



School Standards and Framework Act 1998

1998 CHAPTER 31

PART V

NURSERY EDUCATION

Further provisions relating to nursery education

123 Children with special educational needs.

- (1) It shall be the duty of—
- (a) any [^{F1}local authority][^{F2}in England] or other person providing [^{F3} relevant early years education], and
 - (b) any person employed by such an authority or other person, or otherwise engaged to provide his services, in the provision of such education,

[^{F4}to have regard to the provisions of the code of practice issued under section 77 of the Children and Families Act 2014 (in the case of education in England) ^{F5}....]

[^{F6}(1A) Subsection (1) does not apply in so far as the person in question is already under a duty to have regard to the provisions of the code of practice in question.]

- (2) [^{F7}The code of practice in question] may include practical guidance in respect of the provision of [^{F8}relevant early years education] for children with special educational needs in circumstances where functions under [^{F9}Part 3 of the Children and Families Act 2014 ^{F10}...] do not fall to be discharged.

- (3) But unless [^{F11}the code of practice in question] includes provision made by virtue of subsection (2)—

- (a) the Secretary of State shall publish a document explaining how the practical guidance contained in that code applies in circumstances where functions under [^{F12}Part 3 of the Children and Families Act 2014] ^{F13}... 1996 do not fall to be discharged, and

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- (b) the duty imposed by subsection (1) includes a duty to have regard to the provisions of that document.

[^{F14}(3A) Subsection (3B) applies if—

- (a) a [^{F15}local authority] or other person providing [^{F15}relevant early years education] for a child makes special educational provision for him because it is considered that he has special educational needs;
- (b) no [^{F16}EHC plan] ^{F17}... 1996 is maintained for the child; and
- (c) his parent has not previously been informed under subsection (3B) of the special educational provision made for him.

(3B) The [^{F1}local authority] or other person concerned must inform the child’s parent that special educational provision is being made for him because it is considered that he has special educational needs.]

[^{F18}(4) In this section “relevant early years education” means—

- (a) in relation to England, early years provision as defined by section 20 of the Childcare Act 2006 which is—

- [provided under arrangements made by a local authority in England in
- ^{F19}(i) pursuance of the duty imposed by section 7 of that Act (whether or not the local authority provides the early years provision); [^{F20}or
- (ii) provided under arrangements made by a local authority in pursuance of any duty imposed under section 2 of the Childcare Act 2016 (whether or not the local authority provides the early years provision);]

^{F21}(b)]

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), art. 1, **Sch. 2 para. 10(2)** (with Sch. 2 para. 10(4))
- F2** Words in s. 123(1)(a) inserted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(a)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F3** Words in s. 123(1)(a) substituted (1.9.2008 for E.) by Childcare Act 2006 (c. 21), s. 109(2), **Sch. 2 para. 34(a)**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F4** Words in s. 123(1) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(2)**; S.I. 2014/889, art. 7(a)
- F5** Words in s. 123(1) omitted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(b)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

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- F6** S. 123(1A) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(3)**; S.I. 2014/889, art. 7(a)
- F7** Words in s. 123(2) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(4)(a)**; S.I. 2014/889, art. 7(a)
- F8** Words in s. 123(2) substituted (1.9.2008 for E.) by Childcare Act 2006 (c. 21), s. 109(2), **Sch. 2 para. 34(a)**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F9** Words in s. 123(2) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(4)(b)**; S.I. 2014/889, art. 7(a)
- F10** Words in s. 123(2) omitted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(c)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F11** Words in s. 123(3) substituted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(5)(a)**; S.I. 2014/889, art. 7(a)
- F12** Words in s. 123(3) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(5)(b)**; S.I. 2014/889, art. 7(a)
- F13** Words in s. 123(3)(a) omitted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(d)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F14** S. 123(3A)(3B) inserted (1.1.2002 for E. and 1.4.2002 for W.) by 2001 c. 10, ss. 7(2), 43(3) (with s. 43(13)); S.I. 2001/2217, art. 5, Sch. Pt. II (which S.I. was amended by S.I. 2001/2614, art. 4); S.I. 2002/74, art. 5, Sch. Pt. II
- F15** Words in s. 123(3A) substituted (1.9.2008 for E.) by Childcare Act 2006 (c. 21), s. 109(2), **Sch. 2 para. 34(a)**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F16** Words in s. 123(3A)(b) inserted (1.9.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 3 para. 69(6)**; S.I. 2014/889, art. 7(a)
- F17** Words in s. 123(3A)(b) omitted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(e)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I. 2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3
- F18** S. 123(4) substituted (1.9.2008 for E.) by Childcare Act 2006 (c. 21), s. 109(2), **Sch. 2 para. 34(b)**; S.I. 2008/2261, art. 2 (with Sch. 1)
- F19** Words in s. 123(4)(a) renumbered as s. 123(4)(a)(i) (E.) (10.1.2017) by The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257), regs. 1(2), **41(a)**
- F20** S. 123(4)(a)(ii) and word inserted (E.) (10.1.2017) by The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257), regs. 1(2), **41(b)**
- F21** S. 123(4)(b) omitted (W.) (1.9.2021 for specified purposes, 1.1.2022 for specified purposes, 1.9.2022 for specified purposes) by virtue of Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2), s. 100(3), **Sch. 1 para. 7(4)(f)**; S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2); S.I. 2021/1243, art. 3 (with arts. 4-23) (as amended by S.I. 2021/1428, art. 2); S.I.

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2021/1244, art. 3 (with arts. 4-21) (as amended by S.I. 2021/1428, art. 3); S.I. 2021/1245, arts. 3, 4 (with art. 1(4)); S.I. 2022/891, art. 3 (with arts. 4-25); S.I. 2022/892, arts. 2, 3 (with arts. 4-18); S.I. 2022/893, art. 4; S.I. 2022/894, art. 3; S.I. 2022/895, arts. 3, 4; S.I. 2022/896, art. 3 (with arts. 1(7), 4-22); S.I. 2022/897, art. 3 (with arts. 1(8), 4-21); S.I. 2022/898, arts. 2, 3

124 **Travel arrangements for children receiving nursery education otherwise than at school.**

After section 509 of the ^{M1}Education Act 1996 there shall be inserted—

“509A Travel arrangements for children receiving nursery education otherwise than at school.

- (1) A local education authority may provide a child with assistance under this section if they are satisfied that, without such assistance, he would be prevented from attending at any premises—
 - (a) which are not a school or part of a school, but
 - (b) at which relevant nursery education is provided,
 for the purpose of receiving such education there.
- (2) The assistance which may be provided for a child under this section consists of either—
 - (a) making arrangements (whether for the provision of transport or otherwise) for the purpose of facilitating the child’s attendance at the premises concerned, or
 - (b) paying the whole or any part of his reasonable travel expenses.
- (3) When considering whether to provide a child with assistance under this section in connection with his attendance at any premises, a local education authority may have regard (among other things) to whether it would be reasonable to expect alternative arrangements to be made for him to receive relevant nursery education at any other premises (whether nearer to his home or otherwise).
- (4) Where the assistance to be provided for a child under this section consists of making arrangements for the provision of transport, the authority may, if they consider it appropriate to do so, determine that the assistance shall not be so provided unless—
 - (a) the child’s parent, or
 - (b) the person providing the relevant nursery education concerned,
 agrees to make to the authority such payments in respect of the provision of the transport (not exceeding the cost to the authority of its provision) as they may determine.
- (5) In this section “relevant nursery education” means nursery education which is provided—
 - (a) by a local education authority, or
 - (b) by any other person—
 - (i) who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the

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purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or
(ii) who is in receipt of grants under section 1 of the ^{M2}Nursery Education and Grant-Maintained Schools Act 1996.”

Marginal Citations

M1 1996 c. 56.

M2 1996 c. 50.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3)(aa) inserted by [2011 nawm 7 s. 16\(2\)](#) (Amendment not applied to [legislation.gov.uk](#) - s.16(02) of 2011 nawm007 omitted by 2013 nawm001 s. 100(4), Sch. 5 para. 13(2); S.I. 2014/178, art. 2(f) (with art. 3) prior to commencement)
- s. 18B inserted by [2011 nawm 7 s. 16\(3\)](#) (Amendment not applied to [legislation.gov.uk](#) - s.16(02) of 2011 nawm007 omitted by 2013 nawm001 s. 100(4), Sch. 5 para. 13(2); S.I. 2014/178, art. 2(f) (with art. 3) prior to commencement)
- Sch. 22 para. 5(1B) inserted by [2023 c. 55 s. 235\(4\)](#)