



# Education Act 1996

## 1996 CHAPTER 56

### PART IV

#### SPECIAL EDUCATIONAL NEEDS

### CHAPTER I

#### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Introductory*

#### **312 Meaning of “special educational needs” and “special educational provision” etc.**

- (1) A child has “special educational needs” for the purposes of this Act if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) Subject to subsection (3) (and except for the purposes of [F<sup>1</sup>section 15A or 15B]) a child has a “learning difficulty” for the purposes of this Act 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 [F<sup>2</sup>compulsory school age] and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when of F<sup>3</sup> . . . 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 this Act “special educational provision” means—

*Status: Point in time view as at 01/12/2004.*

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- (a) in relation to a child who has attained the age of two, 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)<sup>F4</sup> . . . , and
  - (b) in relation to a child under that age, educational provision of any kind.
- (5) In this Part—

“child” includes any person who has not attained the age of 19 and is a registered pupil at a school;

[<sup>F5</sup>“maintained school” means any community, foundation or voluntary school or any community or foundation special school not established in a hospital.]

#### Textual Amendments

- F1** Words in s. 312(2) substituted (28.7.2000 for certain purposes otherwise 1.4.2001) by 2000 c. 21, ss. 149, 154, **Sch. 9 para. 56** (with s. 150); S.I. 2001/654, art. 2(2), **Sch. Pt. II** (with art. 3); S.I. 2001/1274, art. 2(1), **Sch. Pt. I**
- F2** Words in s. 312(2)(c) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 23(a)**; S.I. 1998/386, art. 2, **Sch. 1 Pt. III**
- F3** Words in s. 312(2)(c) repealed (1.8.1998) by 1997 c. 44, s. 57(1)(4), Sch. 7 para. 23(b), **Sch. 8**; S.I. 1998/386, art. 2, **Sch. 1 Pt. III**
- F4** Words in s. 312(4)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 71(a), **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F5** Words in s. 312(5) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 71(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

### *Code of Practice*

#### **313 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 [<sup>F6</sup>maintained schools][<sup>F7</sup> and maintained nursery schools ] of their functions under this Part.
- (2) It shall be the duty of—
- (a) local education authorities, and such governing bodies, exercising functions under this Part, 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,
- to have regard to the provisions of the code.
- (3) On any appeal under this Part to the Tribunal, 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.
- [<sup>F8</sup>(5) In this Part (except sections 333 to 336), “the Tribunal”, in relation to an appeal, means—

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- (a) where the local education authority concerned is in England, the Special Educational Needs and Disability Tribunal,
- (b) where the local education authority concerned is in Wales, the Special Educational Needs Tribunal for Wales.]

#### Textual Amendments

- F6** Words in s. 313(1) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 72** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F7** Words in s. 313(1) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 36** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F8** S. 313(5) substituted (1.9.2003) by Education Act 2002 (c. 32), s. 216(3), **Sch. 18 para. 2** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, Sch. Pt. III

### 314 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*

### 315 Review of arrangements.

- (1) A local education authority shall keep under review the arrangements made by them for special educational provision.
- (2) In doing so the authority shall, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult [<sup>F9</sup>the governing bodies of community, foundation and voluntary and community and foundation special schools [<sup>F10</sup>and maintained nursery schools ] in their area.].

#### Textual Amendments

- F9** Words in s. 315(2) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.73** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F10** Words in s. 315(2) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 37** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

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### **[<sup>F11</sup>316 Duty to educate children with special educational needs in mainstream schools**

- (1) This section applies to a child with special educational needs who should be educated in a school.
- (2) If no statement is maintained under section 324 for the child, he must be educated in a mainstream school.
- (3) If a statement is maintained under section 324 for the child, he must be educated in a mainstream school unless that is incompatible with—
  - (a) the wishes of his parent, or
  - (b) the provision of efficient education for other children.
- (4) In this section and section 316A “mainstream school” means any school other than—
  - (a) a special school, or
  - (b) an independent school which is not—
    - (i) a city technology college,
    - (ii) a city college for the technology of the arts, or
    - (iii) [<sup>F12</sup>an Academy].]

#### **Textual Amendments**

**F11** Ss. 316, 316A substituted (15.6.2001 for certain purposes and otherwise 1.1.2002 for E., 21.1.2002 for certain purposes and otherwise 1.4.2002 for W.) for s. 316 by 2001 c. 10, s. 1 (with s. 43(13)); S.I. 2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, arts. 4, 5, Sch. Pts. I, II

**F12** Words s. 316(4)(b)(iii) substituted (26.7.2002) by Education Act 2002 (c. 32), ss. 65(3), 216(2), Sch. 7 para. 6(3) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 2

#### **Modifications etc. (not altering text)**

**C1** S. 316(2)(3) excluded (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(5)(d) (10), 162 (with s. 159)

### **[<sup>F13</sup>316A Education otherwise than in mainstream schools**

- (1) Section 316 does not prevent a child from being educated in—
  - (a) an independent school which is not a mainstream school, or
  - (b) a school approved under section 342,
 if the cost is met otherwise than by a local education authority.
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
  - (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
    - (iii) his parent, and
    - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;

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- (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;
  - (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
    - (iii) his parent;
  - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
- (a) section 348, or
  - (b) paragraph 3 of Schedule 27.
- (4) If a local education authority decide—
- (a) to make a statement for a child under section 324, but
  - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,
- they shall, in making the statement, comply with section 316(3).
- (5) A local education authority may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.
- (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
- (8) An authority must have regard to guidance about section 316 and this section issued—
- (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).
- (10) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.
- (11) “Authority”—
- (a) in relation to a maintained school [<sup>F14</sup> or maintained nursery school] , means each of the following—
    - (i) the local education authority,
    - (ii) the school’s governing body, and
  - (b) in relation to <sup>F15</sup>... a pupil referral unit, means the local education authority.]

#### Textual Amendments

**F13** Ss. 316, 316A substituted (15.6.2001 for certain purposes and otherwise 1.1.2002 for E., 21.1.2002 for certain purposes and otherwise 1.4.2002 for W.) for s. 316 by 2001 c. 10, s. 1 (with s. 43(13)); S.I.

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2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, arts. 4, 5, Sch. Pts. I, II

**F14** Words in s. 316A(11)(a) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 38(a) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

**F15** Words in s. 316A(11)(b) repealed (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 38(b), Sch. 22 Pt. 3 (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

### 317 Duties of governing body or LEA in relation to pupils with special educational needs.

- (1) <sup>F16</sup>The governing body of a community, foundation or voluntary school or 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.

<sup>F17</sup>(2) In subsection (1)(b) “the responsible person” means 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 subsection, that other governor).]

- (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 <sup>F18</sup>community, foundation and voluntary schools<sup>F19</sup> and maintained nursery schools ] shall, in exercising functions relating to the provision for such children, consult the local education authority <sup>F20</sup>. . . and the governing bodies of other such schools, <sup>F21</sup>...

<sup>F21</sup>(b) . . . . .

- (4) Where a child who has special educational needs is being educated in <sup>F22</sup>a community, foundation or voluntary 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—
- (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) <sup>F23</sup>Each governors’ report] 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.

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- [<sup>F24</sup>(6) Each governors' report shall also include information as to—
- (a) the arrangements for the admission of disabled persons as pupils at the school,
  - (b) the steps taken to prevent disabled pupils from being treated less favourably than other pupils,
  - (c) the facilities provided to assist access to the school by disabled pupils, and
  - (d) the plan prepared by the governing body under section 28D of the Disability Discrimination Act 1995 (“the 1995 Act”).

<sup>F25</sup>(7) “Governors’ report” means the report prepared under section 42(1) of the School Standards and Framework Act 1998.

(7A) “Disabled person” means a person who is a disabled person for the purposes of the 1995 Act; and section 28Q of the 1995 Act (interpretation) applies for the purposes of subsection (6) as it applies for the purposes of Chapter 1 of Part 4 of that Act.]

#### Textual Amendments

- F16** Words in s. 317(1) substituted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F17** S. 317(2) substituted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F18** Words in s. 317(3)(a) substituted (1.9.1999) by [1998 c. 31, s. 140\(1\), Sch. 30 para. 74\(4\)\(a\)\(i\)](#) (with ss. 138(9), 144(6)) S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F19** Words in s. 317(3)(a) inserted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(4\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F20** Words in s. 317(3)(a) repealed (1.9.1999) by [1998 c. 31, s. 140\(1\)\(3\), Sch. 30 para. 74\(4\)\(a\)\(ii\), Sch. 31](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F21** S. 317(3)(b) and word repealed (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(4\)\(b\), Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F22** Words in s. 317(4) substituted (1.9.1999) by [1998 c. 31, s. 140\(1\), Sch. 30 para. 74\(5\)](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F23** Words in s. 317(5) substituted (1.1.2002 (E.) and 1.4.2002 (W.)) by [2001 c. 10, s. 42\(1\), Sch. 8 para. 5](#) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4; S.I. 2002/74, [art. 5, Sch. Pt. II](#)
- F24** S. 317(6)-(7A) substituted for s. 317(6)-(7) (1.9.2002 for E., 8.10.2003 for W.) by [Special Educational Needs and Disability Act 2001 \(c. 10\), s. 14\(2\)](#), s. 43(3) (with s. 43(13)); S.I. 2002/2217, art. 4, Sch. 1, Pt. 2; S.I. 2003/2532, art. 2, Sch.
- F25** Words in s. 317(7) substituted (1.10.2002 for E., 1.9.2004 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(5\)](#) (with ss. 210(8), 214(4)); S.I. 2002/2439, art. 3; S.I. 2004/1728, art. 5, Sch. Pt. 2

#### Modifications etc. (not altering text)

- C2** S. 317 modified (5.11.2004) by [The New Relationship with Schools \(Governors Annual Report\) Order 2004 \(S.I. 2004/2683\), arts. 1\(1\), 3](#)
- C3** S. 317(1) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\), arts. 1\(1\), 3\(a\)](#)
- C4** S. 317(5) modified (1.12.2004) by [The New Relationship with Schools \(Governors Annual Report\) \(No 2\) Order 2004 \(S.I. 2004/2810\), arts. 1\(1\), 3\(a\)](#)



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**C5** S. 317(6) modified (1.12.2004) by [The New Relationship with Schools \(Governors Annual Report\) \(No 2\) Order 2004 \(S.I. 2004/2810\)](#), arts. 1(1), **3(b)**

**Commencement Information**

**II** S. 317 wholly in force; s. 317(1)-(5)(7) in force at 1.11.1996 see s. 583(3)(5); s. 317(6) in force at 1.1.1997 by [S.I. 1996/2904](#), **art. 2**

**[<sup>F26</sup>317A Duty to inform parent where special educational provision made**

- (1) This section applies if—
  - (a) a child for whom no statement is maintained under section 324 is a registered pupil at—
    - (i) a community, foundation or voluntary school [<sup>F27</sup> or a maintained nursery school] , or
    - (ii) a pupil referral unit,
  - (b) special educational provision is made for him at the school because it is considered that he has special educational needs, and
  - (c) his parent has not previously been informed under this section of special educational provision made for him at the school.
- (2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child’s parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.
- (3) In any other case, the governing body must inform the child’s parent that special educational provision is being made for him there because it is considered that he has special educational needs.]

**Textual Amendments**

- F26** S. 317A inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by [2001 c. 10, s. 7\(1\) \(with s. 43\(13\)\)](#); [S.I. 2001/2217, art. 5, Sch. Pt. II](#) (as amended by [S.I. 2001/2614, art. 4](#)); [S.I. 2002/74, art. 5, Sch. Pt. II](#)
- F27** Words in s. 317A(1)(a)(i) inserted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 40](#) (with ss. 210(8), 214(4)); [S.I. 2003/1667, art. 4](#); [S.I. 2005/2910, art. 4, Sch.](#)

**Modifications etc. (not altering text)**

- C6** S. 317A(1) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), **3(a)**

**318 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 [<sup>F28</sup>community, foundation or voluntary schools][<sup>F29</sup> or maintained nursery schools] (in their or any other area) in the performance of the governing bodies’ duties under section 317(1)(a), or
  - (b) the governing bodies of [<sup>F28</sup>community or foundation special schools] (in their or any other area) in the performance of the governing bodies’ duties, supply goods or services to those bodies.



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(2) The terms on which goods or services are supplied by local education authorities under <sup>F30</sup>this section to the governing bodies of community, foundation or voluntary schools <sup>F31</sup>[ , maintained nursery schools ] or community or foundation special schools in any other area] may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed.

<sup>F32</sup>[(3) A local education authority <sup>F33</sup>[in England] may supply goods and services to any authority <sup>F33</sup>[in England] or other person (other than a governing body within subsection (1)) for the purpose only of assisting them in making for any child to whom subsection (3A) applies any special educational provision which any learning difficulty of the child calls for.

(3A) This subsection applies to any child—

(a) who is receiving relevant nursery education within the meaning of section 123 of the School Standards and Framework Act 1998, <sup>F34</sup>...

<sup>F34</sup>(b) .....]

<sup>F35</sup>[(3B) A local education authority in Wales may supply goods and services to any authority in Wales or other person (other than a governing body within subsection(1)) for the purpose of assisting them in making for a child any special educational provision which any learning difficulty of the child calls for.]

(4) This section is without prejudice to the generality of any other power of local education authorities to supply goods or services.

#### Textual Amendments

**F28** Words in s. 318(1)(a)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 75(2)(a)(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

**F29** Words in s. 318(1) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 41(2)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

**F30** Words in s. 318(2) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 75(3)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

**F31** Words in s. 318(2) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 41(3)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

**F32** S. 318(3)(3A) substituted (1.10.1998) for s. 318(3) by 1998 c. 31, ss. 140(1), **Sch. 30 para. 75(4)** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**

**F33** S. 318(3): words inserted (19.12.2002) after the word "authority" by virtue of Education Act 2002 (c. 32), **ss. 194(2)(a)**, 216(3) (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 4**, Sch. Pt. 1

**F34** S. 318(3A)(b) repealed (1.4.2003 for E., 2.1.2008 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2007/3611, art. 4(1), Sch. Pt. 1

**F35** S. 318(3B) inserted (19.12.2002) by Education Act 2002 (c. 32), **ss. 194(2)(b)**, 216(3) (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 4**, Sch. Pt. 1

### 319 Special educational provision otherwise than in schools.

(1) Where a local education authority are satisfied that it would be inappropriate for—

(a) the special educational provision which a learning difficulty of a child in their area calls for, or

(b) any part of any such provision,

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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.

### **320 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 324 to attend an institution outside England and Wales which specialises in providing for children with special needs.
- (2) In subsection (1) "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*

### **321 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 a local education authority are responsible for a child if he is in their area and—
- (a) he is a registered pupil at a [F36]maintained school|[F37] or maintained nursery school] ,
  - <sup>F38</sup>[(b) education is provided for him at a school which is not a maintained school [F37] or maintained nursery school] but is so provided at the expense of the 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

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- (d) he is not a registered pupil at a school but is not under the age of two or over compulsory school age and has been brought to their attention as having (or probably having) special educational needs.

#### Textual Amendments

- F36** Words in s. 321(3)(a) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 76(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1)**, Sch. 1
- F37** Words in s. 321(3)(a)(b) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 42** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F38** S. 321(3)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 76(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

### 322 Duty of Health Authority or local authority to help local education authority.

- (1) Where it appears to a local education authority that any Health Authority [<sup>F39</sup>Primary Care Trust] or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of the authority [<sup>F39</sup>or trust], specifying the action in question.
- (2) An authority [<sup>F40</sup>or a trust] 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) applies.
- (3) This subsection applies—
- (a) in the case of a Health Authority [<sup>F41</sup>or Primary Care Trust], if that authority [<sup>F41</sup>or trust] consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the <sup>M1</sup>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 [<sup>F42</sup>or a trust] are under a duty by virtue of subsection (2) to comply with a request to help a local education authority in the making of an assessment under section 323 or a statement under section 324 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 county borough council, a district council (other than one for an area for which there is a county council), a London borough council or the Common Council of the City of London.

#### Textual Amendments

- F39** Words in s. 322(1) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 32(2)(a)(i)(ii)** (with s. 2(5))
- F40** Words in s. 322(2) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 32(2)(b)** (with s. 2(5))
- F41** Words in s. 322(3)(a) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 32(2)(c)(i)(ii)** (with s. 2(5))

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**F42** Words in s. 322(4) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 32(2)(d) (with 2(5))

#### Marginal Citations

**M1** 1977 c. 49.

### 323 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), they shall serve a notice on the child's parent informing him—
- (a) that they [<sup>F43</sup>are considering whether] 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 must not be less than 29 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) and the period specified in the notice in accordance with subsection (1)(d) 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),
- 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 26 has effect in relation to the making of assessments under this section.
- (6) Where, at any time after serving a notice under subsection (1), 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.

#### Textual Amendments

**F43** Words in s. 323(1)(a) substituted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1), Sch. 8 para. 11(1) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

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### **324 Statement of special educational needs.**

- (1) If, in the light of an assessment under section 323 of any child's educational needs and of any representations made by the child's parent in pursuance of Schedule 27, 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).
  - (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 27 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 319 and which they consider should be specified in the statement.
- [<sup>F44</sup>(4A) Subsection (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.]
- (5) Where a local education authority maintain a statement under this section, then—
    - (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 [<sup>F45</sup>maintained school][<sup>F46</sup> or maintained nursery school] is specified in the statement, the governing body of the school shall admit the child to the school.
- [<sup>F47</sup>(5A) Subsection (5)(b) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998.]
- (6) Subsection (5)(b) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
  - (7) Schedule 27 has effect in relation to the making and maintenance of statements under this section.

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### Textual Amendments

- F44** S. 324(4A) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E., 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 9, 43(4)(c) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II
- F45** Words in s. 324(5)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 77(a)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F46** Words in s. 324(5)(b) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 43** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F47** S. 324(5A) inserted (1.10.1998) by 1998 c. 31, ss. 140(1), 145(3), **Sch. 30 para. 77(b)** (with ss. 138(9), 144(6))

### Modifications etc. (not altering text)

- C7** S. 324(5)(b)(5A) applied (with modifications) (1.9.1999) by S.I. 1999/2800, reg. 7, Sch. paras. 1, **2-8**  
S. 324(5)(b)(5A) applied (with modifications) (18.10.1999) by S.I. 1999/2666, reg. 8, Sch. paras. 1(a), **2-8**
- C8** S. 324(5)(b)(5A) applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, **Sch. para. 1(a)**
- C9** S. 324(5A) applied (with modifications) (E.) (8.5.2003) by The New School (Admissions) (England) Regulations 2003 (S.I. 2003/1041), regs. 1(1), 9, **Sch. para. 1(a)**

## 325 Appeal against decision not to make statement.

- (1) If, after making an assessment under section 323 of the educational needs of any child for whom no statement is maintained under section 324, the local education authority do not propose to make such a statement, they shall give notice in writing of their decision, <sup>F48</sup> . . . to the child's parent.
- (2) In such a case, the child's parent may appeal to the Tribunal against the decision.
- [<sup>F49</sup>(2A) A notice under subsection (1) must inform the parent of the right of appeal under subsection (2) and contain such other information as may be prescribed.
- (2B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.]
- (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.

### Textual Amendments

- F48** Words in s. 325(1) repealed (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1)(6), 43(4)(e), Sch. 8 para. 6(1), Sch. 9 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614 art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

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**F49** Ss. 325(2A)(2B) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, s. 42(1), 43(4)(e), Sch. 8 para. 6(2) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt II (as amended by 2001/2614 art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

### **326 Appeal against contents of statement.**

- [<sup>F50</sup>(1) The parent of a child for whom a local education authority maintain a statement under section 324 may appeal to the Tribunal—
- (a) when the statement is first made,
  - (b) if an amendment is made to the statement, or
  - (c) if, after conducting an assessment under section 323, the local education authority determine not to amend the statement.
- (1A) An appeal under this section may be against any of the following—
- (a) the description in the statement of the local education authority's assessment of the child's special educational needs,
  - (b) the special educational provision specified in the statement (including the name of a school so specified),
  - (c) if no school is specified in the statement, that fact.]
- (2) Subsection (1)(b) does not apply where the amendment is made in pursuance of—
- (a) paragraph 8 (change of named school) or 11(3)(b) (amendment ordered by Tribunal) of Schedule 27, or
  - (b) directions under section 442 (revocation of school attendance order);
- and subsection (1)(c) does not apply to a determination made following the service of notice under [<sup>F51</sup>paragraph 2A] (amendment by LEA) of Schedule 27 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 (choice of school) of Schedule 27, 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.



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#### Textual Amendments

- F50** S. 326(1)(1A) substituted (1.1.2002 (E.), 1.4.2002 (W.)) by 2001 c. 10, s. 10, **Sch. 1 para. 19** (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**
- F51** Words in s. 326(2) substituted (1.1.2002 (E.), 1.4.2002 (W.)) by 2001 c. 10, s. 10, **Sch. 1 para. 20** (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**

#### Modifications etc. (not altering text)

- C10** S. 326(3) restricted (prosp.) by **Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(6), 162** (with s. 159)

### [<sup>F52</sup>326A Unopposed appeals

- (1) This section applies if—
  - (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
  - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must—
  - (a) in the case of an appeal under section 325, make a statement under section 324 of the child’s educational needs,
  - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child’s educational needs,
  - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent’s request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- [<sup>F53</sup>(6) In this section, “prescribed” means prescribed by regulations made—
  - (a) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State,
  - (b) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales.]]

#### Textual Amendments

- F52** S. 326A inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, **ss. 5, 43(4)(b)** (with s. 43(13)); S.I. 2001/2217, art. 5, **Sch. Pt. II** (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, **Sch. Pt. II**

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**F53** S. 326A(6) substituted (1.9.2003) by [Education Act 2002 \(c. 32\)](#), s. 216(3), [Sch. 18 para. 3](#) (with ss. 210(8), 214(4), [Sch. 18 para. 17](#)); S.I. 2002/3185, art. 6, [Sch. Pt. III](#)

### **327 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 324, and
  - <sup>F54</sup>[(b) in pursuance of the statement education is provided for the child at a school maintained by another local education authority [<sup>F55</sup>or at an independent 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.

#### **Textual Amendments**

- F54** S. 327(1)(b) substituted (1.9.1999) for s. 327(1)(b)(i)-(iii) by [1998 c. 31](#), s. 140(1), [Sch. 30 para.78](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F55** Words in s. 327(1)(b) inserted (1.9.2003 for E., 1.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 173, 216(4) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2003/2961, art. 6, [Sch. Pt. III](#)

### **328 Reviews of educational needs.**

- (1) Regulations may prescribe the frequency with which assessments under section 323 are to be repeated in respect of children for whom statements are maintained under section 324.
  - (2) Where—
    - (a) the parent of a child for whom a statement is maintained under section 324 asks the local education authority to arrange for an assessment to be made in respect of the child under section 323,
    - (b) no such assessment has 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 section 323, the authority shall comply with the request.
  - (3) If in any case where subsection (2)(a) and (b) applies the authority determine not to comply with the request—
    - (a) they shall give [<sup>F56</sup>notice in writing of that fact] to the child’s parent, and
    - (b) the parent may appeal to the Tribunal against the determination.
- <sup>F57</sup>(3A) A notice under subsection (3)(a) must inform the parent of the right of appeal under subsection (3)(b) and contain such other information as may be prescribed.
- (3B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.]
  - (4) On an appeal under subsection (3) the Tribunal may—

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- (a) dismiss the appeal, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (5) A statement under section 324 shall be reviewed by the local education authority—
- (a) on the making of an assessment in respect of the child concerned under section 323, and
  - (b) in any event, within the period of 12 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.

#### **Textual Amendments**

- F56** Words in s. 328(3)(a) substituted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para 7(1) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II
- F57** S. 328(3A)(3B) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 7(2) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

### **329 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 324 asks the authority to arrange for an assessment to be made in respect of the child under section 323,
  - (b) no such assessment has 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) applies the authority determine not to comply with the request—
- (a) they shall give [<sup>F58</sup>notice in writing of that fact] to the child's parent, and
  - (b) the parent may appeal to the Tribunal against the determination.
- [<sup>F59</sup>(2A) A notice under subsection (2)(a) must inform the parent of the right of appeal under subsection (2)(b) and contain such other information as may be prescribed.]
- (3) On an appeal under subsection (2) 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 323.

*Status: Point in time view as at 01/12/2004.*

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### Textual Amendments

- F58** Words in s. 329(2)(a) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 8(1) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II
- F59** S. 329(2A) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 8(2) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

## [<sup>F60</sup>329A] Review or assessment of educational needs at request of responsible body

- (1) This section applies if—
  - (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
  - (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
  - (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child's parent a notice informing him—
  - (a) that they are considering whether 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 their officer from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to them before the end of the period specified in the notice ("the specified period").
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child's parent and to the responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—
  - (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
  - (b) the parent may appeal to the Tribunal against the decision.

*Status: Point in time view as at 01/12/2004.*

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- (9) A notice given under subsection (8)(a) to the child’s parent must—
- (a) inform the parent of his right to appeal, and
  - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may—
- (a) dismiss it, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means—
- (a) a maintained school,
  - (b) a maintained nursery school,
  - (c) a pupil referral unit,
  - (d) an independent school,
  - (e) a school approved under section 342.
- (13) “The responsible body” means—
- (a) in relation to <sup>F61</sup>... a pupil referral unit, the head teacher,
  - (b) in relation to any other relevant school, the proprietor or head teacher, and
  - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.]

#### Textual Amendments

- F60** S. 329A inserted (15.6.2001 for certain purposes and 1.1.2002 otherwise for E., 21.1.2002 for certain purposes and 1.4.2002 otherwise for W.) by [2001 c. 10, s. 8 \(with s. 43\(13\)\)](#); [S.I. 2001/2217](#), arts. 4, 5, Sch. Pts. I, II (as amended by [S.I. 2001/2614](#), art. 4); [S.I. 2002/74](#), **arts. 4, 5**, Sch. Pts. I, II
- F61** Words in s. 329A(13)(a) repealed (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), s. 216(4), Sch. 21 para. 44, **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); [S.I. 2003/1667](#), art. 4; [S.I. 2005/2910](#), art. 4, Sch.

#### Modifications etc. (not altering text)

- C11** S. 329A modified (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 36(9)(b)**, 162 (with s. 159)
- C12** S. 329A(13)(a) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), **3(a)**

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### **331 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 falls, or probably falls, within subsection (2)—
  - (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 if requested to do so by 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
  - (b) may maintain that statement,in such manner as they consider appropriate.

### **332 Duty of Health Authority or National Health Service trust to notify parent etc.**

- (1) This section applies where a Health Authority [<sup>F62</sup>, a Primary Care Trust][<sup>F63</sup>, a National Health Service trust or an NHS foundation trust], in the course of exercising any of their functions in relation to a child who is under [<sup>F64</sup>compulsory school age], form the opinion that he has (or probably has) special educational needs.
- (2) The Authority or trust—
  - (a) shall inform the child's parent of their opinion and of their duty under paragraph (b), and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the Authority or trust, shall bring it to the attention of the appropriate local education authority.
- (3) If the 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.

#### **Textual Amendments**

**F62** Words in s. 332(1) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), **Sch. 1 para. 32(3)** (with s. 2(5))

**F63** Words in s. 332(1) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 4 para. 105**; S.I. 2004/759, art. 2

**F64** Words in s. 332(1) substituted (1.8.1998) by 1997 c. 44, s. 57(1), **Sch. 7 para. 24**; S.I. 1998/386, art. 2, **Sch. 1 Pt. III**

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## *F*<sup>65</sup> *General duties of local education authorities*

### **Textual Amendments**

**F65** S. 332A and preceding cross-heading inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 2 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

### **332A Advice and information for parents**

- (1) A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs.
- (2) In making the arrangements, the authority must have regard to any guidance given—
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (3) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.

### ***I*<sup>F66</sup> 332B Resolution of disputes**

- (1) A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other) about the exercise by authorities of functions under this Part.
- (2) A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.
- (3) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given—
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (5) The authority must take such steps as they consider appropriate for making the arrangements made under subsections (1) and (2) known to—
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal.
- (7) In this section—



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“authorities” means the governing bodies of maintained schools and the local education authority,

“relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.

- (8) For the purposes of this section a school is a relevant school in relation to a child if it is—
- (a) a maintained school or a maintained nursery school,
  - (b) a pupil referral unit,
  - (c) a city technology college, a city college for the technology of the arts or a city academy,
  - (d) an independent school named in the statement maintained for the child under section 324, or
  - (e) a school approved under section 342.]]

#### Textual Amendments

**F66** S. 332B inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 3 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II

### *Special Educational Needs Tribunal*

#### **333 Constitution of Tribunal.**

[<sup>F67</sup>(1Z) In this section and sections 334 to 336, “the Tribunal” means the Special Educational Needs and Disability Tribunal.]

[<sup>F68</sup>(1) The Tribunal shall exercise the jurisdiction conferred on it by this Part.]

- (2) There shall be appointed—
  - (a) a President of the Tribunal (referred to in this Part as “the President”),
  - (b) a panel of persons (referred to in this Part as “the chairmen’s panel”) who may serve as chairman of the Tribunal, and
  - (c) a panel of persons (referred to in this Part 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.

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#### Textual Amendments

- F67** S. 333(1Z) inserted (31.3.2003) by [Education Act 2002 \(c. 32\)](#), ss. 195, 216(3), **Sch. 18 para 4** (with ss. 210(8), 214(4), **Sch. 18 para. 17**); [S.I. 2002/3185](#), **art. 5**, **Sch. Pt. II**
- F68** S. 333(1) substituted (1.9.2002) by [2001 c. 10](#), ss. 42(1), 43(3), **Sch. 8 para. 3** (with s. 43(13)); [S.I. 2002/2217](#), **art. 3**, **Sch. 1 Pt. 1**

#### Modifications etc. (not altering text)

- C13** S. 333(5)(6) applied (with modifications) (1.7.1999) by [S.I. 1999/672](#), **art. 5**, **Sch. 2**

### 334 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 <sup>M2</sup>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.

#### Modifications etc. (not altering text)

- C14** S. 334(2) applied (with modifications) (1.7.1999) by [S.I. 1999/672](#), **art. 5**, **Sch. 2**

#### Marginal Citations

- M2** [1990 c. 41](#).

### 335 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 the Secretary of State 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.

#### Modifications etc. (not altering text)

- C15** S. 335 applied (with modifications) (1.7.1999) by [S.I. 1999/672](#), **art. 5**, **Sch. 2**

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### 336 Tribunal procedure.

- (1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part 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,
  - <sup>F69</sup>(d) .....
  - (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 [<sup>F70</sup>disclosure] 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,
  - (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.

[<sup>F71</sup>(2A) Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.]

- (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) Part I of the <sup>M3</sup>Arbitration Act 1996 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of [<sup>F72</sup>that Part].

[<sup>F73</sup>(4A) The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter 1 of Part 4 of the Disability Discrimination Act 1995.]

- (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), or
  - (b) any requirement imposed by the regulations by virtue of subsection (2)(h),is guilty of an offence.

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- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

- F69** Section 336(2)(d) repealed (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1)(6), 43(4)(e), Sch. 8 para. 13(2)(a), Sch. 9 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II
- F70** Word in s. 336(2)(g) substituted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 13(2)(b) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II
- F71** S. 336(2A) inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 13(3) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II
- F72** Words in s. 336(4) substituted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 42(1), 43(4)(e), Sch. 8 para. 13(4) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II
- F73** S. 336(4A) inserted (1.7.2002) by 2001 c. 10, s. 42(1), Sch. 8 para. 13(5) (with s. 43(13)); S.I. 2002/1721, art. 4, Sch. Pt. I

#### Modifications etc. (not altering text)

- C16** S. 336 applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2

#### Marginal Citations

- M3** 1996 c. 23.

### [<sup>F74</sup>336Z] Special Educational Needs Tribunal for Wales

- (1) There shall be a tribunal to be known as Tribiwnlys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales.
- (2) Sections 333 to 336 shall apply in relation to that tribunal as they apply in relation to the Special Educational Needs and Disability Tribunal, but as if—
  - (a) functions of the Secretary of State were functions of the National Assembly for Wales,
  - (b) references to the Secretary of State were references to the National Assembly for Wales,
  - (c) requirements for the Treasury's consent were omitted.
- (3) The powers of the National Assembly for Wales under sections 333(4) and (5) and 334(2) are exercisable only with the agreement of the Secretary of State.]

#### Textual Amendments

- F74** S. 336ZA inserted (31.3.2003) by Education Act 2002 (c. 32), ss. 195, 216(3), Sch. 18 para. 5 (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 5, Sch. Pt. II

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### [<sup>F75</sup>336A Compliance with orders

(1) If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.

[<sup>F76</sup>(2) In subsection (1), “prescribed” means prescribed by regulations made—

- (a) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State,
- (b) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State.]]

#### Textual Amendments

- F75** S. 336A inserted (11.5.2001 for certain purposes, 1.1.2002 otherwise for E. and 1.4.2002 otherwise for W.) by 2001 c. 10, ss. 4, 43(4)(a) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2001/3992, art. 5, Sch. Pt. II
- F76** S. 336A(2) substituted (1.9.2003) by Education Act 2002 (c. 32), s. 216(3), Sch. 18 para. 6 (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, Sch. Pt. III

**Status:**

Point in time view as at 01/12/2004.

**Changes to legislation:**

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