

# **APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 10: Schools**

##### ***Chapter 2: Complaints: England***

671. Under the current processes, when a parent or pupil is concerned about an issue arising from their individual experience at school, they can contact the teacher or head teacher of a school. If the issue remains unresolved they can contact the governing body of the school or management committee in the case of a short stay school (pupil referral unit).
672. If the complainant remains unhappy, once the governing body has looked into their complaint, they may approach the Secretary of State under section 496 or 497 of the Education Act 1996 and ask him to consider their complaint. The Secretary of State must consider that the governing body has been acting unreasonably and that it is expedient to intervene. In practice there are few occasions when a direction may be made.
673. These sections create a new scheme for complaints and amend section 496/7 in respect of complaints heard by school governing bodies which have been brought to the attention of the Secretary of State and repeal section 409 and *paragraph 6(3) and (4)* of Schedule 1 to the Education Act 1996. The Government intends that the Secretary of State's role will be replaced by a new parents' and young person's independent complaints service (involving a Local Commissioner)
674. A Local Commissioner will be able to consider complaints about school issues affecting a particular pupil where they may not appeal by another independent route.
675. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not fall within the scope of the new scheme as they have their own independent appeals processes. Special educational needs cases which are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as SENDIST) will also be outside the scope of Local Commissioners.

##### ***Section 206: Complaints to which this Chapter applies***

676. The section specifies who may approach a Local Commissioner under the new independent service. "The Commission for Local Administration" and "The Local Commissioner" are statutory names for the body generally known as the Local Government Ombudsman.
677. A "qualifying school" is a community, foundation, or voluntary aided school, community special or foundation special school, maintained nursery school or a short

stay school. The Secretary of State may add to or amend this definition by order (made under section 222) which would be subject to the affirmative resolution procedure.

678. The section provides that a complaint against a school may be made where a pupil or parent claims to have suffered injustice because of the actions, or omissions, of the governing body or by the head teacher exercising, or failing to exercise, functions of a kind specified in regulations under this section. Where the head teacher delegates authority to another member of staff, the head teacher remains legally accountable for the member of staff complying with that action.
679. Where a governing body makes arrangements for another individual or body to carry out functions on its behalf, this will also be capable of referral to a Local Commissioner. For example, where a school contracts out services for an “after school club”, a parent or pupil could make a complaint about an act that occurred whilst a pupil was attending this provision, despite the fact that it was not run directly by the governing body.
680. Where a pupil is educated off the site of the school this will also be included within the remit of Local Commissioners. For example, a pupil might be on the roll at one school but may attend some lessons at another school. This can happen in cases where a pupil is on roll at a short stay school but attends a mainstream school as part of their education.
681. People acting on the governing body’s behalf can also be complained about. This includes a person employed by a local education authority or outside agency as they will be carrying out actions with the governing body’s permission.
682. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not be capable of referral to a Local Commissioner as they have their own independent appeals processes. This also applies to cases that are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as the Special Educational Needs and Disability Tribunal (SENDIST)).
683. A parent or pupil may approach a Local Commissioner asking them to investigate their complaint. “Parent” includes anyone who has parental responsibility for a child or who has care of him or her. A Local Commissioner will be able to consider complaints from carers as well as parents and young people.

### ***Section 207: Power of Local Commissioner to investigate complaint***

684. The section enables a Local Commissioner to investigate the complaint made by the complainant. Where head teachers or governing bodies have considered the complaint and feel the complaint should be referred to a Local Commissioner, they may do so with the complainant’s consent. For example, a head teacher or governing body may feel they have done all they can to assist the complainant and a Local Commissioner may be able to resolve the issue.
685. Before proceeding to investigate a matter a Local Commissioner must be satisfied that the governing body had notice of the matter complained about and an opportunity to investigate and respond, or that it is not reasonable in the circumstances to expect the matter to be brought to the attention of the governing body (*subsection (3)(b)*). A Local Commissioner is able to use discretion to take a flexible approach and proceed with an investigation if satisfied that it is not reasonable to expect the matter to have first been brought to the attention of the governing body.
686. A Local Commissioner is able to investigate or discontinue complaints as it feels appropriate. If a Local Commissioner is satisfied with the steps the school is taking or is going to take, or that the complaint is vexatious, he or she may decide not to investigate the complaint.

***Section 208: Time-limit etc for making complaint***

687. This section requires complaints to be made in writing within 12 months of the incident occurring. A Local Commissioner may disapply these requirements. For example, where a pupil's particular circumstances or level of education made it difficult for them to put the complaint in writing it may be given orally, or a complainant may raise complaints with a Local Commissioner after the 12 month period if the complainant can show a good reason for the delay.

***Section 209: Procedure in respect of investigations***

688. This section sets out the processes involved in a Local Commissioner considering a complaint. It ensures that the governing body or head teacher about whom the complaint was made and any other person involved are allowed the opportunity to comment. Investigations must be carried out in private. But otherwise it is for a Local Commissioner to decide how to conduct the investigation. A Local Commissioner may obtain information and make enquiries from any person as they see fit.
689. If a Local Commissioner sees fit it may choose to pay any persons a sum in respect of expenses incurred by them or an allowance for loss of their time for the purposes of carrying out the investigation.

***Section 210: Investigations: further provisions***

690. The section gives a Local Commissioner various powers in order to facilitate their investigations. A Local Commissioner may require a governing body, head teacher, or any other person who in the Local Commissioner's opinion is able to provide information or documents relevant to the investigation, to provide such information or documents.
691. A Local Commissioner has the same powers as the High Court to compel the attendance and examination of witnesses and the production of documents. This means that anyone not complying with a Local Commissioner's requests may be in contempt of court and subject to the penalties associated with that. If any person obstructs an investigation, or is guilty of an act or omission in relation to an investigation which would constitute contempt of court in proceedings in the High Court, a Local Commissioner may certify this as an offence to the High Court. The High Court may then deal with the person charged as though they had committed the same offence in relation to the High Court.

***Section 211: Statements about investigations***

692. This section provides for statements to be issued by a Local Commissioner when he or she decides not to investigate or to discontinue an investigation, and when an investigation is completed. If the Local Commissioner decides not to investigate or to discontinue an investigation, the statement must set out the Local Commissioner's reasons for that decision.
693. When a Local Commissioner has completed an investigation, the statement must set out the Local Commissioner's conclusions and any recommendations. The Local Commissioner may make recommendations for action which, in the Commissioner's opinion, the governing body needs to take to remedy any injustice sustained by the person affected. Recommendations may also be aimed at preventing injustice being caused in the future as a result of similar action of the governing body or head teacher. For example, the Local Commissioner might recommend an apology to the pupil, or changes to the school's discipline policy.
694. The Local Commissioner must send a copy of the statement to the complainant, or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, the parent) the governing body and head teacher. The statement must identify the school concerned. It will then be for the Local Commissioner to decide whether it is appropriate for the

individual to be identified. The statement must not identify the complainant or any other person unless the Local Commissioner considers it necessary to identify that person.

**Section 212: Adverse findings notices**

695. This section requires a governing body to consider any statement containing recommendations by a Local Commissioner and notify the Local Commissioner within the “required period” as set by the Local Commissioner of the action which the governing body has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the governing body has decided to take no action, the Local Commissioner may require a governing body to publish an adverse findings notice. The Local Commissioner may also do this in two other circumstances: first, if not satisfied with the action which the governing body has taken or proposes to take; or second, if, after a further month following the end of the “notification period” (or any longer period agreed in writing by the Local Commissioner), the Local Commissioner has not received satisfactory confirmation that the governing body has taken the proposed action.
696. An adverse findings notice, in a form agreed between the governing body and a Local Commissioner, should include details of any action recommended in the Local Commissioner’s statement which the governing body has not taken, any supporting material required by the Local Commissioner, and an explanation of the governing body’s reasons for not having taken the recommended action (if the governing body wishes). The adverse findings notice must be published by the governing body in a manner directed by the Local Commissioner. The Local Commissioner might, for example, require publication in a local newspaper or, if the school has one, on its internet site.
697. A Local Commissioner must publish an adverse findings notice if the governing body fails to do so in accordance with *subsections (4) and (5)*, or cannot agree the form of the notice with the Local Commissioner within one month of the date the notice was received (or longer if agreed in writing by the Local Commissioner). *Subsection (7)* requires the provider to reimburse the LGO on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under *subsection (6)*.

**Section 213: Publication of statements etc. by Local Commissioner**

698. A Local Commissioner may publish all or part of a statement under section 211, or publish a summary of a statement. In deciding whether to publish a statement the Commissioner must take into account the public interest as well as the interests of the complainant and of other persons. The Local Commissioner may also supply a copy of all or part of a statement to anyone who requests it, and charge a fee for this. This fee must be reasonable and any fees charged are unlikely to be significant. *Subsections (8) to (10)* of section 211 apply to a Local Commissioner’s publication of a statement or supply of any copy under this section. That means that, for example, the summary must not identify the complainant or any other person (other than the school) unless the Local Commissioner considers it necessary to identify that person.

**Section 214: Disclosure of information, Section 215: Permitted disclosures of information by Local Commissioner**

699. These sections restrict the disclosure by a Local Commissioner of information obtained during the course of an investigation. Information obtained must not be disclosed except for the purposes specified. Particular exemptions allowing disclosure of information include, for example, disclosure for the purposes of a complaint being investigated by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, a local education authority under section 12 of the Education Act 1996 and the Secretary of State.

***Section 216: Law of defamation***

700. This section confers absolute privilege for the purposes of the law of defamation on certain communications between a Local Commissioner and other parties and certain publications by a Local Commissioner. This means that these communications and publications are not actionable for slander or libel.
701. The publication of any matter by a Local Commissioner in communications with a complainant, the Parliamentary Commissioner, Her Majesty's Chief Inspector of Education, Children's Services and Skills or a local authority will also be privileged. Privilege will also apply to the publication of statements, adverse finding notices, summaries and reports by a Local Commissioner.

***Section 217: Consultation with Parliamentary Commissioner for Administration***

702. Under this section if a Local Commissioner thinks that any matters which are the subject of the investigation include a matter that could be the subject of an investigation by the Parliamentary Commissioner (these being the actions of the Secretary of State and its impact on the complainant) the Local Commissioner is required to consult the Parliamentary Commissioner and inform the complainant of how to initiate such a complaint. It also imposes a similar obligation on the Parliamentary Commissioner in respect of complaints made to them which contain matters which could be the subject of an investigation under this chapter. In such circumstances the Parliamentary Commissioner must consult the Local Commissioner and inform the complainant how to initiate such a complaint.

***Section 218: Arrangements etc. to be made by Commission***

703. This section provides that the Commission must divide matters which may be investigated into appropriate categories and allocate responsibility for each category between the Local Commissioners. The Commission must also publish information about the procedures for making complaints under this Chapter.
704. *Subsection (3)(b)* makes clear that any information published under *subsection (2)(b)* must include details of the assistance available to pupils who are, or have been in care, disabled children and parents, and children with special educational needs.

***Section 219: Annual reports***

705. This section provides that every Local Commissioner must prepare a report on the discharge of their functions for each financial year to the Commission for Local Administration in England (the Commission). The Commission must then prepare an annual report which must be laid before Parliament.

***Section 220: Secretary of State's power of direction***

706. This section enables the Secretary of State to make a direction to a governing body that has not complied with a recommendation from a Local Commissioner. The Secretary of State may direct a governing body to comply within a specified period. That direction is enforceable by a mandatory order.

***Section 221: Disapplication of certain powers of Secretary of State***

707. This section amends sections 496 and 497 of the Education Act 1996. Currently, complainants may approach the Secretary of State asking him to consider the complaint. But for the Secretary of State to intervene the governing body has to be acting unreasonably or unlawfully and it must be expedient to intervene. In practice there are few occasions where the Secretary of State may issue a direction where the head teacher or school has failed in its statutory duty.

708. The effect of the amendments is that the Secretary of State can no longer make a direction in relation to complaints against governing bodies of schools that have or could have been made to a Local Commissioner. Instead, the complainant may approach a Local Commissioner if they are not satisfied with the governing body's response. After investigation into the complaint, a Local Commissioner will be able to recommend that the school undertake a course of action to remedy an injustice suffered by a particular individual.
709. A Local Commissioner will offer a scrutiny that is independent of central Government and will be able not only to consider if a school has been acting unreasonably or unlawfully (which is the scope of the Secretary of State's current practice) but also to recommend that a governing body provide a remedy.
710. Regulations may prescribe that the Secretary of State may make a direction in relation to a matter that could have been referred to the new scheme where the complaint is from a "prescribed person". The Government envisages that such prescribed persons might include the local education authority or governing bodies of other schools.

***Section 222: Power to amend meaning of "qualifying school"***

711. This section enables the types of schools that are covered by the scheme ("qualifying schools") to be added to, or amended by order at a later date. This order would be subject to the affirmative resolution procedure.

***Section 223: Amendments consequential on Chapter 2***

712. A Local Commissioner will be able to consider complaints relating to the National Curriculum where it affects an individual pupil. Previously, local education authorities had a role in the complaints process under section 409 of the Education Act 1996 and paragraphs 6(3) and (4) of Schedule 1 of the Education Act 1996. These sections have been repealed so that complainants are able to approach a Local Commissioner under the new scheme.