



# Education Act 1996

## 1996 CHAPTER 56

### PART IV

#### SPECIAL EDUCATIONAL NEEDS

### CHAPTER II

#### SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

#### *Special schools*

#### **337 Special schools**

- (1) A school which is specially organised to make special educational provision for pupils with special educational needs and is for the time being approved by the Secretary of State under section 342 shall be known as a special school.
- (2) There are three categories of special school—
  - (a) maintained special schools;
  - (b) grant-maintained special schools; and
  - (c) special schools which are neither maintained nor grant-maintained schools.
- (3) A special school is a maintained special school if it is maintained by a local education authority.
- (4) A special school is a grant-maintained special school if it is conducted by a governing body incorporated in pursuance of proposals for the purpose—
  - (a) made by the funding authority under section 339 of this Act (or section 183 of the Education Act 1993), or
  - (b) made under section 345 of this Act (or section 186 of that Act).

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*Establishment etc. of special schools*

**338 Power of funding authority to establish grant-maintained special school**

- (1) The funding authority may establish in the area of any local education authority a school which is specially organised to make special educational provision for pupils with special educational needs if—
- (a) an order under section 27(1) (allocation of responsibility for providing sufficient school places) applies to the area, and
  - (b) the school is intended to provide relevant education for pupils in the area, whether or not it also provides other education or education for pupils from outside the area.
- (2) Subsection (1) has effect subject to section 339(4).

**339 Establishment, etc. of maintained or grant-maintained special schools**

- (1) Where a local education authority intend—
- (a) to establish a school which is specially organised to make special educational provision for pupils with special educational needs, or
  - (b) to make any prescribed alteration to a maintained special school, or
  - (c) to discontinue such a school,
- they shall serve under subsection (5) notice of their proposals.
- (2) Where the funding authority—
- (a) intend to establish a school which is specially organised to make special educational provision for pupils with special educational needs, or
  - (b) are of the opinion that any prescribed alteration should be made to a grant-maintained special school, or
  - (c) are of the opinion that such a school should be discontinued,
- and an order under section 27(1) applies to the area concerned, they shall serve under subsection (5) notice of their proposals.
- (3) Where the governing body of a grant-maintained special school intend—
- (a) to make any prescribed alteration to the school, or
  - (b) to discontinue the school,
- they shall serve under subsection (5) notice of their proposals.
- (4) Except in pursuance of proposals under this section approved under section 340—
- (a) a local education authority or the funding authority may not establish a school which is specially organised to make special educational provision for pupils with special educational needs,
  - (b) no prescribed alteration may be made to a maintained or grant-maintained special school, and
  - (c) a maintained or grant-maintained special school may not be discontinued.
- (5) Notice for the purposes of subsections (1) to (3) above shall be served on—
- (a) the Secretary of State, and
  - (b) such other persons as may be prescribed,
- and shall give such information as may be prescribed.

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- (6) If the proposals are approved under section 340—
  - (a) the body which served the notice, or
  - (b) in the case of proposals under subsection (2)(b) or (c) above, the governing body of the school,shall implement them.
- (7) If proposals under subsection (2)(a) above are so approved, a governing body of the school shall be incorporated on such date as may be specified in the proposals (referred to in this Part as the “incorporation date”).
- (8) In relation to the establishment of a school in pursuance of proposals under subsection (2)(a) above, regulations may apply any provision of Chapter IV or V of Part III of this Act with or without modification.
- (9) In this Part—
  - (a) references to the discontinuance of a maintained special school are to the local education authority ceasing to maintain it, and
  - (b) references to an alteration to a school include the transfer of the school to a new site.

#### **340 Procedure for dealing with proposals**

- (1) Before a body serve notice of any proposals under section 339 they shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the body shall have regard to any guidance given from time to time by the Secretary of State.
- (2) Within such period as may be specified in the notice under that section (which must not be less than two months beginning with the date on which the notice is served), any person may submit objections to the proposals to the body which served the notice.
- (3) Within one month after the end of the period for making objections specified in the last notice to be served under that section, the body which served the notice shall transmit to the Secretary of State copies of all objections which have been duly made (and not withdrawn in writing), together with their observations on them.
- (4) The Secretary of State may, after considering the proposals, any objections to the proposals and any observations on the objections—
  - (a) reject the proposals,
  - (b) approve them without modification, or
  - (c) after consulting the body which served notice of them (and, in the case of proposals under section 339(2)(b) or (c), the governing body) approve them with such modifications as he thinks desirable.
- (5) The Secretary of State may modify any proposals required under section 339 to be implemented—
  - (a) in the case of proposals under section 339(2)(b) or (c)—
    - (i) at the request of the governing body, or
    - (ii) at the request of the funding authority and after consulting the governing body, or
  - (b) in any other case, at the request of the body which served notice of the proposals.

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- (6) References in this Part to proposals under section 339, in any case where the Secretary of State has modified such proposals in pursuance of this section, are to the proposals as so modified.
- (7) Service of a notice under that section which is sent by post in accordance with section 572 (service of notices) shall be taken to have been effected on the second day after the day on which the notice is posted.

### **341 Approval of premises of maintained or grant-maintained special schools**

- (1) Where a body serve under section 339(5) notice of proposals for the establishment of a school which is specially organised to make special educational provision for pupils with special educational needs, they shall submit to the Secretary of State the particulars in respect of the proposed premises of the school mentioned in subsection (3).
- (2) Where a body serve under section 339(5) notice of proposals for making a prescribed alteration to a special school, they shall, if the Secretary of State so directs, submit to him the particulars in respect of the premises or proposed premises of the school mentioned in subsection (3).
- (3) The particulars are—
  - (a) particulars of the provision made or to be made in respect of the means of access to and within the premises or proposed premises of the school, and
  - (b) such other particulars in respect of the premises or proposed premises of the school as the Secretary of State may require,
 and they shall be submitted at such time and in such form and manner as the Secretary of State may direct.
- (4) The particulars submitted under subsection (3)(a) shall indicate the extent to which the provision referred to conforms with the minimum requirements, so far as they are relevant to school premises, of—
  - (a) Design Note 18 “Access for Disabled People to Educational Buildings” published in 1984 on behalf of the Secretary of State, or
  - (b) (if that Note has been replaced by a document prescribed by regulations made or having effect as if made under the Town and Country Planning Act 1990) that document.
- (5) Particulars submitted under this section in respect of the premises or proposed premises of the school require the approval of the Secretary of State.
- (6) Where any proposals falling within subsection (1) or (2) are required to be implemented, they shall be implemented in accordance with any particulars approved under this section.

### **342 Approval of special schools**

- (1) The Secretary of State may approve under this section any school which is specially organised to make special educational provision for pupils with special educational needs (and which is not a maintained or grant-maintained school), and may give his approval before or after the school is established.

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- (2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.
- (3) Any school which—
  - (a) is established in pursuance of proposals approved under section 340 (or section 184 of the Education Act 1993), or
  - (b) was a special school immediately before 1st April 1994 (the date when section 184 of that Act came into force),shall be treated, subject to subsection (4) below, as approved under this section.
- (4) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school while approved under this section, and
  - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3)) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4), the requirements which may be imposed by the regulations include requirements—
  - (a) which call for arrangements to be approved by the Secretary of State, or
  - (b) as to the organisation of any special school as a primary school or as a secondary school.
- (6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a special school—
  - (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.
- (7) Where approval is withdrawn from a maintained special school or grant-maintained special school, the local education authority or, as the case may be, the governing body shall serve under section 339 notice of their proposals to discontinue the school.
- (8) For the purposes of proposals made under subsection (7)—
  - (a) section 339 shall have effect as if the school had not ceased to be a special school on the withdrawal of the approval, and
  - (b) section 340 shall have effect as if subsections (1) to (3), and the reference in subsection (4) to the rejection of proposals, were omitted.

### **343 Nursery education in grant-maintained special schools**

- (1) No notice of proposals for a school to become a nursery school may be given under section 339(2) or (3).
- (2) Subject to subsection (1) above, proposals under section 339(2) or (3) may, in particular, be made for the purpose of securing the provision of education for junior pupils who have not attained the age of five.

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*Government etc. of special schools*

**344 Government etc. of special schools**

- (1) Chapters IV and VI of Part II have effect in relation to the government and conduct of maintained special schools and other matters relating to such schools; and section 120 provides for schemes under Chapter V of that Part (financial delegation) to apply to such schools.
- (2) Schedule 28 has effect in relation to the government and conduct of grant-maintained special schools and other matters relating to such schools.

*Maintained special school becoming grant-maintained*

**345 Maintained special school becoming grant-maintained special school**

- (1) Regulations may make provision for maintained special schools, or any class or description of such schools, to cease to be maintained by the local education authority and become grant-maintained special schools.
- (2) Regulations shall require, before a maintained special school becomes a grant-maintained special school in pursuance of the regulations—
  - (a) the submission to the Secretary of State of proposals for the purpose by the governing body of the school, and
  - (b) the approval of such proposals, as originally submitted or as modified by the Secretary of State (whether before or after they are approved).
- (3) If the proposals are so approved, a governing body of the school shall be incorporated in accordance with Schedule 28 on the date of approval (referred to in this Part as the “incorporation date”).
- (4) Regulations made for the purposes of this section may apply any provision of—
  - (a) Chapter II (apart from section 198) or Chapter III or V of Part III,
  - (b) section 340, or
  - (c) section 35(7) or (8), section 37(1), (4), (7), (8) or (9), section 167(3) or (6) or section 169(1), (4) or (6),
 with or without modification.

*Grouping of grant-maintained special schools*

**346 Groups including grant-maintained special schools**

- (1) Regulations may modify the provisions of Chapter IX of Part III (groups of grant-maintained schools) for the purpose of securing that—
  - (a) two or more grant-maintained special schools, or one or more grant-maintained special schools together with one or more grant-maintained schools, may be conducted as a group by a single governing body,
  - (b) a special school maintained by a local education authority may cease to be so maintained and may be conducted by a governing body incorporated under that Chapter, and

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- (c) a grant-maintained special school may become a member of a group of schools conducted by such a governing body,  
and that, where a group of schools including one or more special schools is conducted by such a governing body, the governing body are appropriately constituted.
- (2) Regulations made for the purpose mentioned in subsection (1) may modify sections 338 to 342 and Schedule 28.
- (3) Where that Chapter applies to special schools by virtue of regulations—
  - (a) section 183(1) shall not be read as applying to such schools,
  - (b) a special school conducted by a governing body incorporated under that Chapter shall be known as a grant-maintained special school, and
  - (c) in Chapter II of Part I of the School Inspections Act 1996 (procedure for school inspections) references to a group of grant-maintained schools include a group of one or more grant-maintained special schools together with one or more grant-maintained schools.

#### *Independent schools providing special education*

### **347 Approval of independent schools**

- (1) The Secretary of State may approve an independent school as suitable for the admission of children for whom statements are maintained under section 324.
- (2) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school as a condition of its approval under this section,
  - (b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and
  - (c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as the Secretary of State sees fit to impose.
- (4) In any case where there is a failure to comply with such a condition imposed under subsection (3), the Secretary of State may withdraw his approval.
- (5) No person shall so exercise his functions under this Part that a child with special educational needs is educated in an independent school unless—
  - (a) the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements are maintained under section 324, or
  - (b) the Secretary of State consents to the child being educated there.

### **348 Provision of special education at non-maintained schools**

- (1) This section applies where—
  - (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school, and

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- (b) either the name of the school is specified in a statement in respect of the child under section 324 or the local education authority are satisfied—
  - (i) that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school, and
  - (ii) that it is appropriate for the child to be provided with education at the particular school.
- (2) Where this section applies, the local education authority shall pay the whole of the fees payable in respect of the education provided for the child at the school, and if—
  - (a) board and lodging are provided for him at the school, and
  - (b) the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided,the authority shall pay the whole of the fees payable in respect of the board and lodging.
- (3) In this section “maintained school” means—
  - (a) a school maintained by a local education authority,
  - (b) a grant-maintained school, and
  - (c) a grant-maintained special school.

#### *Variation of deeds*

### **349 Variation of trust deeds etc. by order**

- (1) The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 342 or 347.
- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.