

# **APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 10: Schools**

##### ***Chapter 1: Schools causing concern: England***

655. By way of background, Part 4 of the Education and Inspections Act 2006 gives local education authorities and the Secretary of State intervention powers to tackle underperforming schools. The LEA powers consist of appointing new members to the school's governing body, establishing an interim executive board (IEB), directing the school to federate or collaborate with or seek advice from another school or other person, and suspending the school's right to a delegated budget. Before any of these powers may be exercised the school must either be in one of the Ofsted categories of requiring "special measures" or "significant improvement", or be given a warning notice by the LEA and allowed time to respond.
656. Also the Secretary of State currently has reserve powers in relation to schools requiring special measures or significant improvement. Three of these are set out alongside the LEA intervention powers, and are to appoint additional governors, to impose an IEB, and to close a school (although this last power applies to schools in special measures only). Another of the reserve powers, under section 62A of the Education Act 2002, is to require the LEA to obtain advisory services if they have a poor record or appear unlikely to be effective in eliminating the deficiencies.

##### ***Section 203: Powers in relation to schools causing concern: England***

657. [Section 196](#) introduces Schedule 13 which contains amendments to Part 4 of the Education and Inspections Act 2006.

##### ***Schedule 13: Powers in relation to schools causing concern: England***

658. The Education Act 2002 gives the Secretary of State power to issue orders about teachers' pay and conditions in England and Wales - - - see section 122 of that Act. The School Teachers' Pay and Conditions Document has been included in an order under that section.
659. Paragraph 4 of Schedule 13 to the Act inserts a new section 60A in the Education and Inspections Act 2006. The new section introduces a system of teachers' pay and conditions warning notices which allows LEAs to issue a notice to the governing body of a maintained school where the LEA are satisfied that the governing body has failed to comply, or failed to secure compliance by the head teacher, with the provisions of an order under section 122 of the 2002 Act relating to teachers' pay and conditions (including the School Teachers' Pay and Conditions Document).

660. Section 60A also provides that if a teachers' pay and conditions warning notice is given and, after a compliance period, the governing body has not complied with it or successfully made representations to the LEA against it, the school will become eligible for intervention. Some of the LEA's and the Secretary of State's current powers under Part 4 of the 2006 Act will then be available. These are:
- section 64 (power of the LEA to appoint additional governors)
  - section 65 (power of LEA to provide for governing body to consist of interim executive members)
  - section 66 (power of LEA to suspend right to delegated budget)
  - section 67 (power of Secretary of State to appoint additional governors)
  - section 69 (power of Secretary of State to provide for the governing body to consist of interim executive members).
661. Paragraph 6 of Schedule 13 to the Act amends section 64 of the Education and Inspections Act 2006 so that where a school is eligible for intervention under Part 4 of the 2006 Act an LEA's power to appoint additional governors will not be available if the Secretary of State has already appointed additional governors under section 67.
662. Paragraphs 8 and 9 of Schedule 13 amend sections 67 (power of Secretary of State to appoint additional governors) and 69 (power of Secretary of State to provide for governing body to consist of interim executive members) so that the Secretary of State's powers will also be available in a case where a school is eligible for intervention by virtue of a warning notice under section 60 (performance standards and safety) or 60A (teachers' pay and conditions). Formerly these reserve powers were available only when the school was eligible for intervention because it required significant improvement or special measures.
663. Paragraph 10 of Schedule 13 makes further provision about warning notices by inserting new sections 69A and 69B in the Education and Inspections Act 2006. Section 69A gives the Secretary of State power to direct an LEA to consider giving a performance standards and safety warning notice to a governing body school if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must provide a written response, copied to Her Majesty's Chief Inspector of Schools within 10 working days. If the LEA agree to issue a warning notice they must do so – copied to the Secretary of State – within five working days of their response to the Secretary of State and withdraw any previous warning notice given to the governing body under section 60. If the LEA decides not to issue a warning notice they must set out the reasons for the decision in their response to the Secretary of State.
664. New section 69B gives the Secretary of State a power to direct an LEA to consider giving a teachers' pay and conditions warning notice to a governing body if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must give a copy to the school's governing body, and then provide a written response (including any response from the governing body) to the Secretary of State within 10 working days. If the LEA agree to issue a warning notice they must do so — copied to the Secretary of State — within five working days of their response to the Secretary of State and withdraw any previous warning notice they had issued to the governing body under section 60A.
665. If the LEA decide not to issue a teachers' pay and conditions warning notice they must set out the reasons for the decision in their response to the Secretary of State. The Secretary of State may then direct the LEA to give a warning notice in the terms specified in the direction and to withdraw any previous warning notice they had issued to the governing body under section 60A.

**Section 204: Power to require LEAs in England to obtain advisory services**

666. This section amends section 62A of the Education Act 2002. Section 62A currently gives the Secretary of State the power to require LEAs in England to obtain advisory services where:
- the LEA have schools in either of the categories “requiring special measures” or “requiring significant improvement”, and
  - the LEA do not appear to be effective or likely to be effective in improving those schools or other schools in their area which may be placed in these categories.
667. The advisory services can be supplied by an organisation, school or named person, who would provide advice to the LEA for the purposes of school improvement.
668. *Subsection (2)* inserts an additional trigger for the Secretary of State’s power to require the LEA to obtain advisory services. The new trigger allows intervention when there are a disproportionate number of low-performing schools within the LEA’s remit and it appears to the Secretary of State that the LEA are unlikely to improve standards in those schools or in other schools in their area which may in the future become low-performing.
669. Standards of performance of pupils at a school are assessed by reference to the matters set out in new section 62A(1C), which provides that the standards of pupils when they joined the school and the standards achieved by pupils at similar schools may be taken into account.

**Section 205 and Schedule 14: Powers in relation to schools causing concern: Wales**

670. *Section 205* gives effect to Schedule 14 which contains the Welsh provisions corresponding to those in Schedule 13 for England. The amendments are to the School Standards and Framework Act 1998, and have broadly the same effect as those made in relation to teachers’ pay and conditions in England by Schedule 13, except that the Welsh Ministers rather than the Secretary of State have reserve intervention powers.

**Chapter 2: Complaints: England**

671. Under the current processes, when a parent or pupil is concerned about an issue arising from their individual experience at school, they can contact the teacher or head teacher of a school. If the issue remains unresolved they can contact the governing body of the school or management committee in the case of a short stay school (pupil referral unit).
672. If the complainant remains unhappy, once the governing body has looked into their complaint, they may approach the Secretary of State under section 496 or 497 of the Education Act 1996 and ask him to consider their complaint. The Secretary of State must consider that the governing body has been acting unreasonably and that it is expedient to intervene. In practice there are few occasions when a direction may be made.
673. These sections create a new scheme for complaints and amend section 496/7 in respect of complaints heard by school governing bodies which have been brought to the attention of the Secretary of State and repeal section 409 and *paragraph 6(3) and (4)* of Schedule 1 to the Education Act 1996. The Government intends that the Secretary of State’s role will be replaced by a new parents’ and young person’s independent complaints service (involving a Local Commissioner)
674. A Local Commissioner will be able to consider complaints about school issues affecting a particular pupil where they may not appeal by another independent route.
675. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not fall within the scope of the new scheme as they have

their own independent appeals processes. Special educational needs cases which are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as SENDIST) will also be outside the scope of Local Commissioners.

***Section 206: Complaints to which this Chapter applies***

- 676. The section specifies who may approach a Local Commissioner under the new independent service. “The Commission for Local Administration” and “The Local Commissioner” are statutory names for the body generally known as the Local Government Ombudsman.
- 677. A “qualifying school” is a community, foundation, or voluntary aided school, community special or foundation special school, maintained nursery school or a short stay school. The Secretary of State may add to or amend this definition by order (made under section 222) which would be subject to the affirmative resolution procedure.
- 678. The section provides that a complaint against a school may be made where a pupil or parent claims to have suffered injustice because of the actions, or omissions, of the governing body or by the head teacher exercising, or failing to exercise, functions of a kind specified in regulations under this section. Where the head teacher delegates authority to another member of staff, the head teacher remains legally accountable for the member of staff complying with that action.
- 679. Where a governing body makes arrangements for another individual or body to carry out functions on its behalf, this will also be capable of referral to a Local Commissioner. For example, where a school contracts out services for an “after school club”, a parent or pupil could make a complaint about an act that occurred whilst a pupil was attending this provision, despite the fact that it was not run directly by the governing body.
- 680. Where a pupil is educated off the site of the school this will also be included within the remit of Local Commissioners. For example, a pupil might be on the roll at one school but may attend some lessons at another school. This can happen in cases where a pupil is on roll at a short stay school but attends a mainstream school as part of their education.
- 681. People acting on the governing body’s behalf can also be complained about. This includes a person employed by a local education authority or outside agency as they will be carrying out actions with the governing body’s permission.
- 682. Complaints and appeals relating to school admissions dealt with by the local education authority or governing body, permanent school exclusions and special educational needs will not be capable of referral to a Local Commissioner as they have their own independent appeals processes. This also applies to cases that are currently within the remit of the First-Tier Tribunal (Special Educational Needs and Disability) (previously known as the Special Educational Needs and Disability Tribunal (SENDIST)).
- 683. A parent or pupil may approach a Local Commissioner asking them to investigate their complaint. “Parent” includes anyone who has parental responsibility for a child or who has care of him or her. A Local Commissioner will be able to consider complaints from carers as well as parents and young people.

***Section 207: Power of Local Commissioner to investigate complaint***

- 684. The section enables a Local Commissioner to investigate the complaint made by the complainant. Where head teachers or governing bodies have considered the complaint and feel the complaint should be referred to a Local Commissioner, they may do so with the complainant’s consent. For example, a head teacher or governing body may feel they have done all they can to assist the complainant and a Local Commissioner may be able to resolve the issue.

685. Before proceeding to investigate a matter a Local Commissioner must be satisfied that the governing body had notice of the matter complained about and an opportunity to investigate and respond, or that it is not reasonable in the circumstances to expect the matter to be brought to the attention of the governing body (*subsection (3)(b)*). A Local Commissioner is able to use discretion to take a flexible approach and proceed with an investigation if satisfied that it is not reasonable to expect the matter to have first been brought to the attention of the governing body.
686. A Local Commissioner is able to investigate or discontinue complaints as it feels appropriate. If a Local Commissioner is satisfied with the steps the school is taking or is going to take, or that the complaint is vexatious, he or she may decide not to investigate the complaint.

### ***Section 208: Time-limit etc for making complaint***

687. This section requires complaints to be made in writing within 12 months of the incident occurring. A Local Commissioner may disapply these requirements. For example, where a pupil's particular circumstances or level of education made it difficult for them to put the complaint in writing it may be given orally, or a complainant may raise complaints with a Local Commissioner after the 12 month period if the complainant can show a good reason for the delay.

### ***Section 209: Procedure in respect of investigations***

688. This section sets out the processes involved in a Local Commissioner considering a complaint. It ensures that the governing body or head teacher about whom the complaint was made and any other person involved are allowed the opportunity to comment. Investigations must be carried out in private. But otherwise it is for a Local Commissioner to decide how to conduct the investigation. A Local Commissioner may obtain information and make enquiries from any person as they see fit.
689. If a Local Commissioner sees fit it may choose to pay any persons a sum in respect of expenses incurred by them or an allowance for loss of their time for the purposes of carrying out the investigation.

### ***Section 210: Investigations: further provisions***

690. The section gives a Local Commissioner various powers in order to facilitate their investigations. A Local Commissioner may require a governing body, head teacher, or any other person who in the Local Commissioner's opinion is able to provide information or documents relevant to the investigation, to provide such information or documents.
691. A Local Commissioner has the same powers as the High Court to compel the attendance and examination of witnesses and the production of documents. This means that anyone not complying with a Local Commissioner's requests may be in contempt of court and subject to the penalties associated with that. If any person obstructs an investigation, or is guilty of an act or omission in relation to an investigation which would constitute contempt of court in proceedings in the High Court, a Local Commissioner may certify this as an offence to the High Court. The High Court may then deal with the person charged as though they had committed the same offence in relation to the High Court.

### ***Section 211: Statements about investigations***

692. This section provides for statements to be issued by a Local Commissioner when he or she decides not to investigate or to discontinue an investigation, and when an investigation is completed. If the Local Commissioner decides not to investigate or to discontinue an investigation, the statement must set out the Local Commissioner's reasons for that decision.

693. When a Local Commissioner has completed an investigation, the statement must set out the Local Commissioner's conclusions and any recommendations. The Local Commissioner may make recommendations for action which, in the Commissioner's opinion, the governing body needs to take to remedy any injustice sustained by the person affected. Recommendations may also be aimed at preventing injustice being caused in the future as a result of similar action of the governing body or head teacher. For example, the Local Commissioner might recommend an apology to the pupil, or changes to the school's discipline policy.
694. The Local Commissioner must send a copy of the statement to the complainant, or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, the parent) the governing body and head teacher. The statement must identify the school concerned. It will then be for the Local Commissioner to decide whether it is appropriate for the individual to be identified. The statement must not identify the complainant or any other person unless the Local Commissioner considers it necessary to identify that person.

### ***Section 212: Adverse findings notices***

695. This section requires a governing body to consider any statement containing recommendations by a Local Commissioner and notify the Local Commissioner within the "required period" as set by the Local Commissioner of the action which the governing body has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the governing body has decided to take no action, the Local Commissioner may require a governing body to publish an adverse findings notice. The Local Commissioner may also do this in two other circumstances: first, if not satisfied with the action which the governing body has taken or proposes to take; or second, if, after a further month following the end of the "notification period" (or any longer period agreed in writing by the Local Commissioner), the Local Commissioner has not received satisfactory confirmation that the governing body has taken the proposed action.
696. An adverse findings notice, in a form agreed between the governing body and a Local Commissioner, should include details of any action recommended in the Local Commissioner's statement which the governing body has not taken, any supporting material required by the Local Commissioner, and an explanation of the governing body's reasons for not having taken the recommended action (if the governing body wishes). The adverse findings notice must be published by the governing body in a manner directed by the Local Commissioner. The Local Commissioner might, for example, require publication in a local newspaper or, if the school has one, on its internet site.
697. A Local Commissioner must publish an adverse findings notice if the governing body fails to do so in accordance with *subsections (4) and (5)*, or cannot agree the form of the notice with the Local Commissioner within one month of the date the notice was received (or longer if agreed in writing by the Local Commissioner). *Subsection (7)* requires the provider to reimburse the LGO on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under *subsection (6)*.

### ***Section 213: Publication of statements etc. by Local Commissioner***

698. A Local Commissioner may publish all or part of a statement under section 211, or publish a summary of a statement. In deciding whether to publish a statement the Commissioner must take into account the public interest as well as the interests of the complainant and of other persons. The Local Commissioner may also supply a copy of all or part of a statement to anyone who requests it, and charge a fee for this. This fee must be reasonable and any fees charged are unlikely to be significant. *Subsections (8) to (10)* of section 211 apply to a Local Commissioner's publication of a statement or supply of any copy under this section. That means that, for example, the summary

must not identify the complainant or any other person (other than the school) unless the Local Commissioner considers it necessary to identify that person.

***Section 214: Disclosure of information, Section 215: Permitted disclosures of information by Local Commissioner***

699. These sections restrict the disclosure by a Local Commissioner of information obtained during the course of an investigation. Information obtained must not be disclosed except for the purposes specified. Particular exemptions allowing disclosure of information include, for example, disclosure for the purposes of a complaint being investigated by Her Majesty's Chief Inspector of Education, Children's Services and Skills, a local education authority under section 12 of the Education Act 1996 and the Secretary of State.

***Section 216: Law of defamation***

700. This section confers absolute privilege for the purposes of the law of defamation on certain communications between a Local Commissioner and other parties and certain publications by a Local Commissioner. This means that these communications and publications are not actionable for slander or libel.
701. The publication of any matter by a Local Commissioner in communications with a complainant, the Parliamentary Commissioner, Her Majesty's Chief Inspector of Education, Children's Services and Skills or a local authority will also be privileged. Privilege will also apply to the publication of statements, adverse finding notices, summaries and reports by a Local Commissioner.

***Section 217: Consultation with Parliamentary Commissioner for Administration***

702. Under this section if a Local Commissioner thinks that any matters which are the subject of the investigation include a matter that could be the subject of an investigation by the Parliamentary Commissioner (these being the actions of the Secretary of State and its impact on the complainant) the Local Commissioner is required to consult the Parliamentary Commissioner and inform the complainant of how to initiate such a complaint. It also imposes a similar obligation on the Parliamentary Commissioner in respect of complaints made to them which contain matters which could be the subject of an investigation under this chapter. In such circumstances the Parliamentary Commissioner must consult the Local Commissioner and inform the complainant how to initiate such a complaint.

***Section 218: Arrangements etc. to be made by Commission***

703. This section provides that the Commission must divide matters which may be investigated into appropriate categories and allocate responsibility for each category between the Local Commissioners. The Commission must also publish information about the procedures for making complaints under this Chapter.
704. *Subsection (3)(b)* makes clear that any information published under *subsection (2)(b)* must include details of the assistance available to pupils who are, or have been in care, disabled children and parents, and children with special educational needs.

***Section 219: Annual reports***

705. This section provides that every Local Commissioner must prepare a report on the discharge of their functions for each financial year to the Commission for Local Administration in England (the Commission). The Commission must then prepare an annual report which must be laid before Parliament.

### ***Section 220: Secretary of State's power of direction***

706. This section enables the Secretary of State to make a direction to a governing body that has not complied with a recommendation from a Local Commissioner. The Secretary of State may direct a governing body to comply within a specified period. That direction is enforceable by a mandatory order.

### ***Section 221: Disapplication of certain powers of Secretary of State***

707. This section amends sections 496 and 497 of the Education Act 1996. Currently, complainants may approach the Secretary of State asking him to consider the complaint. But for the Secretary of State to intervene the governing body has to be acting unreasonably or unlawfully and it must be expedient to intervene. In practice there are few occasions where the Secretary of State may issue a direction where the head teacher or school has failed in its statutory duty.
708. The effect of the amendments is that the Secretary of State can no longer make a direction in relation to complaints against governing bodies of schools that have or could have been made to a Local Commissioner. Instead, the complainant may approach a Local Commissioner if they are not satisfied with the governing body's response. After investigation into the complaint, a Local Commissioner will be able to recommend that the school undertake a course of action to remedy an injustice suffered by a particular individual.
709. A Local Commissioner will offer a scrutiny that is independent of central Government and will be able not only to consider if a school has been acting unreasonably or unlawfully (which is the scope of the Secretary of State's current practice) but also to recommend that a governing body provide a remedy.
710. Regulations may prescribe that the Secretary of State may make a direction in relation to a matter that could have been referred to the new scheme where the complaint is from a "prescribed person". The Government envisages that such prescribed persons might include the local education authority or governing bodies of other schools.

### ***Section 222: Power to amend meaning of "qualifying school"***

711. This section enables the types of schools that are covered by the scheme ("qualifying schools") to be added to, or amended by order at a later date. This order would be subject to the affirmative resolution procedure.

### ***Section 223: Amendments consequential on Chapter 2***

712. A Local Commissioner will be able to consider complaints relating to the National Curriculum where it affects an individual pupil. Previously, local education authorities had a role in the complaints process under section 409 of the Education Act 1996 and paragraphs 6(3) and (4) of Schedule 1 of the Education Act 1996. These sections have been repealed so that complainants are able to approach a Local Commissioner under the new scheme.

## ***Chapter 3: Inspections***

### ***Section 225: Interim statements***

713. This section inserts three new sections into the Education Act 2005 in relation to the powers of the Chief Inspector and associated duties of schools.
714. Section 10A enables the Chief Inspector to publish an interim statement (which it is expected will be commonly known as a "health check") where the Chief Inspector considers that a school's performance is such that it is appropriate to defer a routine inspection of the school for at least a year. The statement must set out the Chief Inspector's opinion that inspection can be deferred and the reasons for that opinion. It

is made on the basis of information available at the time and does not prevent the Chief Inspector from inspecting the school at any time if this is deemed necessary in light of changed circumstances. As its name indicates, the statement is only an interim measure. It cannot be used to defer an inspection beyond the end of the maximum period allowed between scheduled inspections.

715. Section 14A applies in cases where the Chief Inspector makes an interim statement about a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school. Subsections (1) to (3) of 14A require the Chief Inspector to send a copy of the interim statement to the appropriate authority of the school (either the governing body or the local education authority) and to other specified people. Subsection (4) of section 14A requires the appropriate authority of the school to make the statement available to members of the public and to take steps to ensure a copy of the statement is received by parents within a prescribed period.
716. Section 16A broadly mirrors the provisions in section 14A but applies to Academies; city technology colleges; city colleges for the technology of the arts; and special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the Education Act 1996. Under section 16A, the Chief Inspector must send a copy of the interim statement to the school's proprietor and others.

#### ***Section 226: Powers of persons providing administrative support in connection with inspections***

717. This section amends Part 2 of Schedule 12 to the Education and Inspections Act 2006 to entitle administrators supplied by inspection service providers to enter an institution being inspected and assist inspectors by performing administrative tasks during the course of that inspection. The amendment prohibits inspection administrators from conducting inspections.

#### ***Chapter 4: School Support Staff Pay and Conditions: England***

718. This Chapter establishes the School Support Staff Negotiating Body ("SSSNB"). The SSSNB will be responsible for negotiating matters referred to it that are related to the remuneration, duties or working time of school support staff, with a view to reaching and submitting agreements to the Secretary of State for his consideration.
719. The provisions enable the Secretary of State to make orders relating to those agreements submitted to him where he believes they properly address any matters referred to the SSSNB; are practicable for schools and local education authorities (as employers of school support staff) to implement; and have taken into account any factors that the Secretary of State has asked the SSSNB to have regard to during its considerations.

#### **The SSSNB**

#### ***Section 227: The School Support Staff Negotiating Body***

720. This section establishes the SSSNB and introduces Schedule 15 which makes further provision about the SSSNB.

#### ***Schedule 15: The School Support Staff Negotiating Body***

721. This Schedule makes provision for the constitutional arrangements, membership and proceedings of the SSSNB and certain administrative matters relating to the SSSNB.
722. It provides that the SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.
723. The constitutional arrangements must:

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

- provide for the members to include representatives of the prescribed organisations, the Secretary of State and an independent chair;
- not provide for a member of the SSSNB to have voting rights, unless the member represents the interests of one of the prescribed organisations;
- provide for the SSSNB to issue an annual report about the performance of its functions in each 12 month period.

724. The constitutional arrangements may:

- provide for the SSSNB to include other members;
- make arrangements for the provision of administrative support for the SSSNB;
- require the annual report to be sent to particular persons or published in a particular manner;
- provide for the payment of fees to the independent chair and the payment of expenses incurred by the SSSNB.

### ***Section 228: Matters within SSSNB's remit***

725. This section describes the matters that fall within the remit of the SSSNB, these matters being the pay and conditions of employment relating to the duties and working time of school support staff in England, and allows the Secretary of State to include or exclude matters by order.

### ***Section 229: Referral of matter to SSSNB for consideration***

726. This section enables the Secretary of State to refer a matter to the SSSNB for consideration where that matter falls within the remit of the SSSNB; specify factors which the SSSNB must have regard to in considering the matter; and specify a date by which the SSSNB must submit any agreement it reaches about the matter or notify him that it has been unable to reach agreement.

727. It requires the SSSNB to consider the matter referred, taking into account any factors specified by the Secretary of State, and to submit any agreement reached by it to the Secretary of State, or to notify him that it has been unable to reach agreement, by any date specified by the Secretary of State.

### ***Section 230: Consideration of other matters by SSSNB***

This section allows the SSSNB to consider and reach agreement on a matter within the remit of the Body where the matter has not been referred to it by the Secretary of State, and to submit that agreement to the Secretary of State.

### ***Section 231: Agreement submitted by SSSNB under section 229 or 230***

728. This section applies where the SSSNB submits an agreement to the Secretary of State (except where the agreement is submitted as a result of the SSSNB's reconsideration of a matter).

729. Upon receipt of the agreement, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration.

### ***Section 232: Reconsideration of agreement by SSSNB***

730. Where the Secretary of State refers an agreement back to the SSSNB for reconsideration, this section provides that he may specify factors that the SSSNB must take into account, and a date by which the SSSNB must submit its revised agreement or, if it has not agreed any revisions, resubmit the existing agreement.

731. Following reconsideration of the agreement, the SSSNB must submit any revised agreement back to the Secretary of State or, if it has not agreed any revisions, resubmit the existing agreement.
732. This section also enables the Secretary of State to withdraw the reference of the agreement, withdraw or vary any factor which must be taken into account, specify additional factors to be taken into account or postpone any deadline set to a later date, at any time before the SSSNB submits the revised agreement or resubmits the existing agreement.

***Section 233: SSSNB's submission of agreement following reconsideration: powers of Secretary of State***

733. This section applies where the SSSNB has resubmitted an agreement following reconsideration. The Secretary of State may:
- make an order ratifying the agreement;
  - refer the agreement back to the SSSNB for further consideration;
  - make an order requiring particular persons to have regard to the agreement;
  - make an order which makes provision otherwise than in the terms of the agreement.
734. The Secretary of State may refer an agreement back to the SSSNB for further reconsideration only if it appears to the Secretary of State that:
- the agreement does not properly address the matter that was referred to the SSSNB; or
  - it is not practicable to implement the agreement; or
  - the SSSNB has failed to take into account factors specified by the Secretary of State on referral of the matter to the SSSNB for reconsideration.
735. The Secretary of State may make an order otherwise than in the terms of the agreement only if it appears to him that one or more of the above conditions applies, and that there is an urgent need to make such an order.

***Section 234: Powers of Secretary of State in absence of SSSNB agreement***

736. The effect of *subsections (1) and (2)* of this section is that where the SSSNB notifies the Secretary of State that it has been unable to reach agreement or fails to submit an agreement to the Secretary of State by any deadline imposed, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, may make provision by order in relation to the matter referred to the SSSNB.
737. The effect of *subsections (3) and (4)* is that where, following reconsideration, the SSSNB fails by any deadlines imposed either to submit a revised agreement, or, where it has not agreed any revisions, to resubmit the existing agreement to the Secretary of State, the Secretary of State may extend any such deadline or, if he considers there is an urgent need to do so, by order make provision in relation to a matter to which the agreement relates.
738. *Subsection (5)* requires the Secretary of State to consult the SSSNB before making an order under this section relating to a matter referred to the SSSNB, or to a matter to which an agreement referred to the SSSNB relates.

***Section 235: Effect of order ratifying SSSNB agreement***

739. Where the Secretary of State by order ratifies an agreement this section provides that:

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

- if the agreement relates to a person's remuneration, that remuneration is to be determined and paid in accordance with it;
  - if the agreement relates to any other condition of a person's employment that condition becomes a term of the person's contract of employment.
740. It also provides that any term of the person's contract of employment which conflicts with the agreement has no effect.

***Section 236: Effect of order making provision otherwise than in terms of SSSNB agreement***

741. Where the Secretary of State makes an order otherwise than in terms of a SSSNB agreement, or in the absence of a SSSNB agreement, this section provides that the order must either:
- require particular persons to have regard to the order when exercising particular functions; or
  - provide that the order has effect for the purpose of determining the conditions of employment of the persons to whom it applies.

***Section 237: Orders: supplementary***

742. This section provides that orders made under this Chapter may apply retrospectively but may not reduce a person's pay or alter their conditions of employment to their detriment retrospectively.
743. It also provides that where an order makes provision by reference to an agreement or other document it must make provision about the publication of that agreement or document.

***Section 238: Guidance***

744. This section provides that, with the Secretary of State's approval, the SSSNB may issue guidance relating to-
- an agreement that has been ratified by an order under this Chapter
  - an agreement to which persons are by an order under this Chapter required to have regard.
745. It also allows the Secretary of State to issue guidance relating to an order which makes provision in the absence of, or otherwise than in terms of the agreement.
746. *Subsection (3)* provides that local education authorities and governing bodies of schools maintained by local education authorities must have regard to guidance issued under this section.

***Section 239: Non-statutory School Support Staff Negotiating Body***

747. This section provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB.
748. It also provides for:
- the non-statutory body's constitutional arrangements; and
  - any matters referred to the non-statutory body by the Secretary of State; to be treated as if they were:
  - arrangements made in respect of; and

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

- matters referred to;  
the SSSNB under this Chapter.

***Section 240: “School support staff”***

749. This section defines “school support staff” for the purposes of this Chapter. The definition excludes school teachers and persons of descriptions described in regulations. The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of “school support staff” persons whose terms and conditions of employment are determined in accordance with agreements of other bodies which are as follows: the Soulbury Committee, the Joint Negotiating Committee for Youth and Community Workers and the Joint Negotiating Committee for Local Authority and Associated Employees.

***Section 241: General interpretation***

750. This section defines other terms used in the Chapter.