



Education and Skills Act 2008

2008 CHAPTER 25

PART 4

REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

CHAPTER 2

SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

Non-maintained special schools in England

142 Interpretation

- (1) For section 337 of the Education Act 1996 (c. 56) (special schools) and the italic heading preceding it substitute—

“Interpretation

337 Special schools

A school is a special school if—

- (a) it is specially organised to make special educational provision for pupils with special educational needs, and
- (b) in the case of a school that is not maintained by a local education authority, it is approved under section 342.

337A Interpretation of Chapter

In this Chapter—

“a non-maintained special school” means a school that is approved under section 342;

Status: This is the original version (as it was originally enacted).

“the appropriate national authority” means—

- (a) in relation to a school in England, the Secretary of State;
- (b) in relation to a school in Wales, the Welsh Ministers.”

- (2) Section 342 of that Act (approval of non-maintained special schools) is amended as follows.
- (3) In subsection (1)—
 - (a) for “Secretary of State” substitute “appropriate national authority”;
 - (b) omit “his”.
- (4) In subsection (5)(a) for “Secretary of State” substitute “appropriate national authority”.

143 Right of sixth-form pupils to opt out of religious worship

- (1) Section 342 of the Education Act 1996 is amended as follows.
- (2) After subsection (5) insert—
 - “(5A) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in England that is approved under this section—
 - (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil’s parent, and
 - (b) attends religious worship unless withdrawn from attendance at such worship—
 - (i) in the case of a sixth-form pupil, in accordance with the pupil’s own wishes, and
 - (ii) in any other case, in accordance with the wishes of the pupil’s parent.
 - (5B) In subsection (5A) “a sixth-form pupil” means a pupil who—
 - (a) has ceased to be of compulsory school age, and
 - (b) is receiving education suitable to the requirements of pupils over compulsory school age.”
- (3) In subsection (6) for “special school” substitute “school in Wales that is”.

144 Protection of pupils in an emergency

After section 342 of the Education Act 1996 (c. 56) insert—

“Non-maintained special schools in England: protection of pupils in an emergency

342A Application to justice of the peace: power to make regulations

- (1) Regulations may make provision conferring power on a justice of the peace, on the application of the Secretary of State, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342.
- (2) Regulations under this section may in particular make provision corresponding, with or without modifications, to that made in—

- (a) section 120(2) to (7) of the Education and Skills Act 2008 (emergency orders in relation to registered independent educational institutions), or
- (b) section 122 of that Act (notification).”

145 Appeals

After section 342A of the Education Act 1996 (inserted by section 144) insert—

“Non-maintained special schools in England: appeals

342B Appeal against decision of Secretary of State

- (1) Regulations may make provision for an appeal against a decision of the Secretary of State—
 - (a) to withdraw approval from a non-maintained special school in England by virtue of section 342(4)(b) (failure to comply with prescribed requirement) otherwise than at the request of the proprietor;
 - (b) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school.
- (2) In subsection (1)(b) “relevant arrangements” means arrangements that require the approval of the Secretary of State by virtue of section 342(5)(a).
- (3) Regulations under this section must provide that an appeal brought by virtue of this section—
 - (a) lies to the First-tier Tribunal, and
 - (b) must be brought by the proprietor of the school in question.
- (4) The regulations may in particular make provision, in the case of an appeal brought by virtue of subsection (1)(a), prohibiting the Secretary of State from acting on a decision to withdraw approval during the period in which—
 - (a) an appeal against the decision could be brought, or
 - (b) where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

342C Appeal against order of justice of peace

- (1) Regulations may make provision for an appeal against the making of an order by virtue of section 342A (order by justice of peace in an emergency).
- (2) The regulations must provide that an appeal brought by virtue of this section—
 - (a) lies to the First-tier Tribunal, and
 - (b) must be brought by the proprietor of the school in question.”

Independent schools in England

146 Abolition of requirement of approval for independent schools: England

- (1) Section 347 of the Education Act 1996 (c. 56) (approval of independent schools) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1) —
 - (a) for “The Secretary of State” substitute “The Welsh Ministers”;
 - (b) after “independent school” insert “in Wales”.
- (3) In subsection (3) for “the Secretary of State sees” substitute “the Welsh Ministers see”.
- (4) In subsection (4) for “the Secretary of State may withdraw his” substitute “the Welsh Ministers may withdraw their”.
- (5) In subsection (5)—
 - (a) for “a child with special educational needs” substitute “a relevant child”;
 - (b) in paragraph (a) for “the Secretary of State” substitute “the Welsh Ministers”;
 - (c) in paragraph (b), for “the Secretary of State is” substitute “the Welsh Ministers are”, and for “consents” substitute “consent”.
- (6) After subsection (5) insert—

“(5ZA) In subsection (5) “a relevant child” means a child with special educational needs—

 - (a) for whom a local education authority in Wales maintain a statement under section 324, or
 - (b) for whom no local education authority maintain such a statement and who is in the area of a local education authority in Wales.”
- (7) In subsection (5A)—
 - (a) for “But that” substitute “Subsection (5)”;
 - (b) after “local education authority” insert “in Wales”.

147 Approval of independent schools: consequential amendments

- (1) Section 349 of the Education Act 1996 (c. 56) (variation of trust deeds by order) is amended as follows.
- (2) In subsection (1)—
 - (a) for “The Secretary of State” substitute “The appropriate national authority”;
 - (b) for “him” substitute “it”;
 - (c) omit “or 347”.
- (3) After that provision insert—

“(1A) The Welsh Ministers may by order make such modifications of any trust deed or other instrument relating to a school in Wales as, after consultation with the governing body or other proprietor of the school, appear to them to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 347.”
- (4) Section 483A of that Act (city colleges and academies: special educational needs) is amended as follows.
- (5) For subsection (3)(a) and (b) substitute—
 - “(a) the statement is maintained by a local education authority in England,
 - or

- (b) the statement is maintained by a local education authority in Wales and the Welsh Ministers consent to the child being educated at the school.”
- (6) In subsection (4) of that section for “The Secretary of State” substitute “The appropriate national authority”.
- (7) At the end of that section add—
 - “(6A) In subsection (4) “the appropriate national authority” means—
 - (a) in relation to a school in England, the Secretary of State;
 - (b) in relation to a school in Wales, the Welsh Ministers.”
- (8) In section 59(3) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) (vulnerable adults)—
 - (a) in paragraph (b), for the words following “which” substitute—
 - “(i) is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act), or
 - (ii) is in Wales and is approved by the Welsh Ministers under section 347 of that Act.”;
 - (b) in paragraph (c), for “the Secretary of State” substitute “the Welsh Ministers”.

148 Approval of independent schools: transitional provision

- (1) This section applies where, immediately before the coming into force of section 146, a relevant child is being educated in an independent school in England and—
 - (a) the school is for the time being approved by the Secretary of State under section 347 of the Education Act 1996 (c. 56), or
 - (b) the Secretary of State has consented to the child being educated there under subsection (5)(b) of that section.
- (2) In subsection (1) “a relevant child” means a child with special educational needs—
 - (a) for whom a local education authority in Wales maintains a statement under section 324 of the Education Act 1996 (statement of special educational needs), or
 - (b) for whom no local education authority maintains such a statement and who is in the area of a local education authority in Wales.
- (3) On the coming into force of section 146 the Welsh Ministers are deemed to have consented, under section 347(5)(b) of the Education Act 1996, to the child being educated at the school.
- (4) The Welsh Ministers may withdraw consent deemed to have been given under subsection (3) as if it had in fact been given.
- (5) In this section “child” has the same meaning as in Part 4 of the Education Act 1996 (see section 312(5) of that Act).