

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

##### ***Chapter 4: School Support Staff Pay and Conditions: England***

718. This Chapter establishes the School Support Staff Negotiating Body (“SSSNB”). The SSSNB will be responsible for negotiating matters referred to it that are related to the remuneration, duties or working time of school support staff, with a view to reaching and submitting agreements to the Secretary of State for his consideration.
719. The provisions enable the Secretary of State to make orders relating to those agreements submitted to him where he believes they properly address any matters referred to the SSSNB; are practicable for schools and local education authorities (as employers of school support staff) to implement; and have taken into account any factors that the Secretary of State has asked the SSSNB to have regard to during its considerations.

#### **The SSSNB**

##### ***Section 227: The School Support Staff Negotiating Body***

720. This section establishes the SSSNB and introduces Schedule 15 which makes further provision about the SSSNB.

##### ***Schedule 15: The School Support Staff Negotiating Body***

721. This Schedule makes provision for the constitutional arrangements, membership and proceedings of the SSSNB and certain administrative matters relating to the SSSNB.
722. It provides that the SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.
723. The constitutional arrangements must:
- provide for the members to include representatives of the prescribed organisations, the Secretary of State and an independent chair;
  - not provide for a member of the SSSNB to have voting rights, unless the member represents the interests of one of the prescribed organisations;
  - provide for the SSSNB to issue an annual report about the performance of its functions in each 12 month period.
724. The constitutional arrangements may:
- provide for the SSSNB to include other members;

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- make arrangements for the provision of administrative support for the SSSNB;
- require the annual report to be sent to particular persons or published in a particular manner;
- provide for the payment of fees to the independent chair and the payment of expenses incurred by the SSSNB.

***Section 228: Matters within SSSNB's remit***

725. This section describes the matters that fall within the remit of the SSSNB, these matters being the pay and conditions of employment relating to the duties and working time of school support staff in England, and allows the Secretary of State to include or exclude matters by order.

***Section 229: Referral of matter to SSSNB for consideration***

726. This section enables the Secretary of State to refer a matter to the SSSNB for consideration where that matter falls within the remit of the SSSNB; specify factors which the SSSNB must have regard to in considering the matter; and specify a date by which the SSSNB must submit any agreement it reaches about the matter or notify him that it has been unable to reach agreement.
727. It requires the SSSNB to consider the matter referred, taking into account any factors specified by the Secretary of State, and to submit any agreement reached by it to the Secretary of State, or to notify him that it has been unable to reach agreement, by any date specified by the Secretary of State.

***Section 230: Consideration of other matters by SSSNB***

This section allows the SSSNB to consider and reach agreement on a matter within the remit of the Body where the matter has not been referred to it by the Secretary of State, and to submit that agreement to the Secretary of State.

***Section 231: Agreement submitted by SSSNB under section 229 or 230***

728. This section applies where the SSSNB submits an agreement to the Secretary of State (except where the agreement is submitted as a result of the SSSNB's reconsideration of a matter).
729. Upon receipt of the agreement, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration.

***Section 232: Reconsideration of agreement by SSSNB***

730. Where the Secretary of State refers an agreement back to the SSSNB for reconsideration, this section provides that he may specify factors that the SSSNB must take into account, and a date by which the SSSNB must submit its revised agreement or, if it has not agreed any revisions, resubmit the existing agreement.
731. Following reconsideration of the agreement, the SSSNB must submit any revised agreement back to the Secretary of State or, if it has not agreed any revisions, resubmit the existing agreement.
732. This section also enables the Secretary of State to withdraw the reference of the agreement, withdraw or vary any factor which must be taken into account, specify additional factors to be taken into account or postpone any deadline set to a later date, at any time before the SSSNB submits the revised agreement or resubmits the existing agreement.

***Section 233: SSSNB's submission of agreement following reconsideration: powers of Secretary of State***

733. This section applies where the SSSNB has resubmitted an agreement following reconsideration. The Secretary of State may:
- make an order ratifying the agreement;
  - refer the agreement back to the SSSNB for further consideration;
  - make an order requiring particular persons to have regard to the agreement;
  - make an order which makes provision otherwise than in the terms of the agreement.
734. The Secretary of State may refer an agreement back to the SSSNB for further reconsideration only if it appears to the Secretary of State that:
- the agreement does not properly address the matter that was referred to the SSSNB; or
  - it is not practicable to implement the agreement; or
  - the SSSNB has failed to take into account factors specified by the Secretary of State on referral of the matter to the SSSNB for reconsideration.
735. The Secretary of State may make an order otherwise than in the terms of the agreement only if it appears to him that one or more of the above conditions applies, and that there is an urgent need to make such an order.

***Section 234: Powers of Secretary of State in absence of SSSNB agreement***

736. The effect of *subsections (1) and (2)* of this section is that where the SSSNB notifies the Secretary of State that it has been unable to reach agreement or fails to submit an agreement to the Secretary of State by any deadline imposed, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, may make provision by order in relation to the matter referred to the SSSNB.
737. The effect of *subsections (3) and (4)* is that where, following reconsideration, the SSSNB fails by any deadlines imposed either to submit a revised agreement, or, where it has not agreed any revisions, to resubmit the existing agreement to the Secretary of State, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, by order make provision in relation to a matter to which the agreement relates.
738. *Subsection (5)* requires the Secretary of State to consult the SSSNB before making an order under this section relating to a matter referred to the SSSNB, or to a matter to which an agreement referred to the SSSNB relates.

***Section 235: Effect of order ratifying SSSNB agreement***

739. Where the Secretary of State by order ratifies an agreement this section provides that:
- if the agreement relates to a person's remuneration, that remuneration is to be determined and paid in accordance with it;
  - if the agreement relates to any other condition of a person's employment that condition becomes a term of the person's contract of employment.
740. It also provides that any term of the person's contract of employment which conflicts with the agreement has no effect.

***Section 236: Effect of order making provision otherwise than in terms of SSSNB agreement***

741. Where the Secretary of State makes an order otherwise than in terms of a SSSNB agreement, or in the absence of a SSSNB agreement, this section provides that the order must either:
- require particular persons to have regard to the order when exercising particular functions; or
  - provide that the order has effect for the purpose of determining the conditions of employment of the persons to whom it applies.

***Section 237: Orders: supplementary***

742. This section provides that orders made under this Chapter may apply retrospectively but may not reduce a person's pay or alter their conditions of employment to their detriment retrospectively.
743. It also provides that where an order makes provision by reference to an agreement or other document it must make provision about the publication of that agreement or document.

***Section 238: Guidance***

744. This section provides that, with the Secretary of State's approval, the SSSNB may issue guidance relating to-
- an agreement that has been ratified by an order under this Chapter
  - an agreement to which persons are by an order under this Chapter required to have regard.
745. It also allows the Secretary of State to issue guidance relating to an order which makes provision in the absence of, or otherwise than in terms of the agreement.
746. *Subsection (3)* provides that local education authorities and governing bodies of schools maintained by local education authorities must have regard to guidance issued under this section.

***Section 239: Non-statutory School Support Staff Negotiating Body***

747. This section provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB.
748. It also provides for:
- the non-statutory body's constitutional arrangements; and
  - any matters referred to the non-statutory body by the Secretary of State;
- to be treated as if they were:
- arrangements made in respect of; and
  - matters referred to;
- the SSSNB under this Chapter.

***Section 240: "School support staff"***

749. This section defines "school support staff" for the purposes of this Chapter. The definition excludes school teachers and persons of descriptions described in regulations. The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of "school support staff" persons whose terms and

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conditions of employment are determined in accordance with agreements of other bodies which are as follows: the Soulbury Committee, the Joint Negotiating Committee for Youth and Community Workers and the Joint Negotiating Committee for Local Authority and Associated Employees.

***Section 241: General interpretation***

750. This section defines other terms used in the Chapter.