



# Education Act 1996

## 1996 CHAPTER 56

### PART IV

#### SPECIAL EDUCATIONAL NEEDS

### CHAPTER II

#### SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

#### *[<sup>F1</sup>Interpretation*

#### Textual Amendments

- F1** Ss. 337, 337A and cross-heading substituted for s. 337 and cross-heading (30.3.2010) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 142(1)**, 173(4); S.I. 2010/1093, art. 2(a)

#### **[<sup>F2</sup>337 Special schools**

A school is a special school if it is specially organised to make special educational provision for pupils with special educational needs, and it is—

- (a) maintained by a local authority,
- (b) an Academy school, or
- (c) a non-maintained special school.]

#### Textual Amendments

- F2** S. 337 substituted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 36**; 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)

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**337A Interpretation of Chapter**

In this Chapter—

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

“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.]

*Establishment etc. of special schools*

<sup>F3</sup>338 .....

**Textual Amendments**

**F3** S. 338 omitted (1.4.1999) by virtue of 1998 c. 31, s. 140(1), **Sch. 30 para. 81** (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), **Sch. 1**; ss. 338-341 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 81, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

<sup>F4</sup>339 .....

**Textual Amendments**

**F4** S. 339 repealed (1.4.1999 so far as relating to the omission of s. 339(2) and certain words in s. 339(4) (a) and 1.9.1999 otherwise) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 81, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), **Sch. 1**; S.I. 1999/2323, art. 2(1), **Sch. 1**

<sup>F5</sup>340 .....

**Textual Amendments**

**F5** S. 340 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para.81, **Sch. 31** (with ss. 138(9), 144(6) and subject to savings in S.I. 1999/704, **regs. 7, 8, 14(2)(g)**); S.I. 1999/2323, art. 2(1), **Sch. 1**

<sup>F6</sup>341 .....

**Textual Amendments**

**F6** S. 341 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 81, **Sch.31** (with ss. 138(9), 144(6) and subject to savings in S.I. 1999/704, **regs. 8, 14(2)(g)** and S.I. 1999/2323, **art. 17(b)**); S.I. 1999/2323, art. 2(1), **Sch. 1**

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### [<sup>F7</sup>Approval of non-maintained special schools]

#### Textual Amendments

- F7** S. 342 and crossheading substituted for s. 342 (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 82** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

#### <sup>X1</sup>[<sup>F8</sup>342 Approval of non-maintained special schools.

- (1) The [<sup>F9</sup>appropriate national authority] may approve under this section any school which—
  - (a) is specially organised to make special educational provision for pupils with special educational needs, and
  - (b) is not a community or foundation special school [<sup>F10</sup>or an Academy school], and may give <sup>F11</sup>... approval before or after the school is established.
- (2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.
- (3) Any school which was a special school immediately before 1st April 1994 shall be treated, subject to subsection (4) below, as approved under this section.
- (4) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school while approved under this section, and
  - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3)) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4), the requirements which may be imposed by the regulations include requirements—
  - (a) which call for arrangements to be approved by the [<sup>F12</sup>appropriate national authority], or
  - (b) as to the organisation of any special school as a primary school or as a secondary school.

[ Regulations shall make provision for securing that, so far as practicable, every pupil <sup>F13</sup>(5A) 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.]

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- (6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a [<sup>F14</sup>school in Wales that is] approved under this section—
- (a) receives religious education and attends religious worship, or
  - (b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.]

#### Editorial Information

- X1** S. 342: With effect from 1.9.1999 s. 342 became subsumed by new cross-heading "Approval of non-maintained special schools". Versions of this provision as it stood at any time before that date cannot be accessed directly by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 1.9.1999 or navigate via the Chapter II heading.

#### Textual Amendments

- F8** S. 342 and cross-heading substituted for s. 342 (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 82** (with **ss. 138(9), 144(6)**); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F9** Words in s. 342(1) substituted (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 142(3)(a), 173(4)**; S.I. 2010/1093, art. 2(a)
- F10** Words in s. 342(1)(b) inserted (1.9.2014) by **Children and Families Act 2014 (c. 6), s. 139(6), Sch. 3 para. 37**; 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** Word in s. 342(1) repealed (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 142(3)(b), 173(4), Sch. 2**; S.I. 2010/1093, art. 2(a)(c)
- F12** Words in s. 342(5)(a) substituted (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 142(4), 173(4)**; S.I. 2010/1093, art. 2(a)
- F13** S. 342(5A)(5B) inserted (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 143(2), 173(4)**; S.I. 2010/1093, art. 2(a)
- F14** Words in s. 342(6) substituted (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 143(3), 173(4)**; S.I. 2010/1093, art. 2(a)

*[<sup>F15</sup>Non-maintained special schools in England: protection of pupils in an emergency*

#### Textual Amendments

- F15** S. 342A and cross-heading inserted (30.3.2010) by **Education and Skills Act 2008 (c. 25), ss. 144, 173(4)**; S.I. 2010/1093, art. 2(a)

### 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).]

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## *[<sup>F16</sup>Non-maintained special schools in England: appeals*

### **Textual Amendments**

**F16** Ss. 342B, 342C and cross-heading inserted (30.3.2010) by [Education and Skills Act 2008 \(c. 25\)](#), ss. [145](#), [173\(4\)](#); S.I. [2010/1093](#), art. [2\(a\)](#)

### **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.]

<sup>X2F17</sup>**343**.....

### **Editorial Information**

**X2** S. 343: With effect from 1.9.1999, a new cross-heading "Approval of non-maintained special schools" was inserted before s. 342. Versions of s. 343 as it stood at any time before that date cannot now be accessed directly by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 1.9.1999 or navigate via the Chapter II heading.

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**Textual Amendments**

- F17** S. 343 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 83, **Sch. 31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

*Government etc. of special schools*

**F18** **344** .....

**Textual Amendments**

- F18** S. 344 repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 83, **Sch. 31** (with ss. 138(9), 144(6) and subject to savings in S.I. 1999/2323, art. 5, Sch. 7 paras. 2, **10**); S.I. 1999/2323, art. 2(1), Sch. 1

*Maintained special school becoming grant-maintained*

**F19** **345** .....

**Textual Amendments**

- F19** S. 345 repealed (1.4.1999) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 83, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/1016, art. 2(1), **Sch. 1**

*Grouping of grant-maintained special schools*

**F20** **346** .....

**Textual Amendments**

- F20** S. 346 repealed (1.10.1998) by 1998 c. 31, s. 140(1)(3), Sch. 30 para. 83, **Sch.31** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt.I**

*Independent schools providing special education*

**347 Approval of independent schools.**

- (1) [<sup>F21</sup>The Welsh Ministers] may approve an independent school [<sup>F22</sup> in Wales] as suitable for the admission of children for whom statements are maintained under section 324.
- (2) Regulations may make provision as to—
  - (a) the requirements which are to be complied with by a school as a condition of its approval under this section,

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- (b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and
  - (c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as [<sup>F23</sup>the Welsh Ministers see] fit to impose.
- (4) In any case where there is a failure to comply with such a condition imposed under subsection (3), [<sup>F24</sup>the Welsh Ministers may withdraw their] approval.
- (5) No person shall so exercise his functions under this Part that [<sup>F25</sup>a relevant child] is educated in an independent school unless—
- (a) the school is for the time being approved by [<sup>F26</sup>the Welsh Ministers] as suitable for the admission of children for whom statements are maintained under section 324, or
  - (b) [<sup>F27</sup>the Welsh Ministers are] satisfied that there is a place available for the child at the school and [<sup>F28</sup>consent] to the child being educated there.
- [<sup>F29</sup>(5ZA) In subsection (5) “a relevant child” means a child with special educational needs—
- (a) for whom a [<sup>F30</sup>local authority] in Wales maintain a statement under section 324, or
  - (b) for whom no [<sup>F30</sup>local authority] maintain such a statement and who is in the area of a [<sup>F30</sup>local authority] in Wales.]
- [<sup>F31</sup>(5A) [<sup>F32</sup>Subsection (5)] does not apply to a [<sup>F30</sup>local authority][<sup>F33</sup> in Wales] deciding, for the purposes of section 324(5), whether a parent has made suitable arrangements.]

#### Textual Amendments

- F21** Words in s. 347(1) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(2)(a), 173(4); S.I. 2009/1513, art. 3
- F22** Words in s. 347(1) inserted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(2)(b), 173(4); S.I. 2009/1513, art. 3
- F23** Words in s. 347(3) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(3), 173(4); S.I. 2009/1513, art. 3
- F24** Words in s. 347(4) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(4), 173(4); S.I. 2009/1513, art. 3
- F25** Words in s. 347(5) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(5)(a), 173(4); S.I. 2009/1513, art. 3
- F26** Words in s. 347(5)(a) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(5)(b), 173(4); S.I. 2009/1513, art. 3
- F27** Words in s. 347(5)(b) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(5)(c), 173(4); S.I. 2009/1513, art. 3
- F28** Word in s. 347(5)(b) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(5)(c), 173(4); S.I. 2009/1513, art. 3
- F29** S. 347(5ZA) inserted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(6), 173(4); S.I. 2009/1513, art. 3
- F30** 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))

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- F31** S. 347(5A) inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by 2001 c. 10, s. 42(1), Sch. 8 para. 12 (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (as amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II
- F32** Words in s. 347(5A) substituted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(7)(a), 173(4); S.I. 2009/1513, art. 3
- F33** Words in s. 347(5A) inserted (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 146(7)(b), 173(4); S.I. 2009/1513, art. 3

**Modifications etc. (not altering text)**

- C1** S. 347(5)(b) modified (1.9.2009) by Education and Skills Act 2008 (c. 25), ss. 148(3), 173(4); S.I. 2009/1513, art. 3

**348 Provision of special education at non-maintained schools** [<sup>F34</sup>—Wales].

- (1) This section applies where—
- (a) special educational provision in respect of a child with special educational needs is made at a school which is not a maintained school,
  - [<sup>F35</sup>(aa) the child is in the area of a local authority in Wales,] and
  - (b) either the name of the school is specified in a statement in respect of the child under section 324 or the [<sup>F30</sup>local authority] are satisfied—
    - (i) that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school, and
    - (ii) that it is appropriate for the child to be provided with education at the particular school.
- (2) Where this section applies, the [<sup>F30</sup>local authority] shall pay the whole of the fees payable in respect of the education provided for the child at the school, and if—
- (a) board and lodging are provided for him at the school, and
  - (b) the authority are satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided,
- the authority shall pay the whole of the fees payable in respect of the board and lodging.

<sup>F36</sup>[(3) In this section “maintained school” means a school maintained by a [<sup>F30</sup>local authority].]

**Textual Amendments**

- F30** 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))
- F34** Word in s. 348 title inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), Sch. 3 para. 38(3); 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))
- F35** S. 348(1)(aa) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), Sch. 3 para. 38(2); 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))
- F36** S. 348(3) substituted (1.9.1999) for s. 348(3)(a)-(c) by 1998 c. 31, s. 140(1), Sch. 30 para.84 (with ss. 138(9), 144(6))



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### *Variation of deeds*

#### **349 Variation of trust deeds etc. by order.**

- (1) [<sup>F37</sup>The appropriate national authority] may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appear to [<sup>F38</sup>it] to be necessary to enable the governing body or proprietor to meet any requirement imposed by [<sup>F39</sup>—

(a)] regulations under section 342 <sup>F40</sup>.... [<sup>F39</sup>, or

“(b) Academy arrangements.”]

[<sup>F41</sup>(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.]

- (2) Any modification made by an order under this section may be made to have permanent effect or to have effect for such period as may be specified in the order.

#### **Textual Amendments**

- F37** Words in s. 349(1) substituted (1.9.2009) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 147(2)(a)**, 173(4); [S.I. 2009/1513](#), art. 3
- F38** Word in s. 349(1) substituted (1.9.2009) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 147(2)(b)**, 173(4); [S.I. 2009/1513](#), art. 3
- F39** Words in s. 349(1) inserted (29.7.2010) by [Academies Act 2010 \(c. 32\)](#), s. 19(2), **Sch. 2 para. 3**; [S.I. 2010/1937](#), art. 2, **Sch. 1**
- F40** Words in s. 349(1) repealed (1.9.2009) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 147(2)(c)**, 173(4), **Sch. 2**; [S.I. 2009/1513](#), art. 3
- F41** S. 349(1A) inserted (1.9.2009) by [Education and Skills Act 2008 \(c. 25\)](#), **ss. 147(3)**, 173(4); [S.I. 2009/1513](#), art. 3

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