



# Education Act 1981

## 1981 CHAPTER 60

### *Preliminary*

#### **1 Meaning of " special educational needs " and " special educational provision "**

- (1) For the purposes of this Act a child has "special educational needs " if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) Subject to subsection (4) below, a child has a " learning difficulty " if—
  - (a) he has a significantly greater difficulty in learning than the majority of children of his age; or
  - (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided in schools, within the area of the local authority concerned, for children of his age; or
  - (c) he is under the age of five years and is, or would be if special educational provision were not made for him. likely to fall within paragraph (a) or (b) when over that age.
- (3) " Special educational provision " means—
  - (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority concerned; and
  - (b) in relation to any child under that age, educational provision of any kind.
- (4) A child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

*Provision of special education*

**2 Provision of special education: duties of local education authorities etc.**

- (1) In section 8(2) of the principal Act (which requires local education authorities to have regard to certain matters in fulfilling their duty to secure provision of primary and secondary schools) for paragraph (c) there is substituted the following paragraph—
  - “(c) to the need for securing that special educational provision is made for pupils who have special educational needs; and”.
- (2) Where a local education authority arrange special educational provision for a child for whom they maintain a statement under section 7 of this Act it shall be the duty of the authority, if the conditions mentioned in subsection (3) below are satisfied, to secure that he is educated in an ordinary school.
- (3) The conditions are that account has been taken, in accordance with section 7, of the views of the child's parent and that educating the child in an ordinary school is compatible with—
  - (a) his receiving the special educational provision that he requires;
  - (b) the provision of efficient education for the children with whom he will be educated; and
  - (c) the efficient use of resources.
- (4) It shall be the duty of every local education authority to keep under review the arrangements made by them for special educational provision.
- (5) It shall be the duty of the governors, in the case of a county or voluntary school, and of the local education authority by whom the school is maintained, in the case of a maintained nursery school—
  - (a) to use their best endeavours, in exercising their functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision that is required for him is made;
  - (b) to secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him; and
  - (c) to secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.
- (6) In subsection (5)(b) above "responsible person" means;—
  - (a) in the case of a county or voluntary school, the head teacher or the appropriate governor (that is to say the chairman of the governors or, where the governors have designated another governor for the purposes of this paragraph, that other governor); and
  - (b) in the case of a nursery school, the head teacher.
- (7) Where a child who has special educational needs is being educated in an ordinary school maintained by a local education authority it shall be the duty of those concerned with making special educational provision for that child to secure, so far as is both compatible with the objectives mentioned in paragraphs (a) to (c) of subsection (3) above and reasonably practicable, that the child engages in the activities of the school together with children who do not have special educational needs.

### **3 Provision of special education otherwise than in schools**

If, in relation to any child in their area who has special educational needs, a local education authority are satisfied that it would be inappropriate for the special educational provision required for that child, or for any part of that provision, to be made in a school, they may after consulting the child's parent arrange for it or, as the case may be, for that part of it, to be made otherwise than in a school.

*Identification and assessment of children with special educational needs*

### **4 General duty of local education authority towards children for whom they are responsible**

- (1) It shall be the duty of every local education authority to exercise their powers under this Act with a view to securing that, of the children for whom they are responsible, those with special educational needs which call for the local education authority to determine the special educational provision that should be made for them are identified by the authority.
- (2) For the purposes of this Act a local education authority are responsible for a child if he is in their area and—
  - (a) he is registered as a pupil at a school maintained by them or is registered as a pupil in pursuance of arrangements made by them by virtue of section 6 of the Education (Miscellaneous Provisions) Act 1953 at a school which is not maintained by them or another local education authority: or
  - (b) he has been brought to their attention as having, or as probably having, special educational needs and—
    - (i) is registered as a pupil at a school but does not fall within paragraph (a) above ; or
    - (ii) is not registered as a pupil at a school and is not under the age of two years or over compulsory school age.

### **5 Assessment of special educational needs**

- (1) Where, in the case of a child for whom a local education authority are responsible, the authority are of the opinion—
  - (a) that he has special educational needs which call for the authority to determine the special educational provision that should be made for him ; or
  - (b) that he probably has such special educational needs;they shall make an assessment of his educational needs under this section.
- (2) Assessments under this section shall be made in accordance with the following provisions of this Act.
- (3) If a local education authority propose to make an assessment of the educational needs of a child under this section they shall, before doing so, serve notice on the child's parent informing him—
  - (a) that they propose to make an assessment;
  - (b) of the procedure to be followed in making it;
  - (c) of the name of the officer of the authority from whom further information may be obtained ; and

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- (d) of his right to make representations, and submit written evidence, to the authority within such period (which shall not be less than 29 days beginning with the date on which the notice is served) as may be specified in the notice.
- (4) When a local education authority have served a notice under subsection (3) above and the period specified in the notice in accordance with paragraph (d) has expired, the authority shall, if they consider it appropriate after taking into account any representations made and any evidence submitted to them in response to the notice, assess the educational needs of the child concerned.
- (5) Where a local education authority decide to make an assessment under this section they shall notify the child's parent in writing of their decision and of their reasons for making it.
- (6) If, after making an assessment of the educational needs of a child under this section, the local education authority decide that they are not required to determine the special educational provision that should be made for him the parent may appeal in writing to the Secretary of State.
- (7) In a case falling within subsection (6) above the local education authority shall notify the parent in writing of his right of appeal under that subsection.
- (8) On an appeal under subsection (6) above the Secretary of State may, if he thinks fit, direct the local education authority to reconsider their decision.
- (9) The provisions of Part I of Schedule 1 to this Act have effect in relation to assessments under this section.
- (10) Where, at any time after serving a notice under subsection (3) above, a local education authority decide not to assess the educational needs of the child concerned they shall notify his parent in writing of their decision.

## **6 Assessment of special educational needs of children under the age of two**

- (1) Where, in the case of a child in their area who is under the age of two years, a local education authority are of the opinion—
  - (a) that he has special educational needs which call for the authority to determine the special educational provision that should be made for him; or
  - (b) that he probably has such special educational needs;they may, with the consent of the child's parent, make an assessment of his educational needs and shall do so at the request of that parent.
- (2) An assessment under this section shall be made in such manner as the local education authority consider appropriate; and after making such an assessment they may make a statement of the child's special educational needs, and maintain that statement, in such manner as they consider appropriate.

## **7 Statement of child's special educational needs**

- (1) Where an assessment has been made in respect of a child under section 5, the local education authority who are responsible for the child shall, if they are of the opinion that they should determine the special educational provision that should be made for him, make a statement of his special educational needs and maintain that statement in accordance with the following provisions of this Act.

- (2) In any case where a local education authority maintain a statement under this section in respect of a child, it shall be the duty of the authority to arrange that the special educational provision specified in the statement is made for him unless his parent has made suitable arrangements.
- (3) Before making such a statement a local education authority shall serve on the parent of the child concerned—
- (a) a copy of the proposed statement; and
  - (b) a written explanation of the effect of subsections (4) to (7) below.
- (4) If the parent on whom a copy of a proposed statement has been served under subsection (3) (a) above disagrees with any part of the proposed statement he may, before the expiry of the appropriate period—
- (a) make representations (or further representations) to the authority about the content of the proposed statement;
  - (b) require the authority to arrange a meeting between him and an officer of the authority at which the proposed statement can be discussed.
- (5) Where a parent, having attended a meeting arranged by a local education authority under subsection (4)(b) above, disagrees with any part of the assessment in question he may, before the expiry of the appropriate period, require the authority to arrange one or more meetings under subsection (6) below.
- (6) Where a local education authority receive a request duly made under subsection (5) above they shall arrange such meeting or meetings as they consider will enable the parent to discuss the relevant advice with the appropriate person or persons.
- In this subsection—
- " relevant advice " means such of the advice given to the authority in connection with the assessment as they consider to be relevant to that part of the assessment with which the parent disagrees ; and
  - " appropriate person " means the person who gave the relevant advice or any other person who, in the opinion of the authority, is the appropriate person to discuss it with the parent.
- (7) In this section " appropriate period " means the period of 15 days beginning—
- (a) in the case of a request under subsection (4)(b) above, with the date on which the statement mentioned in subsection (3)(b) above was served on the parent;
  - (b) in the case of a request under subsection (5) above, with the date fixed for the meeting arranged under subsection (4)(b) above ; and
  - (c) in the case of representations, or further representations, under subsection (4) (a) above—
    - (i) with the date mentioned in paragraph (a) above; or
    - (ii) if one or more meetings have been arranged under the preceding provision of this section, with the date fixed for the last of those meetings.
- (8) Where any such representations are made to a local education authority the authority may, after considering those representations—
- (a) make a statement in the form originally proposed;
  - (b) make a statement in a modified form; or
  - (c) determine not to make a statement;

and shall notify the parent in writing of their decision.

- (9) On making a statement under this section a local education authority shall serve on the parent of the child concerned—
- (a) a copy of the statement;
  - (b) notice in writing of his right under section 8(1) of this Act to appeal against the special educational provision specified in the statement; and
  - (c) notice in writing of the name of the person to whom he may apply for information and advice about the child's special educational needs.
- (10) The Secretary of State may by regulations prescribe the frequency with which assessments are to be repeated in respect of children for whom statements are maintained under this section.
- (11) The provisions of Part II of Schedule 1 to this Act have effect in relation to statements made under this section.

## **8 Appeals against statements**

- (1) Every local education authority shall make arrangements for enabling the parent of a child for whom they maintain a statement under section 7 to appeal, following the first or any subsequent assessment of the child's educational needs under section 5, against the special educational provision specified in the statement.
- (2) Any appeal by virtue of this section shall be to an appeal committee constituted in accordance with paragraph 1 of Part I of Schedule 2 to the Education Act 1980.
- (3) Part II of that Schedule shall have effect in relation to the procedure on any such appeal but with the following modifications—
- (a) paragraph 7 (matters to be taken into account by appeal committee) shall have effect as if for paragraphs (a) and (b) there were substituted the words " any representations made by the appellant under section 7 of the Education Act 1981 ";
  - (b) paragraph 9(b) (decision to be communicated to school governors) shall not apply; and
  - (c) for any reference to section 7 of the 1980 Act there shall be substituted a reference to this section.
- (4) An appeal committee hearing an appeal by virtue of this section may—
- (a) confirm the special educational provision specified in the statement; or
  - (b) remit the case to the local education authority for re consideration in the light of the committee's observations.
- (5) When an appeal committee remit a case to a local education authority the authority shall reconsider it in the light of the committee's observations and shall inform the appellant in writing of their decision.
- (6) In any case where—
- (a) an appeal committee confirm the decision of a local education authority as to the special educational provision to be made for a child; or
  - (b) a local education authority inform an appellant of their decision in a case which has been remitted to them under subsection (4)(b) above;
- the appellant may appeal in writing to the Secretary of State.

- (7) On an appeal under subsection (6) above the Secretary of State may, after consulting the local education authority concerned—
- (a) confirm the special educational provision specified in the statement;
  - (b) amend the statement so far as it specifies the special educational provision and make such other consequential amendments to the statement as he considers appropriate; or
  - (c) direct the local education authority to cease to maintain the statement.

## **9 Requests for assessments**

- (1) If the parent of a child for whom a local education authority are responsible but for whom no statement is maintained by the authority under section 7 asks the authority to arrange for an assessment to be made of the child's educational needs the authority shall comply with the request unless it is in their opinion unreasonable.
- (2) If the parent of a child for whom a local education authority maintain a statement under section 7 asks the authority to arrange for an assessment of his educational needs under section 5 and such an assessment has not been made within the period of 6 months ending with the date on which the request is made, the authority shall comply with the request unless they are satisfied that an assessment would be inappropriate.

## **10 Duty of health authority to notify parents etc.**

- (1) If an Area or District Health Authority, in the course of exercising any of its functions in relation to a child who is under the age of five years, forms the opinion that he has, or; probably has, special educational needs, the Authority shall—
  - (a) inform his parent of its opinion and of its duty under this section; and
  - (b) after giving the parent an opportunity to discuss that opinion with an officer of the Authority, bring it to the attention of the appropriate local education authority.
- (2) If, in a case falling within subsection (1) above, the Authority are of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, they shall inform the parent accordingly.

### *Special schools and approved independent schools*

## **11 Special schools and approved independent schools**

- (1) In section 9 of the principal Act (county schools, voluntary schools, nursery schools and special schools) for subsection (5) there is substituted the following subsection—

“(5) Schools which are specially organised to make special educational provision for pupils with special educational needs and which are for the time being approved by the Secretary of State as special schools shall be known as special schools.”.
- (2) The parent of a child who is of compulsory school age and is registered as a pupil at a special school in accordance with arrangements made by a local education authority shall not withdraw the child from that school without the consent of the local education authority; but any such parent aggrieved by a refusal of the authority to give their

consent may refer the question to the Secretary of State, who shall give such direction thereon as he thinks fit.

- (3) Where a local education authority maintain a statement for a child under section 7 they shall not make arrangements for the provision of education for that child at an independent school unless—
- (a) the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements are maintained under section 7; or
  - (b) the Secretary of State consents to the child being educated there.

## **12 Approval of special schools**

- (1) The Secretary of State may by regulations make provision as to—
- (a) the requirements which are to be complied with by any school as a condition of approval of the school as a special school under section 9(5) of the principal Act;
  - (b) the requirements which are to be complied with by a special school while such an approval is in force with respect to it; and
  - (c) the withdrawal of approval from any school—
    - (i) at the request of the proprietor ; or
    - (ii) on the ground that there has been a failure to comply with any prescribed requirement.
- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may impose requirements which call for arrangements to be approved by the Secretary of State.
- (3) Notwithstanding that the provisions of the principal Act requiring local education authorities to have regard to the need for securing that primary and secondary education are provided in separate schools do not apply with respect to special schools, the regulations may impose requirements as to the organisation of any special school as a primary school or as a secondary school.
- (4) Provision shall be made in the regulations to secure that, so far as practicable, every pupil attending a special school will attend religious worship and religious instruction, or will be withdrawn from attendance at such worship or instruction in accordance with the wishes of his parent.

## **13 Approval of independent schools**

- (1) The Secretary of State may by regulations make provision as to—
- (a) the requirements to be complied with by any school as a condition of approval of the school for the purposes of section 11(3)(a) of this Act;
  - (b) the requirements which are to be complied with by any school while such an approval is in force with respect to it; and
  - (c) the withdrawal of approval from any school—
    - (i) at the request of the proprietor ; or
    - (ii) on the ground that there has been a failure to comply with any prescribed requirement.



- (2) Any approval under section 11(3)(a) may be given subject to such conditions (in addition to those prescribed) as the Secretary of State sees fit to impose.
- (3) Any consent under section 11(3)(b) may be given subject to such conditions as the Secretary of State sees fit to impose.
- (4) In any case where there is a failure to comply with a condition imposed under subsection (2) or (3) above, the Secretary of State may withdraw his approval or, as the case may be, consent.

#### **14 Discontinuance of maintained special schools**

- (1) A local education authority shall not cease to maintain a special school except in accordance with proposals approved by the Secretary of State under this section.
- (2) Where a local education authority intend to cease to maintain a special school they shall serve written notice of their proposals on—
  - (a) the Secretary of State ;
  - (b) the parent of every child who is, at the time when notice is served on the Secretary of State, a registered pupil of the school;
  - (c) any other local education authority who have arranged for special educational provision to be made at the school for a child in their area; and
  - (d) any such other persons as the authority consider appropriate.
- (3) The notice shall specify—
  - (a) the time at which the local education authority intend to implement the proposals ; and
  - (b) a period (which shall not be less than two months beginning with the date on which the notice is served) during which written objections to the proposals may be made to the local education authority.
- (4) Before the expiry of the period of one month beginning with the date on which the period for making objections, specified in the last notice to be served under subsection (2) above, expires, the local education authority shall send to the Secretary of State copies of all objections which have been duly made and not withdrawn in writing, together with their observations on those objections.
- (5) After considering the proposals and any objections and observations sent to him under subsection (4) above the Secretary of State may approve or reject the proposals.
- (6) Where the Secretary of State approves the proposals under this section he may direct that they are to be implemented at a time which is different from that specified in the notice served under subsection (2) above.
- (7) Service of any notice under subsection (2) above which is sent by post in accordance with section 113 of the principal Act shall be deemed to have been effected on the second day after the day on which it is posted.

#### *School attendance orders*

#### **15 Proposed school attendance order: choice of school**

- (1) This section applies in any case where

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- (a) a local education authority propose to serve a school attendance order on the parent of a child under section 37 of the principal Act; and
  - (b) the authority maintain a statement for that child under section 7.
- (2) The order shall not be served until the expiry of the period of 15 days beginning with the date on which the authority serve on the parent written notice—
- (a) of their intention to serve the order ;
  - (b) stating that if, before the expiry of that period, he selects a school at which he desires the child to become a registered pupil, that school will, unless the Secretary of State otherwise directs, be named in the order.
- (3) If, before the expiry of the period mentioned in subsection (2), the parent selects such a school, that school shall, unless the Secretary of State otherwise directs, be named in the order.
- (4) If the local education authority are of the opinion that—
- (a) the school selected by the parent as the school to be named in the order is unsuitable to the child's age, ability or aptitude or to his special educational needs ; or
  - (b) that the attendance of the child at the school so selected would prejudice the provision of efficient education or the efficient use of resources ;
- the authority may, after giving the parent notice of their intention to do so, apply to the Secretary of State for a direction determining what school is to be named in the order.
- (5) Any direction under subsection (4) above may require the local education authority to make such amendments in the statement concerned as the Secretary of State considers necessary or expedient in consequence of his determination.
- (6) Where the school to be named in the school attendance order in pursuance of a direction given by the Secretary of State under this section is a school maintained by a local education authority, it shall be the duty of the authority and of the governors of the school to admit the child to the school.

## **16 Amendment and revocation of school attendance orders**

- (1) This section applies in any case where—
- (a) a local education authority have served a school attendance order on the parent of a child under section 37 of the principal Act; and
  - (b) the authority maintain a statement for that child under section 7.
- (2) If at any time while the order is in force the parent applies to the local education authority requesting—
- (a) that another school be substituted for that named in the order; or
  - (b) that the order be revoked on the ground that arrangements have been made for the child to receive efficient full-time education suitable to his age, ability and aptitude and to his special educational needs otherwise than at school;
- the authority shall amend or revoke the order in compliance with the request unless they are of the opinion that—
- (i) the school selected by the parent as the school to be named in the order is unsuitable to the child's age, ability or aptitude or to his special educational needs or that the proposed change of school is against the interests of the child ;

- (ii) the attendance of the child at the school so selected would prejudice the provision of efficient education or the efficient use of resources ; or
  - (iii) no satisfactory arrangements have been made for the education of the child otherwise than at school.
- (3) If a parent is aggrieved by a refusal of the authority to comply with a request made under subsection (2) above he may refer the question to the Secretary of State, who shall give such direction thereon as he thinks fit.
- (4) Any direction under subsection (3) above may require the local education authority to make such amendments in the statement concerned as the Secretary of State considers necessary or expedient in consequence of his determination.
- (5) Where, in pursuance of a direction given by the Secretary of State under this section, a school which is to be substituted for that named in the school attendance order is a school maintained by a local education authority, it shall be the duty of the authority and of the governors of the school to admit the child to the school.

#### *Miscellaneous*

### **17 Duty of parents**

In section 36 of the principal Act (duty of parents to secure the education of their children) after the word " aptitude " there are inserted the words " and to any special educational needs he may have. "

### **18 Powers of Secretary of State as to medical and other examinations**

- (1) Where any question arising under this Act is referred to the Secretary of State then, if in his opinion he would be assisted in determining that question by the advice of a person appointed by him to examine the child concerned, he may serve a notice on the parent of that child requiring the child's attendance for examination in accordance with the provisions of the notice.
- (2) Sub-paragraphs (2) and (4) of paragraph 2 of Schedule 1 to this Act apply in relation to an examination under this section as they apply in relation to one under Schedule 1.

### **19 Regulations**

Regulations under this Act—

- (a) shall be made by statutory instrument;
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament;
- (c) may make different provision for different cases or circumstances;
- (d) may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit; and
- (e) may make in relation to Wales provision different from that made in relation to England.

### **20 Interpretation and commencement**

- (1) In this Act—

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" child " includes any person who has not attained the age of 19 years and is registered as a pupil at a school;

" ordinary school" means a school which is not a special school;

" principal Act " means the Education Act 1944.

- (2) This Act shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint and different dates may be appointed for different provisions or different purposes.
- (3) Any order under this section may make such transitional provisions as appear to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or of any other provisions of this Act then in force, as appear to him to be necessary or expedient for the purpose or in consequence of the operation of any provisions of this Act before the coming into force of any other provision.

## **21 Short title, etc.**

- (1) This Act may be cited as the Education Act 1981, and this Act and the Education Acts 1944 to 1980 may be cited as the Education Acts 1944 to 1981.
- (2) This Act shall be construed as one with the principal Act.
- (3) The transitional provisions made by Schedule 2 to this Act shall have effect.
- (4) The enactments mentioned in Schedule 3 to this Act shall have effect subject to the minor and consequential amendments specified in that Schedule; and the enactments mentioned in Schedule 4 are hereby repealed to the extent specified in the third column.
- (5) This Act does not extend to Scotland or Northern Ireland.