



# 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 [<sup>F1</sup>subsections (3) and (3A)] 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 [<sup>F2</sup>local authority] , or
  - (c) he is under [<sup>F3</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 [<sup>F4</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.

[<sup>F5</sup>(3A) Subsection (2) does not apply—

- (a) for the purposes of sections 15ZA, 15A, 15B and 507B, or

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- (b) for the purposes of sections 18A and 562H (except for the purpose of determining, for the purposes of those sections, whether a child has special educational needs).]
- (4) In this Act “special educational provision” means—
- (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 [<sup>F2</sup>local authority] (other than special schools) <sup>F6</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>F7</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 (1.9.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 2 para. 6(2)**; S.I. 2010/303, art. 6, Sch. 5
- F2** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F3** 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**
- F4** 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**
- F5** S. 312(3A) inserted (1.9.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 2 para. 6(3)**; S.I. 2010/303, art. 6, Sch. 5
- F6** 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**
- F7** 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**

#### [<sup>F8</sup>312A Children subject to detention

- (1) No provision of, or made under, this Part applies in relation to a child who is subject to a detention order and detained in relevant youth accommodation.
- (2) The following provisions of this section apply where a child who has been subject to a detention order is released having, immediately before release, been detained in relevant youth accommodation.
- (3) Subject to subsection (6), a statement which was maintained for the child by a local authority under section 324 immediately before the beginning of the detention is, from the child's release, to be treated as being maintained by that authority under section 324.
- (4) In subsection (3) “the beginning of the detention” means—
- (a) the beginning of the period of detention in relevant youth accommodation, or

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- (b) where that period is part of a continuous period, comprising periods of detention in relevant youth accommodation and in other accommodation, the beginning of that continuous period.
- (5) For the purposes of subsection (4), it is immaterial whether or not a period of detention is pursuant to a single order.
- (6) Where, on the child's release, a local authority (“the new authority”) other than the authority mentioned in subsection (3) (“the old authority”) becomes responsible for the child for the purposes of this Part—
  - (a) the old authority must transfer the statement to the new authority, and
  - (b) from the child's release, the statement is to be treated as being maintained by the new authority under section 324.]

#### Textual Amendments

**F8** S. 312A inserted (1.9.2010 for E., 1.4.2011 for W.) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), **ss. 52(2)**, 269(3)(4); S.I. 2010/303, art. 6, Sch. 5; S.I. 2011/829, art. 2(d)

### *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 [<sup>F9</sup>local authorities] and the governing bodies of [<sup>F10</sup>maintained schools][<sup>F11</sup> and maintained nursery schools ] of their functions under this Part.
- (2) It shall be the duty of—
  - (a) [<sup>F9</sup>local 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 [<sup>F9</sup>local 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>F12</sup>(5) In this Part <sup>F13</sup> ..., “the Tribunal”, in relation to an appeal, means—
  - (a) where the [<sup>F2</sup>local authority] concerned is in England, [<sup>F14</sup>the First-tier Tribunal] ,
  - (b) where the [<sup>F2</sup>local authority] concerned is in Wales, the Special Educational Needs Tribunal for Wales.]

#### Textual Amendments

**F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))

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- F9** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))
- F10** 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**
- F11** 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.
- F12** 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
- F13** Words in s. 313(5) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 128(a)**
- F14** Words in s. 313(5)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 128(b)**

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

- C1** S. 313(2) applied (E.) (1.2.2008) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2007 \(S.I. 2007/2979\)](#), reg. 1(1), **Sch. 1 para. 1**

**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 <sup>[F2]</sup>local 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>[F15]</sup>the governing bodies of community, foundation and voluntary and community and foundation special schools <sup>[F16]</sup>and maintained nursery schools ] in their area.].

**Textual Amendments**

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F15** 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**

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**F16** 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.

### [<sup>F17</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>F18</sup>an Academy].]

#### Textual Amendments

**F17** 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](#)

**F18** 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)

**C2** S. 316 modified (1.9.2013) by [The Operation of the Local Curriculum \(Wales\) Regulations 2013 \(S.I. 2013/1793\)](#), regs. 1(1), 5

**C3** 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>F19</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 [<sup>F21</sup>local 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—

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- (i) the [<sup>F21</sup>local 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;
  - (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 [<sup>F21</sup>local 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 [<sup>F21</sup>local 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 [<sup>F21</sup>local 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>F20</sup> or maintained nursery school] , means each of the following—
    - (i) the [<sup>F21</sup>local authority],

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- (ii) the school's governing body, and  
(b) in relation to <sup>F21</sup>... a pupil referral unit, means the [<sup>F2</sup>local authority].]

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F19** 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](#)
- F20** 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.](#)
- F21** 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.](#)

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

- C4** S. 316A(2)(c) amendment to earlier affecting provision [S.I. 2007/2599, art. 8 \(30.9.2010\)](#) by [The New Woodlands School \(Amendment\) Order 2010 \(S.I. 2010/2196\)](#), arts. 1, 2
- C5** S. 316A(2) modified (17.12.2007) by [The Harbour School Order 2007 \(S.I. 2007/3205\)](#), arts. 1, 3(a), 5, 6, 10 (as amended (15.12.2010) by [The Harbour School \(Amendment\) Order 2010 \(S.I. 2010/2804\)](#), arts. 1, 2)
- C6** S. 316A(2)(c) modified (temp.) (1.10.2007) by [The New Woodlands School Order 2007 \(S.I. 2007/2599\)](#), arts. 1, 3(a) (with arts. 4, 8)

### 317 Duties of governing body or [<sup>F9</sup>local authority] in relation to pupils with special educational needs.

- (1) [<sup>F22</sup>The governing body of a community, foundation or voluntary school or a maintained nursery school shall] —
- 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,
  - secure that, where the responsible person has been informed by the [<sup>F2</sup>local authority] that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
  - 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>F23</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—

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- (a) the governing bodies of [<sup>F24</sup>community, foundation and voluntary schools][<sup>F25</sup>and maintained nursery schools ] shall, in exercising functions relating to the provision for such children, consult the [<sup>F26</sup>local authority]<sup>F26</sup>. . . and the governing bodies of other such schools, <sup>F27</sup> . . .
- <sup>F27</sup>(b) . . . . .
- [<sup>F28</sup>(3A) The governing body of a community, foundation or voluntary school or a maintained nursery school shall designate a member of the staff at the school (to be known as the “special educational needs co-ordinator”) as having responsibility for co-ordinating the provision for pupils with special educational needs.
- (3B) Regulations may—
- (a) require the governing bodies of schools falling within subsection (3A) to ensure that special educational needs co-ordinators have prescribed qualifications or prescribed experience (or both), and
- (b) confer on the governing bodies of those schools other functions relating to special educational needs co-ordinators.]
- (4) Where a child who has special educational needs is being educated in [<sup>F29</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.
- [<sup>F30</sup>(5) The governing body of a community, foundation or voluntary school, a maintained nursery school, or a community or foundation special school shall—
- (a) in the case of a school in England, prepare a report containing special needs information, and
- (b) in the case of a school in Wales, include special needs information in the report prepared under section 30(1) of the Education Act 2002 (governors' report).
- (6) In subsection (5) “special needs information” means—
- (a) such information as may be prescribed about the implementation of the governing body's policy for pupils with special educational needs, and
- (b) information as to—
- (i) the arrangements for the admission of disabled persons as pupils at the school,
- (ii) the steps taken to prevent disabled pupils from being treated less favourably than other pupils,
- (iii) the facilities provided to assist access to the school by disabled pupils, and
- (iv) the plan prepared by the governing body under [<sup>F31</sup>paragraph 3 of Schedule 10 to the Equality Act 2010 (“the 2010 Act”)].
- (6A) [<sup>F32</sup>In subsection (6)(b) “disabled person” means a person who is a disabled person for the purposes of the 2010 Act; and section 89 (interpretation of Part 6) of, and



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paragraph 6 of Schedule 10 (supplementary provisions for Schedule 10) to, the 2010 Act apply for the purposes of subsection (6)(b) as they apply for the purposes of Part 6 of and Schedule 10 to that Act.]]

### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F9** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))
- F22** 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.
- F23** 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.
- F24** 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**
- F25** 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.
- F26** 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**
- F27** 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.
- F28** S. 317(3A)(3B) inserted (8.1.2007 for E.) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 173, 188(3); S.I. 2006/3400, art. 2(c)
- F29** 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**
- F30** S. 317(5)-(6A) substituted for s. 317(5)-(7A) (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(4), **Sch. 18 para. 2** (with s. 119); S.I. 2005/2034, art. 5 (with Sch. para. 2)
- F31** Words in s. 317(6)(b)(iv) substituted by [2010 c. 15](#), Sch. 26 Pt. 1 para. 36(2) (as inserted (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 5**) (see S.I. 2010/2317, art. 2)
- F32** S. 317(6A) substituted by [2010 c. 15](#), **Sch. 26 Pt. 1 para. 36(3)** (as inserted (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 5**) (see S.I. 2010/2317, art. 2)

### Modifications etc. (not altering text)

- C7** 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**
- C8** 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)**
- C9** S. 317(1)-(3) applied (with modifications) (E.) (1.2.2008) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2007 \(S.I. 2007/2979\)](#), reg. 1(1), **Sch. 1 para. 2**
- C10** S. 317(1)(c) modified (1.9.2013) by [The Operation of the Local Curriculum \(Wales\) Regulations 2013 \(S.I. 2013/1793\)](#), regs. 1(1), **6(1)(a)**
- C11** S. 317(4) applied (with modifications) (E.) (1.2.2008) by [The Education \(Pupil Referral Units\) \(Application of Enactments\) \(England\) Regulations 2007 \(S.I. 2007/2979\)](#), reg. 1(1), **Sch. 1 para. 2**

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- C12** S. 317(4) modified (1.9.2013) by [The Operation of the Local Curriculum \(Wales\) Regulations 2013 \(S.I. 2013/1793\)](#), regs. 1(1), **7(a)**
- C13** 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)**

#### Commencement Information

- I1** 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>F33</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>F34</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 [<sup>F2</sup>local 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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))
- F33** 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](#)
- F34** 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)

- C14** 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 [<sup>F2</sup>local authority] may, for the purpose only of assisting—
- (a) the governing bodies of [<sup>F35</sup>community, foundation or voluntary schools][<sup>F36</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

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- (b) the governing bodies of [<sup>F35</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.
- (2) The terms on which goods or services are supplied by [<sup>F9</sup>local authorities] under [<sup>F37</sup>this section to the governing bodies of community, foundation or voluntary schools [<sup>F38</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>F39</sup>(3) A [<sup>F21</sup>local authority][<sup>F40</sup>in England] may supply goods and services to any authority [<sup>F40</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 [<sup>F41</sup>receiving relevant early years education] within the meaning of section 123 of the School Standards and Framework Act 1998, <sup>F42</sup>...
- <sup>F42</sup>(b) .....]
- <sup>F43</sup>(3B) A [<sup>F21</sup>local 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 [<sup>F9</sup>local authorities] to supply goods or services.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F9** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))
- F35** 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**
- F36** 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.
- F37** 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**
- F38** 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.
- F39** 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**
- F40** 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
- F41** Words in s. 318(3A)(a) substituted (1.9.2008 for E.) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 2 para. 21**; S.I. 2008/2261, art. 2 (with Sch. 1)

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- F42** 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
- F43** 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 [<sup>F2</sup>local 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,
- 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 [<sup>F2</sup>local authority] shall consult the child's parent.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 7\(2\)](#) (with [Sch. 2 para. 7\(4\)\(5\)](#))

### 320 Provision outside England and Wales for certain children.

- (1) A [<sup>F2</sup>local 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local authority].

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 7\(2\)](#) (with [Sch. 2 para. 7\(4\)\(5\)](#))

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### *Identification and assessment of children with special educational needs*

#### **321 General duty of [F<sup>2</sup>local authority] towards children for whom they are responsible.**

- (1) A [F<sup>2</sup>local 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 [F<sup>2</sup>local authority] are responsible for a child if he is in their area and—
  - (a) he is a registered pupil at a [F<sup>44</sup>maintained school][F<sup>45</sup> or maintained nursery school] ,
  - F<sup>46</sup>[(b) education is provided for him at a school which is not a maintained school [F<sup>45</sup> 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
  - (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**

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F44** 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
- F45** 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.
- F46** 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 [F<sup>47</sup>Duty of certain bodies to help local authority.]**

- (1) Where it appears to a [F<sup>2</sup>local authority] that [F<sup>48</sup>another local authority, [F<sup>49</sup>the National Health Service Commissioning Board, a clinical commissioning group or] a Local Health Board <sup>F50</sup>...] could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of [F<sup>51</sup>that body] , specifying the action in question.
- (2) [F<sup>52</sup>A body] 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 [F<sup>53</sup>of those functions by the local authority that made the request] , or

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- (b) subsection (3) applies.
- (3) This subsection applies—
- (a) in [<sup>F54</sup>a case where the request is made] of [<sup>F55</sup>the National Health Service Commissioning Board, a clinical commissioning group or] a [<sup>F56</sup>Local Health Board]<sup>F57</sup> ..., if [<sup>F58</sup>that body] consider that, having regard to the resources available to them for the purpose of the exercise of their functions under the <sup>M1</sup>[<sup>F59</sup>National Health Service Act 2006 or the National Health Service (Wales) Act 2006], it is not reasonable for them to comply with the request, or
- (b) in [<sup>F54</sup>a case where the request is made] 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 [<sup>F60</sup>a local authority, the National Health Service Commissioning Board, a clinical commissioning group or a Local Health Board]<sup>F61</sup> ... are under a duty by virtue of subsection (2) to comply with a request to help a [<sup>F2</sup>local 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.

<sup>F62</sup>(5) .....

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F47** S. 322 title substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(6)(a)**
- F48** Words in s. 322(1) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(6)(b)**
- F49** Words in s. 322(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F50** Words in s. 322(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F51** Words in s. 322(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F52** Words in s. 322(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F53** Words in s. 322(2)(a) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(6)(c)**
- F54** Words in s. 322(3) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 7(6)(d)**
- F55** Words in s. 322(3)(a) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(4)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F56** Words in s. 322(3)(a) substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 1(1), **Sch. para. 26(2)(c)**
- F57** Words in s. 322(3)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F58** Words in s. 322(3)(a) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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- F59** Words in s. 322(3)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 182** (with Sch. 3 Pt. 1)
- F60** Words in s. 322(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(5)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F61** Words in s. 322(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 78(5)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F62** S. 322(5) repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 7(6)(e), **Sch. 3 Pt. 1**

#### Marginal Citations

- M1** 1977 c. 49.

### 323 Assessment of educational needs.

- (1) Where a [<sup>F2</sup>local 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—
- that they [<sup>F63</sup>are considering whether] to make an assessment of the child's educational needs,
  - of the procedure to be followed in making the assessment,
  - of the name of the officer of the authority from whom further information may be obtained, and
  - 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—
- he has special educational needs, and
  - it is necessary for the authority to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
- a [<sup>F2</sup>local authority] have served a notice under subsection (1) and the period specified in the notice in accordance with subsection (1)(d) has expired, and
  - 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local 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.

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### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F63** 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](#)

## 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local 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>F64</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 [<sup>F2</sup>local 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>F65</sup>maintained school][<sup>F66</sup> or maintained nursery school] is specified in the statement, the governing body of the school shall admit the child to the school.
- [<sup>F67</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.]



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- (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.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F64** 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](#)
- F65** 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**
- F66** 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.](#)
- F67** 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)

- C15** 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](#)
- C16** 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)**
- C17** S. 324(5)(b) applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, **Sch.** (with reg. 2(2))
- C18** 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)**
- C19** S. 324(5A) applied (with modifications) (W.) (1.2.2006) by [The New School \(Admissions\) \(Wales\) Regulations 2006 \(S.I. 2006/175\)](#), regs. 1(1), 9, **Sch.** (with reg. 2(2))

### 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 <sup>[F2]</sup>local authority do not propose to make such a statement, they shall give notice in writing of their decision, <sup>F68</sup> . . . to the child's parent.
- (2) In such a case, the child's parent may appeal to the Tribunal against the decision.
- <sup>F69</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 <sup>[F2]</sup>local 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—
- dismiss the appeal,
  - order the <sup>[F2]</sup>local authority to make and maintain such a statement, or

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- (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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F68** 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](#)
- F69** 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>F70</sup>(1) The parent of a child for whom a [<sup>F2</sup>local 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 [<sup>F2</sup>local 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 [<sup>F2</sup>local 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>F71</sup>paragraph 2A] (amendment by [<sup>F9</sup>local authority]) 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.

*Status: Point in time view as at 01/09/2013.*

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- (4) On an appeal under this section the Tribunal shall not order the [F<sup>72</sup>local 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 [F<sup>72</sup>local authority], or both have proposed the school [F<sup>72</sup>, or][F<sup>73</sup>.]
  - [F<sup>74</sup>(c) in the case of proceedings relating to a statement maintained by a local authority in Wales only, the child has proposed the school in the proceedings (whether or not the parent, the local authority or both have also 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.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F9** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(3)** (with Sch. 2 para. 7(4)(5))
- F70** 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**
- F71** 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**
- F72** Word in s. 326(4)(b) inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), s. 26(3), **Sch. para. 2(a)**; [S.I. 2012/320, art. 3\(m\)](#)
- F73** Full stop in s. 326(4)(b) omitted (6.3.2012) by virtue of [Education \(Wales\) Measure 2009 \(nawm 5\)](#), s. 26(3), **Sch. para. 2(a)**; [S.I. 2012/320, art. 3\(m\)](#)
- F74** S. 326(4)(c) inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), s. 26(3), **Sch. para. 2(b)** (as amended (5.5.2010) by [S.I. 2010/1148, arts. 1, 5\(2\)](#)); [S.I. 2012/320, art. 3\(m\)](#)

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

- C20** S. 326(3) restricted (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 36(6)**, 162 (with s. 159)

#### [F<sup>75</sup>326A Unopposed appeals

- (1) This section applies if—
- (a) [F<sup>76</sup>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 authority, and][F<sup>76</sup>either—
    - (i) 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 authority in England or Wales, or

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- (ii) the 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 authority in Wales, 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>F77</sup>(6) In this section, “prescribed” means prescribed by regulations made—
- (a) in relation to an appeal [<sup>F78</sup>against a decision of a [<sup>F2</sup>local authority] in England] , by the Secretary of State,
  - (b) in relation to an appeal [<sup>F79</sup>against a decision of a [<sup>F2</sup>local authority] in Wales, by the Welsh Ministers] .]]

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F75** 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**
- F76** Words in s. 326A(1)(a) substituted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\), s. 26\(3\)](#), **Sch. para. 3** (as amended (5.5.2010) by [S.I. 2010/1148, arts. 1, 5\(2\)](#)); [S.I. 2012/320, art. 3\(m\)](#)
- F77** 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**
- F78** Words in s. 326A(6)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), art. 1\(1\)](#), **Sch. 3 para. 129(a)**
- F79** Words in s. 326A(6)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), art. 1\(1\)](#), **Sch. 3 para. 129(b)**

#### 327 Access for [<sup>F2</sup>local authority] to certain schools.

- (1) This section applies where—
- (a) a [<sup>F2</sup>local authority] maintain a statement for a child under section 324, and

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- <sup>F80</sup>[(b) in pursuance of the statement education is provided for the child at a school maintained by another [<sup>F2</sup>local authority][<sup>F81</sup>or at an independent school][<sup>F82</sup>or an alternative provision Academy that is not an independent school] .]
- (2) Any person authorised by the [<sup>F2</sup>local 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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F80** 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**
- F81** 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
- F82** Words in s. 327(1)(b) inserted (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012 \(S.I. 2012/976\)](#), art. 1, **Sch. para. 5** (with art. 3)

### 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—
- the parent of a child for whom a statement is maintained under section 324 asks the [<sup>F2</sup>local authority] to arrange for an assessment to be made in respect of the child under section 323,
  - no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - 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—
- they shall give [<sup>F83</sup>notice in writing of that fact] to the child's parent, and
  - the parent may appeal to the Tribunal against the determination.
- <sup>F84</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 [<sup>F2</sup>local 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—
- dismiss the appeal, or
  - 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 [<sup>F2</sup>local authority]—

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- (a) on the making of an assessment in respect of the child concerned under section 323, and
    - [<sup>F85</sup>(aa) where the child concerned—
      - (i) has been subject to a detention order, and
      - (ii) immediately before release was detained in relevant youth accommodation,
 on the child's release from detention,]
  - (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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))
- F83** 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](#)
- F84** 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](#)
- F85** S. 328(5)(aa) inserted (1.9.2010 for E., 1.4.2011 for W.) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\), ss. 52\(3\), 269\(3\)\(4\)](#); [S.I. 2010/303, art. 6, Sch. 5](#); [S.I. 2011/829, art. 2\(d\)](#)

#### [<sup>F86</sup>328A] **Appeal against determination of local authority in England not to amend statement following review**

- (1) This section applies where a local authority in England—
  - (a) conduct a review of a statement in accordance with section 328(5)(b), and
  - (b) determine not to amend the statement.
- (2) The authority shall give written notice of the determination and of their reasons for making it to the parent of the child concerned.
- (3) The parent may appeal to the Tribunal.
- (4) Subsections (1A), (3), (4) and (5) of section 326 apply to an appeal under this section as they apply to an appeal under that section, but with the omission of subsection (3)(c).
- (5) A notice under subsection (2) must inform the parent of the right of appeal and of the period within which the right may be exercised.
- (6) A notice under subsection (2) must be given to the parent within the period of seven days beginning with the day on which the determination is made.]

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#### Textual Amendments

**F86** S. 328A inserted (1.9.2010) by [Children, Schools and Families Act 2010 \(c. 26\)](#), **ss. 2, 29(5)** (with s. 27); [S.I. 2010/1817](#), art. 3

### 329 Assessment of educational needs at request of child's parent.

(1) Where—

- (a) the parent of a child for whom a [<sup>F2</sup>local 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>F87</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>F88</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.

#### Textual Amendments

**F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))

**F87** 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](#)

**F88** 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>F89</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 [<sup>F2</sup>local 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.

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*Status: Point in time view as at 01/09/2013.*

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- (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 [<sup>F2</sup>local 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.
- (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 [<sup>F90</sup>relevant early years 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,
  - [ an alternative provision Academy that is not an independent school,]
  - <sup>F91</sup>(da)
  - (e) a school approved under section 342.



*Status: Point in time view as at 01/09/2013.*

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- (13) “The responsible body” means—
- (a) in relation to <sup>F92</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 [<sup>F93</sup>early years] education, the person or body of persons responsible for the management of the provision of that [<sup>F93</sup>early years] education.
- <sup>F94</sup>(14) “Relevant early years education”—
- (a) in relation to England, has the same meaning as it has (in relation to England) in section 123 of the School Standards and Framework Act 1998 except that it does not include early years education provided by a [<sup>F2</sup>local authority] at a maintained nursery school for a pupil at the school;
  - (b) in relation to Wales, has the same meaning as it has (in relation to Wales) in section 123 of the School Standards and Framework Act 1998 except that it does not include early years education provided by a [<sup>F2</sup>local 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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F89** 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
- F90** Words in s. 329A(11) substituted (1.9.2008 for E.) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 2 para. 22(2)**; [S.I. 2008/2261](#), art. 2 (with Sch. 1)
- F91** S. 329A(12)(da) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 13 para. 9(4)**; [S.I. 2012/924](#), art. 2
- F92** 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.
- F93** Words in s. 329A(13)(c) substituted (1.9.2008 for E.) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 2 para. 22(3)**; [S.I. 2008/2261](#), art. 2 (with Sch. 1)
- F94** S. 329A(14) substituted (1.9.2008 for E.) by [Childcare Act 2006 \(c. 21\)](#), s. 109(2), **Sch. 2 para. 22(4)**; [S.I. 2008/2261](#), art. 2 (with Sch. 1)

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

- C21** S. 329A modified (prosp.) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **ss. 36(9)(b)**, 162 (with s. 159)
- C22** 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 [<sup>F2</sup>local 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.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with [Sch. 2 para. 7\(4\)\(5\)](#))

### 332 Duty of [<sup>F95</sup>Local Health Board] or National Health Service trust to notify parent etc.

- (1) This section applies where a [<sup>F96</sup>a clinical commissioning group,][<sup>F97</sup>Local Health Board]<sup>F98</sup>... [<sup>F99</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>F100</sup>compulsory school age], form the opinion that he has (or probably has) special educational needs.
- (2) The [<sup>F101</sup>Board] or [<sup>F102</sup>other body] —
  - (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 [<sup>F101</sup>Board] or [<sup>F102</sup>other body] , shall bring it to the attention of the appropriate [<sup>F2</sup>local authority].
- (3) If the [<sup>F103</sup>Board] or [<sup>F104</sup>other body] 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.

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F95** Words in s. 332 heading substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 1(1), **Sch. para. 26(3)(a)**
- F96** Words in s. 332(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 79(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F97** Words in s. 332(1) substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 1(1), **Sch. para. 26(3)(a)**
- F98** Words in s. 332(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 79(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F99** 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
- F100** 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**
- F101** Word in s. 332(2) substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 1(1), **Sch. para. 26(3)(b)**
- F102** Words in s. 332(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 79(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F103** Word in s. 332(3) substituted (1.4.2007) by [The References to Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 1(1), **Sch. para. 26(3)(b)**
- F104** Words in s. 332(3) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 79(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *F105 Appeals by children*

### Textual Amendments

- F105** S. 332ZA and cross-heading inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 1(2), 26(3)** (as amended (5.5.2010) by S.I. 2010/1148, arts. 1, 5(2)); S.I. 2012/320, art. 3(a)

## **332ZA Right of a child to appeal to the Welsh Tribunal**

- (1) This section applies to the rights of a parent of a child to appeal to the Welsh Tribunal under any of the following provisions—
- section 325(2) (appeal against decision not to make statement);
  - section 326(1) (appeal against contents of statement);
  - section 328(3)(b) (reviews of educational needs);
  - section 329(2)(b) (assessment of educational needs at request of child's parent);
  - section 329A(8)(b) (review of assessment of educational needs at request of responsible body);
  - paragraph 8(3)(b) of Schedule 27 (change of named school);
  - paragraph 11(2)(b) of Schedule 27 (ceasing to maintain a statement).
- (2) The child may exercise the rights conferred on the parent in respect of that child.
- (3) The child's rights are exercisable concurrently with the parent's rights.

*Status: Point in time view as at 01/09/2013.*

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- (4) The exercise of rights under this section is subject to provision made by regulations under sections 332ZC and 336(1).]

**[<sup>F106</sup>332ZB Notice and service of documents on a child**

- (1) This section applies if a local authority in Wales is required to give notice to or serve a document on a parent of a child under any of the following provisions—
- (a) section 325 (appeal against decision not to make statement);
  - (b) section 328 (reviews of educational needs);
  - (c) section 329 (assessment of educational needs at request of child's parent);
  - (d) section 329A(8) (review or assessment of educational needs at request of responsible body);
  - (e) paragraph 3 of Schedule 26 (manner and timing of assessments);
  - (f) paragraph 2A of Schedule 27 (amendments to a statement);
  - (g) paragraph 2B(2) of Schedule 27 (provision of additional information);
  - (h) paragraph 6 of Schedule 27 (service of statement);
  - (i) paragraph 8 of Schedule 27 (change of named school);
  - (j) paragraph 11 of Schedule 27 (ceasing to maintain a statement).
- (2) The local authority must give notice to, or serve the document on, the child as well as on the parent.
- (3) Any provision applicable to notices given to or documents served on a parent applies equally to notices given to or documents served on a child.]

**Textual Amendments**

**F106** S. 332ZB inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), ss. **2(2)**, 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(b)

**[<sup>F107</sup>332ZC Case friends — Wales**

- (1) The Welsh Ministers may provide by regulations for a child to have a person (referred to in this Part as a “case friend”)—
- (a) to make representations on behalf of a child with a view to avoiding or resolving disagreements about the exercise by local education authorities in Wales of functions under this Part, and
  - (b) to exercise the rights of a child under section 332ZA on the child's behalf.
- (2) A child's case friend must—
- (a) make representations and exercise rights fairly and competently,
  - (b) have no interest adverse to that of the child;
  - (c) ensure that all steps and decisions taken by the case friend are for the benefit of the child and take account of the child's views.
- (3) Regulations made under this section may (among other things)—
- (a) confer functions on the Welsh Tribunal;
  - (b) make provision about procedures in relation to case friends;
  - (c) make provision about the appointment and removal of case friends;

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- (d) specify the circumstances in which a person may or may not act as a case friend;
- (e) specify the circumstances in which a child must have a case friend;
- (f) specify further requirements in respect of the conduct of case friends.]

#### Textual Amendments

**F107** S. 332ZC inserted (10.2.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 3(2)**, 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 2(a)

### *[<sup>F108</sup> General duties of [<sup>F9</sup>local authorities]*

#### Textual Amendments

**F108** 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 [<sup>F109</sup>— England]**

- (1) A [<sup>F2</sup>local authority][<sup>F110</sup>in England] 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 [<sup>F111</sup>given][<sup>F111</sup>given by the Secretary of State] —
  - (a) [<sup>F112</sup>for England, by the Secretary of State,]
  - (b) [<sup>F112</sup>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.

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F109** Word in s. 332A heading inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 4(2)(a)**, 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(c) (with art. 4(a))
- F110** Words in s. 332A(1) inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 4(2)(b)**, 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(c) (with art. 4(a))
- F111** Word in s. 332A(2) substituted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 4(2)(c)**, 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(c) (with art. 4(a))
- F112** S. 332A(2)(a)(b) omitted (6.3.2012) by virtue of [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 4(2)(d)**, 26(3); [S.I. 2012/320](#), art. 3(c) (with art. 4(a))

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## **Advice and information — Wales**

**F113 332AA**

- (1) A local authority in Wales must arrange for any child in their area with special educational needs, for a parent of any such child and for a case friend for any such child, 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 by the Welsh Ministers.
- (3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (4) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
  - (a) children in their area,
  - (b) parents of children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.]

### **Textual Amendments**

**F113** S. 332AA inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 4(3), 26(3)** (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), **art. 3(c)** (with [art. 4\(a\)](#))

## **Resolution of disputes [F115— England]**

**F114 332B**

- (1) A [F2]local authority][F116]in England] 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 [F2]local authority][F116]in England] 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 [F117]given][F117]given by the Secretary of State] —
  - (a) [F118]for England, by the Secretary of State,]
  - (b) [F118]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 [F<sup>2</sup>]local 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 [F<sup>119</sup>], an Academy school or an alternative provision 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

- F2** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F114** 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](#)
- F115** Word in s. 332B heading inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\), ss. 5\(2\)\(a\), 26\(3\)](#) (as amended (5.5.2010) by [S.I. 2010/1148, arts. 1, 5\(2\)](#)); [S.I. 2012/320, art. 3\(d\)](#) (with art. 4(b))
- F116** Words in s. 332B(1)(2) inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\), ss. 5\(2\)\(b\), 26\(3\)](#) (as amended (5.5.2010) by [S.I. 2010/1148, arts. 1, 5\(2\)](#)); [S.I. 2012/320, art. 3\(d\)](#) (with art. 4(b))
- F117** Word in s. 332B(4) substituted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\), ss. 5\(2\)\(c\), 26\(3\)](#) (as amended (5.5.2010) by [S.I. 2010/1148, arts. 1, 5\(2\)](#)); [S.I. 2012/320, art. 3\(d\)](#) (with art. 4(b))
- F118** S. 332B(4)(a)(b) omitted (6.3.2012) by virtue of [Education \(Wales\) Measure 2009 \(nawm 5\), ss. 5\(2\)\(d\), 26\(3\)](#); [S.I. 2012/320, art. 3\(d\)](#) (with art. 4(b))
- F119** Words in s. 332B(8)(c) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 13 para. 9\(5\)](#); [S.I. 2012/924, art. 2](#)

#### [F<sup>120</sup> ~~332B~~ Resolution of disputes — Wales

- (1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between—
- (a) authorities and children in their area about the exercise by authorities of functions under this Part, and
  - (b) authorities and parents of children in their area about the exercise by authorities of functions under this Part.
- (2) A local authority in Wales must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between—
- (a) a relevant child and the proprietor of the school about the special educational provision made for that child, and
  - (b) the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.

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- (3) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given by the Welsh Ministers.
- (5) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (6) The authority must take such steps as they consider appropriate for making the arrangements under subsections (1) and (2) known to—
  - (a) children in their area,
  - (b) parents of children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.
- (7) The arrangements cannot affect the entitlement of a child or a parent of a child to appeal to the Tribunal, and the authority must take such steps as they consider appropriate to make that fact known to children, to parents of children and to case friends for children in their area.
- (8) In this section—
 

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

“relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.
- (9) 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) an independent school named in the statement maintained for the child under section 324, or
  - (d) a school approved under section 342.]

#### **Textual Amendments**

**F120** S. 332BA inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), ss. 5(3), 26(3) (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(d) (with art. 4(b))

### **[<sup>F121</sup>332BA] Independent advocacy services — Wales**

- (1) Every local authority in Wales must—
  - (a) make arrangements for the provision of independent advocacy services in their area;
  - (b) refer any child in their area who requests independent advocacy services to a service provider;
  - (c) refer any person who is a case friend for a child in their area and who requests independent advocacy services to a service provider.



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- (2) In this section “independent advocacy services” are services providing advice and assistance (by way of representation or otherwise) to a child—
  - (a) making, or intending to make an appeal to the Tribunal under section 332ZA, or
  - (b) considering whether to appeal to the Tribunal under that section, or
  - (c) taking part in or intending to take part in dispute resolution arrangements made under section 332BA.
- (3) In making arrangements under this section, every local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—
  - (a) the subject of an appeal to the Tribunal, or
  - (b) involved in investigating or adjudicating on such an appeal.
- (4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (5) Every local authority in Wales must take such steps as they consider appropriate for making the arrangements under this section known to—
  - (a) children in their area,
  - (b) parents of children in their area,
  - (c) head teachers and proprietors of schools in their area, and
  - (d) such other persons as they consider appropriate.
- (6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.
- (7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.]

#### Textual Amendments

**F121** S. 332BB inserted (6.3.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), **ss. 6(2), 26(3)** (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 3(e)

#### *[<sup>F122</sup>Information about children with special educational needs*

#### Textual Amendments

**F122** Ss. 332C-332E inserted (E.W.) (1.1.2009) by [Special Educational Needs \(Information\) Act 2008](#) (c. 11), **ss. 1, 2(3)**; [S.I. 2008/2664](#), art. 2

### 332C Provision of information

- (1) The Secretary of State must exercise the relevant powers with a view to securing, in particular, the provision of special needs information which would, in the opinion of the Secretary of State, be likely to assist the Secretary of State or other persons in improving the well-being of children in England with special educational needs.

*Status: Point in time view as at 01/09/2013.*

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- (2) For the purposes of subsection (1) the relevant powers are the powers of the Secretary of State under the following provisions of this Act (so far as relating to England)—
- (a) section 29,
  - (b) section 408,
  - (c) section 537,
  - (d) section 537A,
  - (e) section 537B, and
  - (f) section 538.

### **332D Publication of information**

- (1) The Secretary of State must in each calendar year publish, or arrange to be published, special needs information which has been obtained under this Act and the publication of which would, in the opinion of the Secretary of State, be likely to assist the Secretary of State or other persons in improving the well-being of children in England with special educational needs.
- (2) Information published under subsection (1) may be published in such form and manner as the Secretary of State thinks fit provided that the name of the child or children to whom the information relates is not included.
- (3) The Secretary of State may make, or arrange for the making of, a charge (not exceeding the cost of supply) for any documents supplied by virtue of this section.

### **332E Interpretation of sections 332C and 332D**

- (1) This section has effect for the interpretation of sections 332C and 332D.
- (2) “Child” means a person under the age of 19 (whether or not the person is a registered pupil at a school).
- (3) “Special needs information” means information about children in England with special educational needs or about special educational provision made for them.
- (4) Any reference to the well-being of children with special educational needs is a reference to their well-being so far as relating to—
  - (a) physical and mental health and emotional well-being;
  - (b) protection from harm and neglect;
  - (c) education, training and recreation;
  - (d) the contribution made by them to society;
  - (e) social and economic well-being.]

### *Special Educational Needs Tribunal*

### **333 Constitution of [<sup>F123</sup>Welsh] Tribunal.**

<sup>F124</sup>[<sup>F125</sup>(1Z)] .....

[<sup>F126</sup>(1ZA) There continues to be a tribunal known as Tribiwnllys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales.

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(1ZB) In <sup>F127</sup>this section and sections 334 to 336ZB]<sup>F127</sup>this Part] “Welsh Tribunal” means Tribiwnlys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales.]

<sup>F128</sup>(1) The <sup>F129</sup>Welsh] Tribunal shall exercise the jurisdiction conferred on it by this Part.]

(2) There shall be appointed—

- (a) a President of the <sup>F130</sup>Welsh] 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 <sup>F130</sup>Welsh] 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 <sup>F130</sup>Welsh] 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 <sup>F131</sup>the Welsh Ministers with the agreement of] the Secretary of State.

(5) <sup>F132</sup>Regulations made by the Welsh Ministers with the agreement of the Secretary of State may] —

- (a) provide for the jurisdiction of the <sup>F133</sup>Welsh] 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 <sup>F134</sup>Welsh] Tribunal as the <sup>F135</sup>Welsh Ministers , with the agreement of the Secretary of State, consider] necessary or desirable.

<sup>F136</sup>(6) The Welsh Ministers may provide such staff and accommodation as the Welsh Tribunal may require.]

#### Textual Amendments

- F123** Word in s. 333 title inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(a)**
- F124** S. 333(1Z) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(b)**
- F125** 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](#)
- F126** S. 333(1ZA)(1ZB) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(c)**
- F127** Words in s. 333(1ZB) substituted (10.2.2012) by [Education \(Wales\) Measure 2009 \(nawm 5\)](#), s. 26(3), **Sch. para. 4** (as amended (5.5.2010) by [S.I. 2010/1148](#), arts. 1, 5(2)); [S.I. 2012/320](#), art. 2(j)
- F128** 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](#)
- F129** Word in s. 333(1) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(d)**
- F130** Word in s. 333(2)(a)-(c) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(d)**
- F131** Words in s. 333(4) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(e)**

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- F132** Words in s. 333(5) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(f)(i)**
- F133** Word in s. 333(5)(a) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(d)**
- F134** Word in s. 333(5)(b) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(d)**
- F135** Words in s. 333(5)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(f)(ii)**
- F136** S. 333(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 130(g)**

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

- C23** S. 333: transfer of functions (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 1(1), 3(1), 4, 5, **Sch. 1** Table 1 (with Sch. 4)
- C24** 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 <sup>[**F137**]</sup>satisfies the judicial-appointment eligibility condition on a 5-year basis.]
- (2) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed <sup>[**F138**]</sup>in regulations made by the Welsh Ministers with the agreement of the Secretary of State] .
- (3) If, in the opinion of the Lord Chancellor <sup>[**F139**]</sup> and of the Lord Chief Justice] , the President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may <sup>[**F140**]</sup>, with the concurrence of the Lord Chief Justice, ] 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 <sup>[**F141**]</sup>Welsh Ministers] , and
  - (b) is eligible for re-appointment if he ceases to hold office.

**Textual Amendments**

- F137** Words in s. 334(1) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 10 para. 28**; S.I. 2008/1653, art. 2(d) (with arts. 3, 4)
- F138** Words in s. 334(2) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 131(a)**
- F139** Words in s. 334(3) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 4 para. 259(a)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(v)
- F140** Words in s. 334(3) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 4 para. 259(b)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(v)
- F141** Words in s. 334(5)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 131(b)**

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

**C25** S. 334(2) applied (with modifications) (1.7.1999) by [S.I. 1999/672, art. 5, Sch. 2](#)

**[<sup>F142</sup>335 Remuneration and expenses.**

- (1) The Welsh Ministers may pay to the President, and to any other person in respect of his service as a member of the Welsh Tribunal, such remuneration and allowances as the Welsh Ministers may determine.
- (2) The Welsh Ministers may defray the expenses of the Welsh Tribunal to such amount as they may determine.]

**Textual Amendments**

**F142** S. 335(1)(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\), art. 1\(1\), Sch. 3 para. 132](#)

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

**C26** S. 335 applied (with modifications) (1.7.1999) by [S.I. 1999/672, art. 5, Sch. 2](#)

**336 Tribunal procedure.**

- (1) Regulations [<sup>F143</sup>made by the Welsh Ministers] may make provision about the proceedings of the [<sup>F144</sup>Welsh] 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 [<sup>F145</sup>Welsh] 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>F146</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>F147</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 [<sup>F148</sup>circumstances prescribed in the regulations] ,
  - (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),

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- (n) for the registration and proof of decisions and orders, [F149]and]
  - (o) for enabling the [F150Welsh] Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.
  - [F151](p) enabling the Welsh Tribunal to stay proceedings on an appeal, and
  - (q) for adding and substituting parties.]
- [F152](2A) Proceeding before the [F153Welsh] Tribunal shall be held in private, except in [F154]circumstances prescribed in the regulations] .]
- [F155](3) The Welsh Ministers may pay such allowances for the purpose of or in connection with the attendance of persons at the Welsh Tribunal as the Welsh Ministers may determine.]
- (4) Part I of the <sup>M2</sup>Arbitration Act 1996 shall not apply to any proceedings before the [F156Welsh] Tribunal but regulations [F157]made by the Welsh Ministers] may make provision corresponding to any provision of [F158]that Part].
- [F159](4A) [F160]Regulations made under subsection (1)] may make provision for an appeal under this Part to be heard, in [F161]circumstances prescribed in the regulations] , with a [F162]claim in relation to a contravention of Chapter 1 of Part 6 of the Equality Act 2010 so far as relating to disability.] .]
- (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.
- [F163](5A) Any person who without reasonable excuse fails to comply with any requirement which—
- (a) is imposed by Tribunal Procedure Rules in relation to appeals under this Part made to the First-Tier Tribunal, and
  - (b) corresponds to a requirement mentioned in subsection (5)(a) or (b),
- is guilty of an offence.]
- (6) A person guilty of an offence under subsection (5) [F164]or (5A)] is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

- F143** Words in s. 336(1) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 133(a)(i)**
- F144** Word in s. 336(1) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 133(a)(ii)**
- F145** Word in s. 336(2)(b) inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 133(b)(i)**
- F146** 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](#)
- F147** 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));

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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**

- F148** Words in s. 336(2)(j) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(b)(ii)**
- F149** Word in s. 336(2)(n) omitted (10.2.2012) by virtue of Education (Wales) Measure 2009 (nawm 5), **ss. 7(2), 26(3)**; S.I. 2012/320, art. 2(b)
- F150** Word in s. 336(2)(o) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(b)(i)**
- F151** S. 336(2)(p)(q) inserted (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), **ss. 7(3), 26(3)** (as amended (5.5.2010) by S.I. 2010/1148, arts. 1, 5(2)); S.I. 2012/320, art. 2(b)
- F152** 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**
- F153** Word in s. 336(2A) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(c)(i)**
- F154** Words in s. 336(2A) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(c)(ii)**
- F155** S. 336(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(d)**
- F156** Word in s. 336(4) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(e)(i)**
- F157** Words in s. 336(4) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(e)(ii)**
- F158** 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**
- F159** 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**
- F160** Words in s. 336(4A) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(f)(i)**
- F161** Words in s. 336(4A) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(f)(ii)**
- F162** Words in s. 336(4A) substituted by 2010 c. 15, **Sch. 26 Pt. 1 para. 37** (as inserted (1.10.2010) by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1(2), **Sch. 1 para. 5**) (see S.I. 2010/2317, art. 2)
- F163** S. 336(5A) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(g)**
- F164** Words in s. 336(6) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 133(h)**

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

- C27** S. 336 applied (with modifications) (1.7.1999) by S.I. 1999/672, art. 5, **Sch. 2**

**Marginal Citations**

- M2** 1996 c. 23.

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#### Textual Amendments

- F165** 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
- F166** S. 336ZA omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 134**

### [<sup>F167</sup>336ZA] Appeals from the Welsh Tribunal to the Upper Tribunal

- (1) A party to any proceedings under this Part before the Welsh Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Welsh Tribunal in those proceedings.
- (2) An appeal may be brought under subsection (1) only if, on an application made by the party concerned, the Welsh Tribunal or the Upper Tribunal has given its permission for the appeal to be brought.
- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Welsh Tribunal.]

#### Textual Amendments

- F167** S. 336ZB inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 135**

### [<sup>F168</sup>336A] Compliance with orders

- (1) If the Tribunal makes an order, the [<sup>F2</sup>local authority] concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.
- [<sup>F169</sup>(2) In subsection (1), “prescribed” means prescribed by regulations made—
  - (a) as to orders of [<sup>F170</sup>the First-tier Tribunal] , by the Secretary of State,
  - (b) as to orders of [<sup>F171</sup>the Welsh Tribunal, by the Welsh Ministers] with the agreement of the Secretary of State.]]

#### Textual Amendments

- F2** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F168** 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**
- F169** 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
- F170** Words in s. 336A(2)(a) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 136(a)**



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**F171** Words in s. 336A(2)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 136(b)**

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