

EXPLANATORY MEMORANDUM TO
THE EDUCATION (SPECIAL EDUCATIONAL NEEDS) (ENGLAND)
(CONSOLIDATION) (AMENDMENT) REGULATIONS 2007

2007 No.1860

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations allow sixth form pupils at maintained special schools to withdraw from religious worship if they wish to. The Regulations allow for this right to come into force for special school sixth formers at the same time as for mainstream school sixth formers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 At Lords Committee Stage of the Education and Inspections Bill, following an Opposition amendment which would have allowed 'competent' pupils to opt out of collective worship and Religious Education if they wished to, Lord Adonis, Parliamentary Under Secretary of State for Schools at the Department for Education and Skills agreed that he would consider the case for allowing pupils to opt of collective worship and that he would seek the views of faith groups with a view to bringing forward an amendment at Report Stage. Officials sought the views of faith groups and the Government amendment was drafted to take account of the views expressed. The Government introduced an amendment which gave sixth formers the right of withdrawal from collective worship. The Hansard text (17 October 2006 : Column 736) is at the following link:

<http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/61017-0014.htm>

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

7.1 All maintained schools must provide a daily act of collective worship which is broadly Christian, for all their registered pupils, including post-16 pupils. This requirement was established by the Education Act 1944 and has been re-enacted by subsequent legislation, including the School Standards and Framework Act 1998. It is the duty of the head teacher to secure collective worship. Duties are also placed on local authorities and governing bodies to exercise their functions with a view to securing the provision of collective worship. All registered pupils must take part in collective worship unless their parents withdraw them.

7.2 Special schools provide education for children with more severe or complex special educational needs (SEN). There are 1,005 local authority maintained special schools in England making provision for 84,680 pupils. A further 4,720 pupils are educated in non-maintained special schools run by charities. The non-maintained and independent sector is not covered by these Regulations.

7.3 Article 9 of the European Convention of Human Rights sets out rights to the freedom of thought, conscience and religion and the right to manifest a religious belief (which may include the right not to manifest a religious belief).

7.4 Lord Adonis, the Parliamentary Under Secretary of State for Schools at the Department for Education and Skills agreed at Lords Committee Stage of the Education and Inspections Bill to consider the case for older pupils to withdraw from collective worship and that he would seek the views of faith groups with a view to bringing forward an amendment at Report Stage. The faith groups' views were sought and they made it clear that they were prepared to concede on the issue of religious worship but did not want the right of withdrawal to extend to Religious Education.

7.5 A clause, via a Government amendment, was inserted into the Education and Inspections Bill amending section 71 of the School Standards and Framework Act 1998 giving the right to mainstream school sixth formers to excuse themselves from religious worship (now section 55). Section 55(8) replaces section 71 (7) of the 1998 Act to enable regulations to be made so that the right to excuse themselves from religious worship is also extended to sixth formers at special schools. Section 55 of the 2006 Act comes into effect on 1 September 2007. The present Regulations make provision for that right to be extended to sixth formers in special schools from the same date.

7.6 The Education (Special Educational Needs) (England) (Consolidation) (Amendment) Regulations 2006, which amended the principal 2001 SEN Regulations, imported the Regulation from the Education (Maintained Special School) (England) Regulations 1999 which ensured that, so far as is practicable, every pupil attending a maintained special school will attend daily collective worship or will be withdrawn in accordance with the wishes of the parents as was the law in force at that time . . .

7.7 The Government needs to legislate on this matter as without these Regulations sixth formers in special schools would not be afforded the same right to opt out of collective worship as their mainstream peers will have, and there is a duty rather than power to make the regulations.

8 Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that local authority maintained special schools will have to make arrangements so that sixth form pupils can excuse themselves from the daily act of collective worship.

9 Contact

9.1 Nigel Fulton at the Department for Education and Skills, Tel: 0207 273 4729 or e-mail: nigel.fulton@dfes.gsi.gov.uk can answer any queries regarding the instrument.