



Education and Skills Act 2008

2008 CHAPTER 25

PART 4

REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

CHAPTER 2

SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

Non-maintained special schools in England

142 Interpretation

- (1) For section 337 of the Education Act 1996 (c. 56) (special schools) and the italic heading preceding it substitute—

“Interpretation

337 Special schools

A school is a special school if—

- (a) it is specially organised to make special educational provision for pupils with special educational needs, and
- (b) in the case of a school that is not maintained by a [^{F1}local authority], it is approved under section 342.

337A Interpretation of Chapter

In this Chapter—

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

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Changes to legislation: There are currently no known outstanding effects for the Education and Skills Act 2008, Chapter 2. (See end of Document for details)

“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.”

(2) Section 342 of that Act (approval of non-maintained special schools) is amended as follows.

(3) In subsection (1)—

- (a) for “Secretary of State” substitute “ appropriate national authority ”;
- (b) omit “his”.

(4) In subsection (5)(a) for “Secretary of State” substitute “ appropriate national authority ”.

Textual Amendments

- F1** 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. 15(2)**

Commencement Information

- I1** S. 142 in force at 30.3.2010 by [S.I. 2010/1093](#), **art. 2(a)**

143 Right of sixth-form pupils to opt out of religious worship

(1) Section 342 of the Education Act 1996 is amended as follows.

(2) After subsection (5) insert—

“(5A) Regulations shall make provision for securing that, so far as practicable, every pupil 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- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil's parent, and
- (b) attends religious worship unless withdrawn from attendance at such worship—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.”

(3) In subsection (6) for “special school” substitute “ school in Wales that is ”.

Commencement Information

- I2** S. 143 in force at 30.3.2010 by [S.I. 2010/1093](#), **art. 2(a)**

Status: Point in time view as at 09/12/2021.

Changes to legislation: There are currently no known outstanding effects for the Education and Skills Act 2008, Chapter 2. (See end of Document for details)

144 Protection of pupils in an emergency

After section 342 of the Education Act 1996 (c. 56) insert—

“Non-maintained special schools in England: protection of pupils in an emergency

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).”

Commencement Information

I3 S. 144 in force at 30.3.2010 by [S.I. 2010/1093](#), [art. 2\(a\)](#)

145 Appeals

After section 342A of the Education Act 1996 (inserted by section 144) insert—

“Non-maintained special schools in England: appeals

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

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- (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.”

Commencement Information

I4 S. 145 in force at 30.3.2010 by [S.I. 2010/1093](#), [art. 2\(a\)](#)

Independent schools in England

F2 146 Abolition of requirement of approval for independent schools: England

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Textual Amendments

F2 S. 146 omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 15\(3\)](#); [S.I. 2021/373](#), art. 8(j)(xxix)

147 Approval of independent schools: consequential amendments

- (1) Section 349 of the Education Act 1996 (c. 56) (variation of trust deeds by order) is amended as follows.
- (2) In subsection (1)—
- ^{F3}(a)
 - ^{F4}(b)
 - (c) omit “or 347”.
- ^{F5}(3)
- (4) Section 483A of that Act (city colleges and academies: special educational needs) is amended as follows.
- (5) For subsection (3)(a) and (b) substitute—
- “(a) the statement is maintained by a [^{F1}local authority] in England, or
 - (b) the statement is maintained by a [^{F1}local authority] in Wales and the Welsh Ministers consent to the child being educated at the school.”
- (6) In subsection (4) of that section for “The Secretary of State” substitute “ The appropriate national authority ”.
- (7) At the end of that section add—

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“(6A) In subsection (4) “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.”

^{F6}(8)

Textual Amendments

- F1** 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. 15(2)**
- F3** S. 147(2)(a) omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 6(1)(i)**; S.I. 2021/373, art. 8(j)(xviii)
- F4** S. 147(2)(b) omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 6(1)(i)**; S.I. 2021/373, art. 8(j)(xviii)
- F5** S. 147(3) omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 6(1)(i)**; S.I. 2021/373, art. 8(j)(xviii)
- F6** S. 147(8) repealed (10.9.2012 immediately after the coming into force of the [Safeguarding Vulnerable Groups \(Miscellaneous Amendments\) Order 2012 \(S.I. 2012/2157\)](#)) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 10 Pt. 5** (with s. 97); S.I. 2012/2234, art. 2(bb)

Commencement Information

- I5** S. 147 in force at 1.9.2009 by [S.I. 2009/1513](#), **art. 3**

^{F7}**148 Approval of independent schools: transitional provision**

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Textual Amendments

- F7** S. 148 omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 15(4)**; S.I. 2021/373, art. 8(j)(xxix)

Status:

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Changes to legislation:

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