised to make special educational provision for pupils with special educational needs,
- (b) no prescribed alteration may be made to a maintained or grant-maintained special school, and
- (c) a maintained or grant-maintained special school may not be discontinued.

(6) Notice for the purposes of subsections (2) to (4) above shall be served on—

- (a) the Secretary of State, and
- (b) such other persons as may be prescribed,

and shall give such information as may be prescribed.

Status: This is the original version (as it was originally enacted).

- (7) If the proposals are approved under section 184 of this Act, the body which served the notice or, in the case of proposals under subsection (3)(b) or (c) above, the governing body of the school shall implement them.
- (8) If proposals under subsection (3)(a) above are so approved, a governing body of the school shall be incorporated on such date as may be specified in the proposals (referred to in this Part of this Act as the “incorporation date”).
- (9) In relation to the establishment of a school in pursuance of proposals under subsection (3)(a) above, regulations may apply any provision of Chapter IV or V of Part II of this Act with or without modification.
- (10) In this Part of this Act—
 - (a) references to the discontinuance of a maintained special school are to the local education authority ceasing to maintain it, and
 - (b) references to an alteration to a school include the transfer of the school to a new site.

184 Procedure for dealing with proposals

- (1) Before a body serve notice of any proposals under section 183 of this Act they shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection, the body shall have regard to any guidance given from time to time by the Secretary of State.
- (2) Any person may, within such period (which shall not be less than two months beginning with the date on which the notice is served) as may be specified in the notice under that section, submit objections to the proposals to the body which served the notice.
- (3) Within one month after the end of the period for making objections specified in the last notice to be served under that section, the body which served the notice shall transmit to the Secretary of State copies of all objections which have been duly made (and not withdrawn in writing), together with their observations on them.
- (4) The Secretary of State may, after considering the proposals, any objections to the proposals and any observations on the objections, reject the proposals, approve them without modification or, after consulting the body which served notice of them and, in the case of proposals under section 183(3)(b) or (c) of this Act, the governing body, approve them with such modifications as he thinks desirable.
- (5) The Secretary of State may modify any proposals required under section 183 of this Act to be implemented—
 - (a) in the case of proposals under section 183(3)(b) or (c) of this Act—
 - (i) at the request of the governing body, or
 - (ii) at the request of the funding authority and after consulting the governing body, or
 - (b) in any other case, at the request of the body which served notice of the proposals.
- (6) References in this Part of this Act to proposals under section 183 of this Act, in any case where the Secretary of State has modified such proposals in pursuance of this section, are to the proposals as so modified.

- (7) Service of a notice under that section which is sent by post in accordance with section 113 of the Education Act 1944 (notices) shall be taken to have been effected on the second day after the day on which the notice is posted.

185 Approval of premises of maintained or grant-maintained special schools

- (1) Where a body serve under section 183(6) of this Act notice of proposals for the establishment of a school which is specially organised to make special educational provision for pupils with special educational needs, they shall submit to the Secretary of State the particulars in respect of the proposed premises of the school mentioned in subsection (3) below.
- (2) Where a body serve under section 183(6) of this Act notice of proposals for making a prescribed alteration to a special school, they shall if the Secretary of State so directs submit to him the particulars in respect of the premises or proposed premises of the school mentioned in subsection (3) below.
- (3) The particulars are—
- (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
 - (b) such other particulars in respect of the premises or proposed premises of the school as the Secretary of State may require,
- and they shall be submitted at such time and in such form and manner as the Secretary of State may direct.
- (4) The particulars submitted under subsection (3)(a) above shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
- (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
 - (b) if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990, that document.
- (5) Particulars submitted under this section in respect of the premises or proposed premises of the school require the approval of the Secretary of State.
- (6) Where any proposals falling within subsection (1) or (2) above are required to be implemented, they shall be implemented in accordance with any particulars approved under this section.

186 Maintained special school becoming grant-maintained special school

- (1) Regulations may make provision for maintained special schools, or any class or description of such schools, to cease to be maintained by the local education authority and become grant-maintained special schools.
- (2) Regulations shall require, before a maintained special school becomes a grant-maintained special school in pursuance of the regulations—
- (a) the submission to the Secretary of State of proposals for the purpose by the governing body of the school, and
 - (b) the approval of such proposals, as originally submitted or as modified by the Secretary of State (whether before or after they are approved).

Status: This is the original version (as it was originally enacted).

- (3) If the proposals are so approved, a governing body of the school shall be incorporated in accordance with Schedule 11 to this Act on the date of approval (referred to in this Part of this Act as the “incorporation date”).
- (4) Regulations made for the purposes of this section may apply any provision of—
 - (a) Chapter II, III or V of Part II of this Act,
 - (b) section 184 of this Act, or
 - (c) section 273 of this Act,
 with or without modification.

187 Groups including grant-maintained special schools

- (1) Regulations may modify the provisions of Chapter IX of Part II of this Act for the purpose of securing that—
 - (a) two or more grant-maintained special schools, or one or more grant-maintained special schools together with one or more grant-maintained schools, may be conducted as a group by a single governing body,
 - (b) a special school maintained by a local education authority may cease to be so maintained and may be conducted by a governing body incorporated under that Chapter, and
 - (c) a grant-maintained special school may become a member of a group of schools conducted by such a governing body,
 and that, where a group of schools including one or more special schools is conducted by such a governing body, the governing body are appropriately constituted.
- (2) Regulations made for the purpose mentioned in subsection (1) above may modify sections 183 to 185 and 188 of this Act and Schedule 11 to this Act.
- (3) Where that Chapter applies to special schools by virtue of regulations—
 - (a) section 22(1) of this Act shall not be read as applying to such schools,
 - (b) a special school conducted by a governing body incorporated under that Chapter shall be known as a grant-maintained special school, and
 - (c) references in Chapter I of Part V of this Act to a group of grant-maintained schools include a group of one or more grant-maintained special schools together with one or more grant-maintained schools.

188 Approval of special schools

- (1) The Secretary of State may approve any school which is specially organised to make special educational provision for pupils with special educational needs, not being a maintained or grant-maintained school, and may give his approval before or after the school is established.
- (2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.
- (3) Any school which—
 - (a) is established in pursuance of proposals approved under section 184 of this Act, or
 - (b) immediately before the coming into force of this section, is a special school,
 shall be treated, subject to subsection (4) below, as approved under this section.

- (4) Regulations may make provision as to—
 - (a) the requirements which are to be complied with by a school while approved under this section, and
 - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3) above) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4) above, the requirements which may be imposed by the regulations include requirements—
 - (a) which call for arrangements to be approved by the Secretary of State, or
 - (b) as to the organisation of any special school as a primary school or as a secondary school.
- (6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a special school—
 - (a) receives religious education and attends religious worship, or
 - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.
- (7) Where approval is withdrawn from a maintained special school or grant-maintained special school, the local education authority or, as the case may be, the governing body shall serve under section 183 of this Act notice of their proposals to discontinue the school.
- (8) For the purposes of proposals made under subsection (7) above—
 - (a) that section shall have effect as if the school had not ceased to be a special school on the withdrawal of the approval, and
 - (b) section 184 of this Act shall have effect as if subsections (1) to (3), and the reference in subsection (4) to the rejection of proposals, were omitted.

189 Approval of independent schools

- (1) The Secretary of State may approve an independent school as suitable for the admission of children for whom statements are maintained under section 168 of this Act.
- (2) Regulations may make provision as to—
 - (a) the requirements which are to be complied with by a school as a condition of its approval under this section,
 - (b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and
 - (c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as the Secretary of State sees fit to impose.
- (4) In any case where there is a failure to comply with such a condition imposed under subsection (3) above, the Secretary of State may withdraw his approval.
- (5) No person shall so exercise his functions under this Part of this Act that a child with special educational needs is educated in an independent school unless—

Status: This is the original version (as it was originally enacted).

- (a) the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements are maintained under section 168 of this Act, or
- (b) the Secretary of State consents to the child being educated there.

190 Provision of education at non-maintained schools

- (1) Subsection (2) below applies where—
 - (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school, and
 - (b) either the name of the school is specified in a statement in respect of the child under section 168 of this Act or the local education authority are satisfied that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school and that it is appropriate for the child to be provided with education at the particular school.
- (2) Where this subsection applies, the local education authority shall—
 - (a) pay the whole of the fees payable in respect of the education provided for him at the school, and
 - (b) if board and lodging are provided for the child at the school and the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided, pay the whole of the fees payable in respect of the board and lodging.
- (3) In this section, “maintained school” means—
 - (a) a school maintained by a local education authority,
 - (b) a grant-maintained school, and
 - (c) a grant-maintained special school.

Variation of deeds

191 Variation of trust deeds etc. by order

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 188 or 189 of this Act.
- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.