



Education Act 1996

1996 CHAPTER 56

PART IV

SPECIAL EDUCATIONAL NEEDS

[^{F1}CHAPTER I

CHILDREN [^{F1}IN WALES] WITH SPECIAL EDUCATIONAL NEEDS

Special educational provision: general

[^{F1}316A] **Education otherwise than in mainstream schools**

- (1) Section 316 does not prevent a child from being educated in—
 - (a) an independent school which is not a mainstream school, or
 - (b) a school approved under section 342,if the cost is met otherwise than by a [^{F3}local authority].
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
 - (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
 - (i) the [^{F3}local authority],
 - [^{F4}(ii) the governing body of the school or, if the school is in England, its head teacher,]
 - (iii) his parent, and
 - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;
 - (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;

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- (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
 - (i) the ^{F3}local authority],
 - ^{F5}(ii) the governing body of the school or, if the school is in England, its head teacher,]
 - (iii) his parent;
 - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
- (a) section 348, or
 - (b) paragraph 3 of Schedule 27.
- (4) If a ^{F3}local authority] decide—
- (a) to make a statement for a child under section 324, but
 - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,
- they shall, in making the statement, comply with section 316(3).
- (5) A ^{F3}local authority] may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.
- (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
- (8) An authority must have regard to guidance about section 316 and this section issued ^{F6}by the Welsh Ministers]—
- ^{F7}(a)
 - ^{F8}(b)
- (9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).
- (10) “Prescribed”^{F9}... means prescribed in regulations made by the ^{F10}Welsh Ministers].
- (11) “Authority”—
- (a) in relation to a maintained school ^{F11}or maintained nursery school], means each of the following—
 - (i) the ^{F3}local authority],
 - (ii) the school’s governing body, and
 - (b) in relation to ^{F12}... a pupil referral unit, means the ^{F3}local authority].]

Textual Amendments

- F1** Pt. 4 Ch. 1 repealed (1.9.2021 for the repeal of ss. 333(1ZA)(2)-(6), 334-335 and otherwise in force for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 4(9)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, **art. 2**); S.I. 2021/1243, **art. 3** (with arts. 4-23)

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- (as amended by S.I. 2021/1428, **art. 2**); S.I. 2021/1244, **art. 3** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, **art. 3** (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, **art. 4**; S.I. 2022/894, **art. 3**; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, **art. 3** (with arts. 1(7), 4-22); S.I. 2022/897, **art. 3** (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F2** Ss. 316, 316A substituted (15.6.2001 for certain purposes and otherwise 1.1.2002 for E., 21.1.2002 for certain purposes and otherwise 1.4.2002 for W.) for s. 316 by 2001 c. 10, s. 1 (with s. 43(13)); S.I. 2001/2217, arts. 4, 5, Sch. Pts. I, II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, **arts. 4, 5**, Sch. Pts. I, II
- F3** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), **Sch. 2 para. 7(2)** (with Sch. 2 para. 7(4)(5))
- F4** S. 316A(2)(a)(ii) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(2)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F5** S. 316A(2)(c)(ii) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(2)(b)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F6** Words in s. 316A(8) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(3)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F7** S. 316A(8)(a) omitted (1.9.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(3)(b)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F8** S. 316A(8)(b) omitted (1.9.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(3)(b)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F9** Words in s. 316A(10) omitted (1.9.2014) by virtue of Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(4)(a)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F10** Words in s. 316A(10) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 14(4)(b)**; S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- F11** Words in s. 316A(11)(a) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 38(a)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F12** Words in s. 316A(11)(b) repealed (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), Sch. 21 para. 38(b), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

Modifications etc. (not altering text)

- C1** S. 316A(2)(c) amendment to earlier affecting provision S.I. 2007/2599, art. 8 (30.9.2010) by The New Woodlands School (Amendment) Order 2010 (S.I. 2010/2196), arts. 1, 2
- C2** Pt. 4 Ch. 1 excluded (1.9.2014) by Children and Families Act 2014 (c. 6), **ss. 81**, 139(6); S.I. 2014/889, art. 7(a) (with savings and transitional provisions in S.I. 2014/2270 (as amended (1.4.2015) by S.I. 2015/505)
- C3** S. 316A(2) modified (17.12.2007) by The Harbour School Order 2007 (S.I. 2007/3205), arts. 1, 3(a), 5, 6, 10 (as amended (15.12.2010) by The Harbour School (Amendment) Order 2010 (S.I. 2010/2804), arts. 1, 2)
- C4** S. 316A(2)(c) modified (temp.) (1.10.2007) by The New Woodlands School Order 2007 (S.I. 2007/2599), arts. 1, **3(a)** (with arts. 4, 8)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(2)(ba) substituted for s. 13(2)(aa)(b) by [2022 asc 1 Sch. 4 para. 8\(2\)](#)
- s. 15A(3A) inserted by [2022 asc 1 Sch. 4 para. 8\(3\)](#)
- s. 15B(3)(c) inserted by [2022 asc 1 Sch. 4 para. 8\(4\)](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/1012 art. 12\(1\)Sch. 2 para. 3](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/863 Sch. 2 para. 4](#)
- s. 17A functions made exercisable concurrently by [S.I. 2014/865 Sch. 2 para. 3](#)
- s. 17A functions made exercisable concurrently by [S.I. 2016/653 Sch. 3 para. 3](#)
- s. 17A-17D inserted by [2009 c. 22 s. 45](#)
- s. 17B-17D applied by [2009 c. 22 s. 86\(8\)](#)
- s. 457(4)(i)-(iia) repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 457(4)(iii) words repealed by [2012 c. 5 Sch. 14 Pt. 1](#)
- s. 508(4) inserted by [2022 asc 1 Sch. 4 para. 8\(7\)](#)
- s. 537AA inserted by [2008 c. 25 Sch. 1 para. 8](#)
- s. 548(7A)(7B) inserted by [2008 c. 25 Sch. 1 para. 9\(5\)](#)
- s. 578(1) words repealed by [2005 c. 18 Sch. 19 Pt. 1](#)