



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 10

#### SCHOOLS

#### CHAPTER 1

#### SCHOOLS CAUSING CONCERN

#### *Schools causing concern: England*

### 203 Powers in relation to schools causing concern: England

Schedule 13 makes provision in relation to schools causing concern in England.

#### Commencement Information

II S. 203 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

### 204 Power to require LEAs in England to obtain advisory services

(1) Section 62A of the Education Act 2002 (power of Secretary of State to require LEAs in England to obtain advisory services) is amended as follows.

(2) After subsection (1) insert—

“(1A) This section also applies where it appears to the Secretary of State that—

(a) a local education authority in England maintain a disproportionate number of low-performing schools, and

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- (b) the authority—
  - (i) have not been effective or are unlikely to be effective in securing an improvement in the standards of performance of pupils at those schools, or
  - (ii) are unlikely to be effective in securing an improvement in the standards of performance of pupils at other schools which may in the future be low-performing schools.
- (1B) In subsection (1A) “low-performing school” means a school at which the standards of performance of pupils are unacceptably low.
- (1C) For the purposes of subsection (1B) the standards of performance of pupils at a school are low if they are low by reference to any one or more of the following—
  - (a) the standards that the pupils might in all the circumstances reasonably be expected to attain;
  - (b) where relevant, the standards previously attained by them;
  - (c) the standards attained by pupils at comparable schools.”
- (3) In subsection (4) after “section” insert—
 

““pupil” has the same meaning as in the Education Act 1996 (see sections 3 and 19(5) of that Act);”.

#### Commencement Information

**I2** S. 204 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

#### *Schools causing concern: Wales*

### **205 Powers in relation to schools causing concern: Wales**

Schedule 14 makes provision in relation to schools causing concern in Wales.

#### Commencement Information

**I3** S. 205 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

VALID FROM 19/04/2010

## CHAPTER 2

### COMPLAINTS: ENGLAND

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

- (1) This Chapter applies to a complaint against a school made by—
  - (a) a parent of a pupil at a qualifying school in England; or
  - (b) a pupil at such a school.

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- (2) In subsection (1) “a complaint against a school” means (subject to subsection (3)) a complaint that the pupil or a parent of the pupil has sustained injustice in consequence of—
- (a) an act of the governing body of the school; or
  - (b) an exercise of, or failure to exercise, a prescribed function of the head teacher of the school.
- (3) A “complaint against a school” does not include a complaint that relates to—
- (a) a decision about admissions to the school;
  - (b) a matter in respect of which the complainant has or had a prescribed right of appeal.
- (4) An act is to be treated as an act of the governing body of a school for the purposes of subsection (2) if it is an act of—
- (a) a person acting on behalf of the governing body; or
  - (b) a person to whom the governing body has delegated any functions.
- (5) An act is also to be treated as an act of the governing body of a school if—
- (a) the governing body exercises a function by means of an arrangement with another person; and
  - (b) the act is done by or on behalf of the other person in carrying out the arrangement.
- (6) In this section—
- (a) “function” includes a power and a duty;
  - (b) “head teacher” has the meaning given by section 579(1) of the Education Act 1996 (c. 56);
  - (c) “qualifying school” means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school (within the meaning given by section 22(9) of the School Standards and Framework Act 1998 (c. 31)) or a short stay school;
  - (d) references to a pupil at a qualifying school are (subject to section 207(6)) references to a person who is, or was within a prescribed period ending with the date of the complaint, a registered pupil (within the meaning of the Education Act 1996) at the school;
  - (e) “parent”, in relation to a pupil, has the meaning given by section 576 of the Education Act 1996 in relation to a child or young person.
- (7) In this Chapter a reference to an act includes an omission.

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

- (1) This section applies where a complaint to which this Chapter applies, and which meets the requirements of section 208—
- (a) is made by the complainant to a Local Commissioner; or
  - (b) is made by the complainant to a governor, the governing body or the head teacher of the school and referred to a Local Commissioner, with the complainant's consent, by the governing body or the head teacher of the school.

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- (2) Where this section applies, a Local Commissioner may under this Chapter investigate the complaint.
- (3) But before investigating a complaint to which this Chapter applies, a Local Commissioner must be satisfied—
  - (a) that the matter was brought to the notice of the governing body by or on behalf of the complainant and that the governing body was given a reasonable opportunity to investigate the matter and respond; or
  - (b) that, in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of the governing body or for the governing body to be given a reasonable opportunity to investigate the matter and respond.
- (4) Whether to initiate, continue or discontinue an investigation is a matter for the discretion of the Local Commissioner dealing with the complaint.
- (5) A Local Commissioner may in particular decide not to investigate a complaint under this Chapter, or to discontinue an investigation—
  - (a) if satisfied with the action that the governing body has taken or proposes to take; or
  - (b) if satisfied that the complaint is vexatious.
- (6) Regulations prescribing a period for the purposes of section 206(6)(d) may prescribe circumstances in which a Local Commissioner may determine that a person who has not been a registered pupil at the school within the prescribed period is to be treated as a “pupil” for the purposes of that section.
- (7) In this Chapter “Local Commissioner” has the meaning given by section 23 of the Local Government Act 1974 (c. 7).

#### **208 Time-limit etc for making complaint**

- (1) The requirements referred to in section 207(1) are that the complaint is made—
  - (a) in writing; and
  - (b) within 12 months beginning with the day the complainant first had notice of the matter complained of;
 but this is subject to subsection (2).
- (2) A Local Commissioner may disapply either or both of the requirements in subsection (1) in relation to a particular complainant.

#### **209 Procedure in respect of investigations**

- (1) A Local Commissioner who proposes to investigate a complaint to which this Chapter applies must give the following an opportunity to comment on the matter—
  - (a) the respondent;
  - (b) any other person who is alleged in the complaint to have done or authorised the act which would be the subject of the investigation;
  - (c) any person who otherwise appears to the Local Commissioner to have done or authorised the act.
- (2) Every investigation under this Chapter is to be conducted in private.

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- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
  - (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit;
  - (b) make such inquiries as the Local Commissioner thinks fit; and
  - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the complainant, and to any other person who attends or provides information for the purposes of an investigation under this Chapter—
  - (a) sums in respect of the expenses properly incurred by them;
  - (b) allowances by way of compensation for the loss of their time.
- (6) In this Chapter a reference to the “respondent” is a reference to the governing body or head teacher about whose act a complaint to which this Chapter applies was made.

## **210 Investigations: further provisions**

- (1) For the purposes of an investigation under this Chapter a Local Commissioner may require the following persons to provide information or produce documents relevant to the investigation—
  - (a) the respondent;
  - (b) any other person who in the Local Commissioner's opinion is able to provide any such information or produce any such documents.
- (2) For the purposes of an investigation under this Chapter a Local Commissioner has the same powers as the High Court in respect of—
  - (a) the attendance and examination of witnesses; and
  - (b) the production of documents.
- (3) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner's opinion is qualified to give it.
- (4) A Local Commissioner may pay to a person giving advice such fees or allowances as the Local Commissioner may determine.
- (5) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Chapter.
- (6) Any person appointed under subsection (5) is deemed to be an officer of the Commission for Local Administration in England in carrying out functions under that appointment.
- (7) No person may be compelled for the purposes of an investigation under this Chapter to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (8) If any person, without lawful excuse—
  - (a) obstructs a Local Commissioner in the performance of the Local Commissioner's functions under this Chapter;

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- (b) obstructs a person discharging or assisting in the discharge of those functions; or
- (c) is guilty of an act in relation to an investigation under this Chapter which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Local Commissioner may certify the offence to the High Court.

- (9) Where an offence is certified under subsection (8), the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in D’s defence, deal with D in any manner in which the High Court could deal with a person who had committed the offence in relation to the High Court.

## **211 Statements about investigations**

- (1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
- (a) decides not to investigate a matter under this Chapter;
  - (b) decides to discontinue an investigation; or
  - (c) completes an investigation.
- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner’s reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
- (a) set out the Local Commissioner’s conclusions on the investigation; and
  - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner’s opinion, the governing body should take—
- (a) to remedy any injustice sustained by the complainant in consequence of the act which was the subject of the investigation; and
  - (b) to prevent injustice being caused in the future in consequence of a similar act.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to—
- (a) the complainant (or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, a parent of the complainant);
  - (b) the respondent; and
  - (c) the governing body, if the respondent is the head teacher.
- (6) If, on consideration of the statement, it appears to the governing body that a payment should be made to or in respect of a person who has suffered injustice in consequence of the act which was the subject of the investigation, the governing body may make such a payment.
- (7) The statement must identify the school concerned.
- (8) The statement must not—
- (a) mention the name of any person; or

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- (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the statement.
- (9) But, after taking into account the public interest as well as the interests of that person, the complainant and other persons, the Local Commissioner may mention the name of a person, or include in the statement any particulars which are likely to identify the person, if the Local Commissioner considers it necessary to do so.
- (10) Nothing in subsection (8) prevents a statement mentioning the name of, or containing particulars which are likely to identify, the head teacher of the school concerned.

## **212 Adverse findings notices**

- (1) This section applies where a governing body receives a statement prepared under section 211 which contains recommendations.
- (2) The governing body must—
  - (a) consider the statement; and
  - (b) notify the Local Commissioner, within the notification period, of the action which the governing body has taken or proposes to take.
- (3) The Local Commissioner may by notice require the governing body to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—
  - (a) does not receive the notification mentioned in subsection (2)(b) within the notification period or is satisfied before the end of that period that the governing body has decided to take no action;
  - (b) is not satisfied with the action which the governing body has taken or proposes to take; or
  - (c) does not within the period of one month beginning with the end of the notification period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the governing body has taken action, as proposed, to the satisfaction of the Commissioner.
- (4) An adverse findings notice is a notice, in such form as the governing body and the Local Commissioner may agree, consisting of—
  - (a) details of any action recommended in the statement which the governing body has not taken;
  - (b) such supporting material as the Local Commissioner may require;
  - (c) if the governing body so requires, an explanation of the reasons for having taken no action, or for not having taken the action recommended in the statement.
- (5) The adverse findings notice must be published by the governing body in such a way as the Local Commissioner may direct.
- (6) If the governing body—
  - (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5); or
  - (b) is unable, within the publication period, to agree with the Local Commissioner the form of the adverse findings notice to be published,

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the Local Commissioner must arrange for an adverse findings notice to be published in such a way as the Local Commissioner considers appropriate.

- (7) The governing body must reimburse the Local Commissioner on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section—
- “notification period” means—
- (a) the period of one month beginning with the date on which the governing body received the statement; or
  - (b) such longer period as the Local Commissioner may agree in writing.
- “publication period” means—
- (a) the period of one month beginning with the date on which the governing body received the notice under subsection (3); or
  - (b) such longer period as the Local Commissioner may agree in writing.

### **213 Publication of statements etc. by Local Commissioner**

- (1) A Local Commissioner may—
- (a) publish all or part of a statement under section 211; or
  - (b) publish a summary of a matter which is the subject of a statement under section 211,
- if, after taking into account the public interest as well as the interests of the complainant and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—
- (a) supply a copy of all or part of a statement or summary mentioned in subsection (1) to any person who requests it; and
  - (b) charge a reasonable fee for doing so.
- (3) Where a Local Commissioner publishes all or part of a statement or summary mentioned in subsection (1), the governing body of the school concerned must, on demand, reimburse the Local Commissioner the reasonable expenses of publication.
- (4) Subsections (8) to (10) of section 211 apply to a summary of a matter which is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

### **214 Disclosure of information**

- (1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Chapter must not be disclosed except—
- (a) for the purpose of the investigation and of any statement, adverse findings notice or summary under section 211, 212 or 213;
  - (b) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Chapter;
  - (c) for the purposes of proceedings under section 210(9).



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- (2) A Local Commissioner and a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) of subsection (1)) of matters coming to their knowledge in the course of an investigation under this Chapter.

## **215 Permitted disclosures of information by Local Commissioner**

- (1) A Local Commissioner may disclose to Her Majesty's Chief Inspector of Education, Children's Services and Skills any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Chief Inspector has functions.
- (2) A Local Commissioner may disclose to the Parliamentary Commissioner for Administration any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Parliamentary Commissioner has functions.
- (3) A Local Commissioner may disclose to the Information Commissioner any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part 5 of the Data Protection Act 1998 (c. 29) (enforcement);
    - (ii) section 48 of the Freedom of Information Act 2000 (c. 36) (practice recommendations); or
    - (iii) Part 4 of that Act (enforcement); or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant); or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (4) A Local Commissioner may disclose to a local education authority (within the meaning given by section 12 of the Education Act 1996 (c. 56)) any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the authority has functions.
- (5) A Local Commissioner may disclose to the Secretary of State any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to the Secretary of State's functions under section 220.
- (6) Nothing in section 214(1) applies in relation to the disclosure of information in accordance with this section.

## **216 Law of defamation**

- (1) For the purposes of the law of defamation the following are absolutely privileged—

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- (a) the publication of any matter in communications between a governing body and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Chapter;
  - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Chapter with a person mentioned in subsection (2);
  - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 211;
  - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 212(3), (4) and (5) or (6);
  - (e) the publication of any matter by inclusion in a statement or summary published or supplied under section 213;
  - (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 219.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) the governing body;
  - (b) the complainant (or, if the complainant is the pupil, a parent of the complainant);
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (d) the Parliamentary Commissioner for Administration;
  - (e) a local education authority (within the meaning given by section 12 of the Education Act 1996 (c. 56));
  - (f) the Secretary of State.

## **217 Consultation with Parliamentary Commissioner for Administration**

- (1) Subsection (2) applies if, at any stage in the course of an investigation under this Chapter, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration in accordance with the Parliamentary Commissioner Act 1967 (c. 13) (“the 1967 Act”).
- (2) The Local Commissioner—
- (a) must consult the Parliamentary Commissioner for Administration about the matter; and
  - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the complainant of the steps necessary to initiate a complaint under the 1967 Act.
- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Chapter may be about anything relating to the matter, including—
- (a) the conduct of any investigation into the matter; and
  - (b) the form, content and publication of any report or statement of the result of such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the 1967 Act, the Parliamentary Commissioner for Administration forms the

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opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Chapter.

- (5) The Parliamentary Commissioner for Administration—
- (a) must consult the appropriate Local Commissioner about the complaint; and
  - (b) where the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Chapter.
- (6) Where a Local Commissioner is consulted about a complaint under the 1967 Act by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Section 11(2) of the 1967 Act (secrecy) does not apply in relation to the disclosure of information in the course of consultations held in accordance with this section.

## **218 Arrangements etc. to be made by Commission**

- (1) The Commission for Local Administration in England (“the Commission”) must—
- (a) divide the matters which may be investigated under this Chapter into such categories as it considers appropriate; and
  - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—
- (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1); and
  - (b) must publish information about the procedures for making complaints under this Chapter.
- (3) The information published under subsection (2)(b) must include details of assistance available to each of the following—
- (a) a pupil at a qualifying school (see section 206(6)(d)) who is, or has been, looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989 (c. 41));
  - (b) a person who has a disability (within the meaning of section 1(1) of the Disability Discrimination Act 1995 (c. 50));
  - (c) a person who has special educational needs (within the meaning of section 312 of the Education Act 1996 (c. 56)).

## **219 Annual reports**

- (1) Every Local Commissioner must for each financial year—
- (a) prepare a general report on the discharge of the Local Commissioner's functions under this Chapter; and
  - (b) submit it to the Commission.
- (2) The Commission must, for each financial year, prepare a general report on the discharge of the Local Commissioners' functions under this Chapter (an “annual report”).
- (3) The annual report must be prepared as soon as practicable after the Commission has received the reports for the year from the Local Commissioners under subsection (1).

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- (4) The Commission must arrange for the publication of—
  - (a) the annual report; and
  - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the annual report before Parliament.
- (6) In this section “financial year” means the period of 12 months ending with 31st March in any year.

## **220 Secretary of State's power of direction**

- (1) This section applies where—
  - (a) a Local Commissioner has made recommendations under section 211(4); and
  - (b) the governing body of the school concerned has not complied with them.
- (2) The Secretary of State may direct the governing body to comply with the recommendations within the period specified in the direction.
- (3) A direction under subsection (2) is enforceable, on an application made on behalf of the Secretary of State, by a mandatory order.

## **221 Disapplication of certain powers of Secretary of State**

- (1) In section 496 of the Education Act 1996 (c. 56) (power of Secretary of State to prevent unreasonable exercise of functions), after subsection (2) insert—
  - “(3) The Secretary of State may not make a direction under this section in respect of a matter that—
    - (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
    - (b) in the Secretary of State's opinion, could have been so complained about.
  - (4) Regulations may disapply subsection (3) in relation to cases where a complaint about the matter has been made to the Secretary of State by—
    - (a) a prescribed person, or
    - (b) a person of a prescribed description.”
- (2) In section 497 of that Act (general default powers of Secretary of State), after subsection (3) insert—
  - “(4) The Secretary of State may not make an order under this section in respect of a matter that—
    - (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
    - (b) in the Secretary of State's opinion, could have been so complained about.

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(5) Regulations may disapply subsection (4) in relation to cases where a complaint about the matter has been made to the Secretary of State by—

- (a) a prescribed person, or
- (b) a person of a prescribed description.”

(3) In section 28M of the Disability Discrimination Act 1995 (c. 50) (directions by Secretary of State and Welsh Ministers) after subsection (7) insert—

“(7A) The Secretary of State may not, unless subsection (7B) applies, give a direction under this section to a responsible body in England in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State's opinion, could have been so complained about.

(7B) This subsection applies if—

- (a) the Local Commissioner has made a recommendation to the responsible body under section 211(4) of the Apprenticeships, Skills, Children and Learning Act 2009 (statement following investigation) in respect of the matter, and
- (b) the responsible body has not complied with the recommendation.”

## **222 Power to amend meaning of “qualifying school”**

- (1) The Secretary of State may by order amend the definition of “qualifying school” in section 206(6)(c).
- (2) An order under this section may make consequential amendments of this Chapter.

## **223 Amendments consequential on Chapter 2**

- (1) The following provisions of the Education Act 1996 (c. 56) cease to have effect—
  - (a) section 408(4)(g) (provision of information);
  - (b) section 409 (complaints and enforcement: maintained schools);
  - (c) paragraph 6(3) and (4) of Schedule 1 (complaints and enforcement: short stay schools).
- (2) In paragraph 1 of Schedule 4 to the Local Government Act 1974 (c. 7) (the Commission), after sub-paragraph (2B) (inserted by the Health Act 2009 (c. 21)) insert—
 

“(2C) A Local Commissioner may not investigate a complaint against a school under Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 if the Local Commissioner—

  - (a) is a governor of the school;
  - (b) is a parent of—
    - (i) a registered pupil at the school, or

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*Changes to legislation: Apprenticeships, Skills, Children and Learning Act 2009, Part 10 is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date.*

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(ii) a person who has been a registered pupil at the school within the five years ending with the making of the complaint; or

(c) works at the school or has worked at the school within those five years.

(2D) In sub-paragraph (2C) “registered pupil” has the same meaning as in the Education Act 1996.”

## 224 Interpretation of Chapter 2

In this Chapter—

- (a) “act” has the meaning given by section 206(7);
- (b) “the Commission” has the meaning given by section 218(1);
- (c) “Local Commissioner” has the meaning given by section 207(7);
- (d) “respondent” has the meaning given by section 209(6).

## CHAPTER 3

### INSPECTIONS

## 225 Interim statements

- (1) The Education Act 2005 (c. 18) is amended as follows.
- (2) After section 10 insert—

### “10A Interim statements between inspections

- (1) The Chief Inspector may make a statement (an “interim statement”) about a school in England to which section 5 applies.
- (2) An interim statement is a statement—
  - (a) that the Chief Inspector is of the opinion that it is not necessary for the school to be inspected under section 5 for at least a year after the date on which the statement is made,
  - (b) setting out the Chief Inspector's reasons for forming that opinion, and
  - (c) containing such other information (if any) as the Chief Inspector considers appropriate.
- (3) The Chief Inspector may arrange for an interim statement to be published in such manner as the Chief Inspector considers appropriate.
- (4) Section 151 of the Education and Inspections Act 2006 (publication of inspection reports: privilege and electronic publication) applies in relation to an interim statement as it applies in relation to a report.”
- (3) In the italic heading before section 14 after “reports” insert “ and interim statements ”.
- (4) After section 14 insert—

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#### **“14A Destination of interim statements: maintained schools**

- (1) The Chief Inspector must ensure that a copy of any interim statement about a maintained school is sent without delay to the appropriate authority for the school.
- (2) The Chief Inspector must ensure that copies of the statement are sent—
  - (a) to the head teacher of the school,
  - (b) to whichever of the local education authority and the governing body are not the appropriate authority, and
  - (c) in the case of a school having foundation governors, to the person who appoints them and (if different) to the appropriate appointing authority.
- (3) If the school provides full-time education suitable to the requirements of pupils over compulsory school age, the Chief Inspector must ensure that a copy of the statement is also sent to the Young People's Learning Agency for England.
- (4) The appropriate authority must—
  - (a) make a copy of any statement sent to the authority under subsection (1) available for inspection by members of the public at such times and at such places as may be reasonable,
  - (b) provide one copy of the statement free of charge to any person who asks for one, and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement within such period following receipt of the statement by the authority as may be prescribed.”
- (5) In the italic heading before section 16 after “reports” insert “ and interim statements ”.
- (6) After section 16 insert—

#### **“16A Destination of interim statements: non-maintained schools**

- (1) The Chief Inspector must ensure that a copy of any interim statement about a school other than a maintained school is sent without delay to the proprietor of the school.
- (2) In the case of a special school which is not a community or foundation special school, the proprietor must without delay send a copy of any interim statement sent to the proprietor under subsection (1) to any local education authority that are paying fees in respect of the attendance of a registered pupil at the school.
- (3) The proprietor of the school must—
  - (a) make any statement sent to the proprietor under subsection (1) available for inspection by members of the public at such times and at such place as may be reasonable,
  - (b) provide one copy of the statement free of charge to any person who asks for one, and

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- (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement within such period following receipt of the statement by the proprietor as may be prescribed.”

- (7) In section 18 (interpretation of Chapter) after the definition of “the Chief Inspector” insert—

““interim statement” means an interim statement under section 10A;”.

#### Commencement Information

- I4** S. 225 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.  
**I5** S. 225 in force at 1.4.2010 in so far as not already in force by S.I. 2010/303, art. 3, Sch. 2 (with arts. 9-11)

## 226 Powers of persons providing administrative support in connection with inspections

- (1) Part 2 of Schedule 12 to the Education and Inspections Act 2006 (c. 40) (inspectors etc acting on behalf of Chief Inspector) is amended as follows.
- (2) In paragraph 9(1) (delegation of functions), after paragraph (c) insert “or  
 (d) any inspection administrator,”, (and omit “or” at the end of paragraph (b)).
- (3) In paragraph 9(2)(a) for “and 11(4)” substitute “, 11(4) and 11A(3) ”.
- (4) In paragraph 10(1) (inspectors etc to have necessary qualifications, experience and skills), after paragraph (c) insert “or  
 (d) an inspection administrator,”, (and omit “or” at the end of paragraph (b)).
- (5) After paragraph 11 insert—

### 11A “Inspection administrators

- (1) The Chief Inspector may enter into arrangements with inspection service providers under which they provide the services of persons to provide administrative support in connection with the carrying out of inspections.
- (2) A person providing administrative support in pursuance of arrangements under sub-paragraph (1) is to be known as an inspection administrator.
- (3) The Chief Inspector may not authorise an inspection administrator to conduct an inspection.”

#### Commencement Information

- I6** S. 226 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.



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## CHAPTER 4

### SCHOOL SUPPORT STAFF PAY AND CONDITIONS: ENGLAND

#### *The SSSNB*

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

- (1) There is to be an unincorporated body of persons known as the School Support Staff Negotiating Body.
- (2) In this Chapter that body is referred to as “the SSSNB”.
- (3) The SSSNB's functions are those conferred on it by this Chapter.
- (4) Schedule 15 makes further provision about the SSSNB.

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#### **Commencement Information**

**I7** S. 227 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### **228 Matters within SSSNB's remit**

- (1) For the purposes of this Chapter, the matters within the SSSNB's remit are matters relating to—
  - (a) the remuneration of school support staff, or
  - (b) conditions of employment relating to the duties or working time of school support staff.
- (2) The Secretary of State may by order provide that, for the purposes of subsection (1)—
  - (a) a payment or entitlement of a specified kind is or is not to be treated as remuneration;
  - (b) a specified matter is or is not to be treated as relating to the duties of school support staff;
  - (c) a specified matter is or is not to be treated as relating to the working time of school support staff.

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#### **Commencement Information**

**I8** S. 228 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### *Consideration of matter by SSSNB*

#### **229 Referral of matter to SSSNB for consideration**

- (1) The Secretary of State may refer a matter within the SSSNB's remit to the SSSNB for consideration by it.
- (2) The rest of this section applies if the Secretary of State does so.
- (3) The Secretary of State may specify—

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- (a) factors to which the SSSNB must have regard in considering the matter;
  - (b) a date by which the SSSNB must comply with subsection (5).
- (4) The SSSNB must consider the matter, having regard to any factors specified under subsection (3)(a).
- (5) When it has considered the matter, the SSSNB must—
- (a) if it has reached an agreement about the matter, submit that agreement to the Secretary of State, and
  - (b) if it has been unable to reach an agreement about the matter, notify the Secretary of State of that.
- (6) If the Secretary of State specifies a date under subsection (3)(b), the SSSNB must comply with subsection (5) no later than that date.
- (7) The Secretary of State may, at any time before the SSSNB have complied with subsection (5) in relation to a matter—
- (a) withdraw or vary the reference of the matter;
  - (b) if factors have been specified under subsection (3)(a), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under subsection (3)(b), specify a later date under that paragraph.

#### Commencement Information

**I9** S. 229 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### 230 Consideration of other matters by SSSNB

- (1) The SSSNB may consider a matter within its remit, even if the matter has not been referred to it by the Secretary of State under section 229.
- (2) If the SSSNB reaches agreement about the matter, it may submit the agreement to the Secretary of State.

#### Commencement Information

**I10** S. 230 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### *Powers of Secretary of State on submission of SSSNB agreement*

### 231 Agreement submitted by SSSNB under section 229 or 230

- (1) This section applies if the SSSNB submits an agreement to the Secretary of State under section 229(5)(a) or 230(2).
- (2) The Secretary of State may—
  - (a) make an order ratifying the agreement, or
  - (b) if the Secretary of State thinks that it would be inappropriate to make an order ratifying the agreement, refer the agreement back to the SSSNB for reconsideration (see section 232).

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**Commencement Information**

**I11** S. 231 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Reconsideration by SSSNB*

**232 Reconsideration of agreement by SSSNB**

- (1) This section applies if, under section 231(2)(b) or section 233(2)(b), the Secretary of State refers an agreement back to the SSSNB for reconsideration.
- (2) The Secretary of State may specify—
  - (a) factors to which the SSSNB must have regard in the reconsideration;
  - (b) a date by which the SSSNB must comply with subsection (4).
- (3) The SSSNB must reconsider the agreement, having regard to any factors specified under subsection (2)(a).
- (4) After completing its reconsideration, the SSSNB must—
  - (a) if it has agreed revisions to the agreement, submit to the Secretary of State a new version of the agreement incorporating the revisions;
  - (b) if it has not agreed revisions to the agreement, submit the existing version of the agreement to the Secretary of State.
- (5) If the Secretary of State specifies a date under subsection (2)(b), the SSSNB must comply with subsection (4) no later than that date.
- (6) The Secretary of State may, at any time before the SSSNB has complied with subsection (4) in relation to an agreement referred back to it for reconsideration—
  - (a) withdraw the reference of the agreement;
  - (b) if factors have been specified under subsection (2)(a), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under subsection (2)(b), specify a later date under that paragraph.

**Commencement Information**

**I12** S. 232 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

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

- (1) This section applies if the SSSNB submits an agreement about a matter to the Secretary of State under section 232.
- (2) Subject to subsections (3) and (4), the Secretary of State may—
  - (a) by order ratify the agreement;
  - (b) refer the agreement back to the SSSNB for reconsideration (see section 232);
  - (c) by order require specified persons to have regard to the agreement in exercising specified functions;

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- (d) by order make provision, in relation to a matter to which the agreement relates, otherwise than in the terms of the agreement.
- (3) The Secretary of State may refer an agreement about a matter back to the SSSNB for reconsideration only if it appears to the Secretary of State that the condition in subsection (5) is met.
- (4) The Secretary of State may make an order under subsection (2)(d) in relation to a matter only if it appears to the Secretary of State that—
  - (a) the condition in subsection (5) is met, and
  - (b) there is an urgent need to make provision in relation to the matter.
- (5) The condition is that one or more of the following applies—
  - (a) the agreement does not properly address the matter;
  - (b) it is not practicable to implement the agreement;
  - (c) the SSSNB failed in reconsidering the agreement to have regard to factors specified under section 232(2)(a).
- (6) In this section, “specified”, in relation to an order, means specified in the order.

#### Commencement Information

**I13** S. 233 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### *Powers of Secretary of State in absence of SSSNB agreement*

### **234 Powers of Secretary of State in absence of SSSNB agreement**

- (1) Subsection (2) applies if—
  - (a) the SSSNB notifies the Secretary of State under section 229(5)(b) that it has been unable to reach agreement on a matter referred to it, or
  - (b) the SSSNB fails to comply with section 229(5) in relation to a matter by any date specified under section 229(3)(b).
- (2) The Secretary of State may—
  - (a) if a date has been specified under section 229(3)(b) in relation to the matter, specify a later date under that paragraph, or
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by order make provision in relation to the matter.
- (3) Subsection (4) applies if the SSSNB fails to comply with section 232(4) in relation to an agreement by any date specified under section 232(2)(b).
- (4) The Secretary of State may—
  - (a) if a date has been specified under section 232(2)(b) in relation to the SSSNB's reconsideration of the agreement, specify a later date under that paragraph, or
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by order make provision in relation to a matter to which the agreement relates.
- (5) Before making an order under subsection (2)(b) or (4)(b), the Secretary of State must consult the SSSNB.

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**Commencement Information**

**I14** S. 234 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Orders*

**235 Effect of order ratifying SSSNB agreement**

- (1) This section applies if the Secretary of State makes an order ratifying an agreement submitted by the SSSNB.
- (2) If the agreement relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with it.
- (3) A provision of the agreement that relates to any other condition of a person's employment has effect as a term of the person's contract of employment.
- (4) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement.

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**Commencement Information**

**I15** S. 235 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

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

- (1) This section applies if the Secretary of State makes an order under section 233(2)(d) or 234(2)(b) or (4)(b).
- (2) The order must either—
  - (a) require specified persons, in exercising specified functions, to have regard to the order, or
  - (b) provide that it is to have effect for determining the conditions of employment of persons to whom it applies.
- (3) If the order makes provision within subsection (2)(b), subsections (4) to (6) apply.
- (4) If the order relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with it.
- (5) A provision of the order that relates to any other condition of a person's employment has effect as a term of the person's contract of employment.
- (6) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the order.
- (7) In subsection (2)(a), “specified” means specified in the order.

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**Commencement Information**

**I16** S. 236 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Status: Point in time view as at 01/04/2010. This version of this part contains provisions that are not valid for this point in time.*

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### 237 Orders: supplementary

- (1) An order under this Chapter may make provision that has retrospective effect, subject to subsection (2).
- (2) An order under this Chapter may not make provision the effect of which is to—
  - (a) reduce remuneration in respect of a period wholly or partly before the date on which the order is made, or
  - (b) alter a condition of a person's employment to the person's detriment in respect of such a period.
- (3) An order under section 233(2)(d) or 234(2)(b) or (4)(b) may make provision by reference to the exercise of a power under—
  - (a) section 35 of the Education Act 2002 (c. 32) (staffing of community schools, etc.), or
  - (b) section 36 of that Act (staffing of foundation schools, etc.).
- (4) An order under this Chapter may make provision by reference to—
  - (a) an agreement submitted to the Secretary of State by the SSSNB, or
  - (b) any other document.
- (5) If an order under this Chapter does so, it must include provision about the publication of the agreement or other document.
- (6) A reference in subsection (3) to an order under section 233(2)(d) or 234(2)(b) or (4)(b), and a reference in section 236(4) to (6) to such an order, or a provision of such an order, includes a reference to a provision of a document referred to by such an order.
- (7) In Schedule 2 to the Education Act 2002 (c. 32) (effect on staffing of suspension of delegated budget), after paragraph 10 insert—

“11 Paragraph 8 has effect subject to—

- (a) any provision made by an order under section 231(2)(a) or 233(2)(a) of the Apprenticeships, Skills, Children and Learning Act 2009;
- (b) any provision made by an order under section 233(2)(d) or 234(2)(b) or (4)(b) of that Act, where the order provides that it is to have effect for determining the conditions of employment of persons to whom it applies.”

#### Commencement Information

**I17** S. 237 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### Guidance

### 238 Guidance

- (1) The SSSNB may, with the approval of the Secretary of State, issue guidance relating to—

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- (a) an agreement to which an order under section 233(2)(c) requires persons to have regard;
  - (b) an agreement that has been ratified by an order under this Chapter.
- (2) The Secretary of State may issue guidance relating to an order made under section 233(2)(d) or 234(2)(b) or (4)(b).
- (3) In exercising functions in respect of school support staff, each of the following is to have regard to guidance issued under this section—
  - (a) a local education authority in England;
  - (b) the governing body of a school maintained by a local education authority in England.

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**Commencement Information**

**I18** S. 238 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*General*

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

- (1) This section applies for the purposes of this Chapter.
- (2) The establishment of the non-statutory School Support Staff Negotiating Body is to be treated as the establishment of the SSSNB.
- (3) Arrangements made for the constitution of the non-statutory School Support Staff Negotiating Body are to be treated as if they were arrangements made under paragraph 1(1) of Schedule 15.
- (4) Consultation carried out before arrangements are made for the constitution of the non-statutory School Support Staff Negotiating Body is to be treated as carried out under paragraph 1(2) of Schedule 15.
- (5) A matter within the SSSNB's remit that has been referred to the non-statutory School Support Staff Negotiating Body by the Secretary of State is to be treated as if it had been referred by the Secretary of State to the SSSNB under section 229.
- (6) For the purposes of this section the “non-statutory School Support Staff Negotiating Body” is the body of persons—
  - (a) established by the Secretary of State before the date on which this Chapter comes into force, and
  - (b) known as the School Support Staff Negotiating Body.

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**Commencement Information**

**I19** S. 239 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

**240 “School support staff”**

- (1) This section has effect for the purposes of this Chapter.

**Status:** Point in time view as at 01/04/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009, Part 10 is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date.

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- (2) “School support staff” are persons within subsection (3).
- (3) A person is within this subsection if the person—
- (a) is employed by a local education authority in England or the governing body of a school maintained by a local education authority in England, under a contract of employment providing for the person to work wholly at a school or schools maintained by a local education authority in England;
  - (b) is not a school teacher, or a person of a prescribed description.
- (4) In this section, “school teacher” means a person who is a school teacher for the purposes of section 122 of the Education Act 2002 (c. 32).

#### Commencement Information

**I20** S. 240 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

## 241 General interpretation

For the purposes of this Chapter—

“contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996 (c. 18);

“school maintained by a local education authority” means—

- (a) a community, foundation or voluntary school;
- (b) a community or foundation special school;
- (c) a maintained nursery school;
- (d) a short stay school.

#### Commencement Information

**I21** S. 241 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)



**Status:**

Point in time view as at 01/04/2010. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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