



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 10

#### SCHOOLS

#### 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.

#### **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)—

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- (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.

*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—
  - (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.

**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.

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### *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).

### *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.

#### **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;

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- (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;
  - (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.

*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.

## 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.

### **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.

### **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

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- (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.”

### *Guidance*

#### **238 Guidance**

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

### *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.

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- (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.

#### **240 “School support staff”**

- (1) This section has effect for the purposes of this Chapter.
- (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 \(c. 32\)](#).

#### **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.