

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 4: Regulation and inspection of independent educational provision in England

Chapter 2: Schools providing for special educational needs

Section 145: Appeals

169. *Section 145* inserts new sections 342B and 342C into the 1996 Act. Section 342B(1) provides the Secretary of State with the power to make regulations which set out the framework for appealing against a decision of the Secretary of State to:
- a) withdraw approval for a non-maintained special school (*subsection (1)(a)*); or
 - b) not to approve, not to approve a change to, or to withdraw approval from the school's relevant arrangements (*subsection (1)(b)*).
170. The “relevant arrangements” are defined in *subsection (2)* of inserted section 342B as those arrangements that are specified as requiring approval by the relevant authority — in this case the Secretary of State — in regulations made under section 342(5)(a) of the 1996 Act. The Secretary of State, working within the regulatory framework for non-maintained special schools, is given the power by section 142 to approve or reject applications from schools for approval of some of their arrangements. For example, the following arrangements must be approved under current regulations: the number of pupils; the type(s) of special educational needs the school caters for; and the age range of pupils at the school. Currently there are no rights of appeal against decisions about approval of arrangements and the only recourse would be to seek a judicial review of a decision.
171. *Subsection (3)* of the new section 342B provides that the regulations must provide that an appeal lies to the First-tier Tribunal and must be made by the proprietor of the school.
172. In the case of an appeal brought against a decision of the Secretary of State to withdraw approval from the school, *subsection (4)* provides that regulations may make provision prohibiting the Secretary of State from acting on the decision:
- a) during the period in which an appeal could be brought; or,
 - b) in a situation where an appeal has been brought, but the appeal has not been determined, or disposed of.
173. Regulations made in this way would have an effect similar to that for appeals against decisions to withdraw registration of an independent educational institution. Section

*These notes refer to the Education and Skills Act 2008
(c.25) which received Royal Assent on 26 November 2008*

342C(1) provides for regulations to be made setting out the rights of a proprietor of a non-maintained special school to appeal against an order granted in an emergency by the justice of the peace on the application of the Secretary of State. Section 342C(2) provides that the right of appeal will be to the First-tier Tribunal and must be made by the proprietor.

174. Section 342C does not enable an order made by a justice of the peace to withdraw approval from the school to be suspended when an appeal is made. This is because an order granted by a justice of the peace will only have been granted where the justice of the peace is satisfied in an urgent case that approval should be removed immediately, for example where pupils are at risk.
175. Part 1 of Schedule 1 includes consequential amendments arising from these sections.