



# Education Act 1996

## 1996 CHAPTER 56

### PART IV

#### SPECIAL EDUCATIONAL NEEDS

#### CHAPTER I

#### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Special educational provision: general*

#### **315 Review of arrangements.**

- (1) A local education authority shall keep under review the arrangements made by them for special educational provision.
- (2) In doing so the authority shall, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult [<sup>F1</sup>the governing bodies of community, foundation and voluntary and community and foundation special schools [<sup>F2</sup>and maintained nursery schools ] in their area.].

#### **Textual Amendments**

- F1** Words in s. 315(2) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para.73** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F2** Words in s. 315(2) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 37** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

#### **[<sup>F3</sup>316 Duty to educate children with special educational needs in mainstream schools**

- (1) This section applies to a child with special educational needs who should be educated in a school.

*Status: Point in time view as at 31/10/2005.*

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- (2) If no statement is maintained under section 324 for the child, he must be educated in a mainstream school.
- (3) If a statement is maintained under section 324 for the child, he must be educated in a mainstream school unless that is incompatible with—
  - (a) the wishes of his parent, or
  - (b) the provision of efficient education for other children.
- (4) In this section and section 316A “mainstream school” means any school other than—
  - (a) a special school, or
  - (b) an independent school which is not—
    - (i) a city technology college,
    - (ii) a city college for the technology of the arts, or
    - (iii) [<sup>F4</sup>an Academy].]

#### Textual Amendments

- F3** 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
- F4** Words s. 316(4)(b)(iii) substituted (26.7.2002) by Education Act 2002 (c. 32), ss. 65(3), 216(2), Sch. 7 para. 6(3) (with ss. 210(8), 214(4)); S.I. 2002/2002, art. 2

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

- C1** S. 316(2)(3) excluded (prosp.) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 36(5)(d) (10), 162 (with s. 159)

### [<sup>F5</sup>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 local education 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 local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
    - (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 local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
    - (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 local education 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 local education 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—
- (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (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”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.
- (11) “Authority”—
- (a) in relation to a maintained school [<sup>F6</sup> or maintained nursery school] , means each of the following—
    - (i) the local education authority,
    - (ii) the school’s governing body, and
  - (b) in relation to <sup>F7</sup>... a pupil referral unit, means the local education authority.]

#### Textual Amendments

- F5** 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

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- F6** 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.
- F7** 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.

### 317 Duties of governing body or LEA in relation to pupils with special educational needs.

- (1) <sup>F8</sup>[The governing body of a community, foundation or voluntary school or a maintained nursery school shall] —
- (a) 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 which his learning difficulty calls for is made,
  - (b) 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) 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.
- <sup>F9</sup>(2) In subsection (1)(b) “the responsible person” means the head teacher or the appropriate governor (that is, the chairman of the governing body or, where the governing body have designated another governor for the purposes of this subsection, that other governor).]
- (3) To the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs—
- (a) the governing bodies of <sup>F10</sup>[community, foundation and voluntary schools]<sup>F11</sup> and maintained nursery schools ] shall, in exercising functions relating to the provision for such children, consult the local education authority <sup>F12</sup>. . . and the governing bodies of other such schools, <sup>F13</sup> . . .
  - <sup>F13</sup>(b) . . . . .
- (4) Where a child who has special educational needs is being educated in <sup>F14</sup>[a community, foundation or voluntary school] or a maintained nursery school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—
- (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources,
- that the child engages in the activities of the school together with children who do not have special educational needs.
- <sup>F15</sup>(5) The governing body of a community, foundation or voluntary school, a maintained nursery school, or a community or foundation special school shall—
- (a) in the case of a school in England, prepare a report containing special needs information, and

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- (b) in the case of a school in Wales, include special needs information in the report prepared under section 30(1) of the Education Act 2002 (governors' report).
- (6) In subsection (5) “special needs information” means—
- (a) such information as may be prescribed about the implementation of the governing body's policy for pupils with special educational needs, and
- (b) information as to—
- (i) the arrangements for the admission of disabled persons as pupils at the school,
- (ii) the steps taken to prevent disabled pupils from being treated less favourably than other pupils,
- (iii) the facilities provided to assist access to the school by disabled pupils, and
- (iv) the plan prepared by the governing body under section 28D of the Disability Discrimination Act 1995 (“the 1995 Act”).
- (6A) In subsection (6)(b) “disabled person” means a person who is a disabled person for the purposes of the 1995 Act; and section 28Q of the 1995 Act (interpretation) applies for the purposes of subsection (6)(b) as it applies for the purposes of Chapter 1 of Part 4 of that Act.]

#### Textual Amendments

- F8** Words in s. 317(1) substituted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(2\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F9** S. 317(2) substituted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(3\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F10** Words in s. 317(3)(a) substituted (1.9.1999) by 1998 c. 31, s. 140(1), [Sch. 30 para. 74\(4\)\(a\)\(i\)](#) (with ss. 138(9), 144(6)) S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F11** Words in s. 317(3)(a) inserted (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(4\)\(a\)](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F12** Words in s. 317(3)(a) repealed (1.9.1999) by 1998 c. 31, s. 140(1)(3), [Sch. 30 para. 74\(4\)\(a\)\(ii\)](#), [Sch. 31](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F13** S. 317(3)(b) and word repealed (1.9.2003 for E.; 31.10.2005 for W.) by [Education Act 2002 \(c. 32\), s. 216\(4\), Sch. 21 para. 39\(4\)\(b\), Sch. 22 Pt. 3](#) (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F14** Words in s. 317(4) substituted (1.9.1999) by 1998 c. 31, s. 140(1), [Sch. 30 para. 74\(5\)](#) (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), [Sch. 1](#)
- F15** S. 317(5)-(6A) substituted for s. 317(5)-(7A) (1.9.2005) by [Education Act 2005 \(c. 18\), s. 125\(4\), Sch. 18 para. 2](#) (with s. 119); S.I. 2005/2034, art. 5 (with Sch. para. 2)

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

- C2** S. 317 modified (5.11.2004) by [The New Relationship with Schools \(Governors Annual Report\) Order 2004 \(S.I. 2004/2683\)](#), arts. 1(1), [3](#)
- C3** S. 317(1) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), arts. 1(1), [3\(a\)](#)
- C4** S. 317(5) modified (1.12.2004) by [The New Relationship with Schools \(Governors Annual Report\) \(No 2\) Order 2004 \(S.I. 2004/2810\)](#), arts. 1(1), [3\(a\)](#)

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#### Commencement Information

**II** S. 317 wholly in force; s. 317(1)-(5)(7) in force at 1.11.1996 see s. 583(3)(5); s. 317(6) in force at 1.1.1997 by [S.I. 1996/2904](#), **art. 2**

### [<sup>F16</sup>317A Duty to inform parent where special educational provision made

- (1) This section applies if—
- (a) a child for whom no statement is maintained under section 324 is a registered pupil at—
    - (i) a community, foundation or voluntary school [<sup>F17</sup> or a maintained nursery school] , or
    - (ii) a pupil referral unit,
  - (b) special educational provision is made for him at the school because it is considered that he has special educational needs, and
  - (c) his parent has not previously been informed under this section of special educational provision made for him at the school.
- (2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child’s parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.
- (3) In any other case, the governing body must inform the child’s parent that special educational provision is being made for him there because it is considered that he has special educational needs.]

#### Textual Amendments

- F16** S. 317A inserted (1.1.2002 (E.) and 1.4.2002 (W.)) by [2001 c. 10, s. 7\(1\)](#) (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](#)
- F17** Words in s. 317A(1)(a)(i) inserted (1.9.2003 for E., 31.10.2005 for W.) by [Education Act 2002 \(c. 32\)](#), [s. 216\(4\)](#), **Sch. 21 para. 40** (with [ss. 210\(8\)](#), [214\(4\)](#)); [S.I. 2003/1667](#), **art. 4**; [S.I. 2005/2910](#), **art. 4**, [Sch.](#)

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

- C5** S. 317A(1) modified (31.3.2004) by [The Blackburn with Darwen \(Maintained Nursery School Governance\) Order 2004 \(S.I. 2004/657\)](#), **arts. 1(1)**, **3(a)**

### 318 Provision of goods and services in connection with special educational needs.

- (1) A local education authority may, for the purpose only of assisting—
- (a) the governing bodies of [<sup>F18</sup>community, foundation or voluntary schools][<sup>F19</sup> or maintained nursery schools] (in their or any other area) in the performance of the governing bodies’ duties under section 317(1)(a), or
  - (b) the governing bodies of [<sup>F18</sup>community or foundation special schools] (in their or any other area) in the performance of the governing bodies’ duties,
- supply goods or services to those bodies.
- (2) The terms on which goods or services are supplied by local education authorities under [<sup>F20</sup>this section to the governing bodies of community, foundation or voluntary schools [<sup>F21</sup>, maintained nursery schools ] or community or foundation special schools in any



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other area] may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed.

<sup>F22</sup>[(3) A local education authority [<sup>F23</sup>in England] may supply goods and services to any authority [<sup>F23</sup>in England] or other person (other than a governing body within subsection (1)) for the purpose only of assisting them in making for any child to whom subsection (3A) applies any special educational provision which any learning difficulty of the child calls for.

(3A) This subsection applies to any child—

(a) who is receiving relevant nursery education within the meaning of section 123 of the School Standards and Framework Act 1998, <sup>F24</sup>...

<sup>F24</sup>(b) .....]

<sup>F25</sup>(3B) A local education authority in Wales may supply goods and services to any authority in Wales or other person (other than a governing body within subsection(1)) for the purpose of assisting them in making for a child any special educational provision which any learning difficulty of the child calls for.]

(4) This section is without prejudice to the generality of any other power of local education authorities to supply goods or services.

#### Textual Amendments

- F18** Words in s. 318(1)(a)(b) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 75(2)(a)(b)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F19** Words in s. 318(1) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 41(2)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F20** Words in s. 318(2) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 75(3)** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F21** Words in s. 318(2) inserted (1.9.2003 for E., 31.10.2005 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 21 para. 41(3)** (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F22** S. 318(3)(3A) substituted (1.10.1998) for s. 318(3) by 1998 c. 31, ss. 140(1), **Sch. 30 para. 75(4)** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**
- F23** S. 318(3): words inserted (19.12.2002) after the word "authority" by virtue of Education Act 2002 (c. 32), **ss. 194(2)(a)**, 216(3) (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 4**, Sch. Pt. 1
- F24** S. 318(3A)(b) repealed (1.4.2003 for E., 2.1.2008 for W.) by Education Act 2002 (c. 32), s. 216(4), **Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2003/124, art. 4; S.I. 2007/3611, art. 4(1), Sch. Pt. 1
- F25** S. 318(3B) inserted (19.12.2002) by Education Act 2002 (c. 32), **ss. 194(2)(b)**, 216(3) (with ss. 210(8), 214(4)); S.I. 2002/3185, **art. 4**, Sch. Pt. 1

### 319 Special educational provision otherwise than in schools.

(1) Where a local education authority are satisfied that it would be inappropriate for—

(a) the special educational provision which a learning difficulty of a child in their area calls for, or

(b) any part of any such provision,

to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.

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- (2) Before making an arrangement under this section, a local education authority shall consult the child's parent.

**320 Provision outside England and Wales for certain children.**

- (1) A local education authority may make such arrangements as they think fit to enable a child for whom they maintain a statement under section 324 to attend an institution outside England and Wales which specialises in providing for children with special needs.
- (2) In subsection (1) "children with special needs" means children who have particular needs which would be special educational needs if those children were in England and Wales.
- (3) Where a local education authority make arrangements under this section in respect of a child, those arrangements may in particular include contributing to or paying—
- (a) fees charged by the institution,
  - (b) expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it,
  - (c) his travelling expenses, and
  - (d) expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.
- (4) This section is without prejudice to any other powers of a local education authority.



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