

SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Special Educational Needs

Sections 1 to 10 and Schedules 1 & 8

Section 1: Education in mainstream schools of children with special educational needs

45. The section replaces the existing section 316 EA and strengthens the right to a mainstream place for children with SEN. This seeks to enable greater inclusion and safeguard the efficient education of all pupils.
46. *Section 316(2)* ensures that pupils with SEN but without a statement are educated in mainstream schools. *Section 316(3)* ensures that pupils with SEN and a statement are educated in mainstream schools unless this would be incompatible with parental choice or with the provision of efficient education for other children. This means an LEA does not have to provide a mainstream place where parents do not want one. In practice, incompatibility with the efficient education of others is likely to be where pupils present severe challenging behaviour that would significantly disrupt the learning of other pupils or place their safety at risk. *Section 316(4)* defines what constitutes a mainstream school. For the purposes of this section, City Technology Colleges (CTCs), City Colleges for the Technology of the Arts (CCTAs) and City Academies (CAs) (which are independent schools) are mainstream schools.
47. The section also inserts a new section 316A in the EA which ensures that the new provisions work alongside the existing provisions of the EA. *Section 316A(1)* allows a child with SEN to be educated at an independent school (whether or not it is a mainstream school), or a non-maintained special school where the LEA are not funding the placement. Without this sub-section parents of children with SEN but without statements would not be able to choose to send their child with SEN to an independent or non-maintained school special school at their own expense. This would be incompatible with the Human Rights Act 1998. *Section 316A(2)* sets out the exceptional circumstances in which a child with SEN but without a statement can be educated at a special school. The section reflects existing arrangements for maintained special schools i.e. children without statements can be placed in special schools if they are being assessed for a statement, or their circumstances have changed suddenly and the head teacher (or governing body in Wales), parents, LEA and (when the child is admitted for an assessment) those providing advice agree, or if a child is in hospital and so is attending a hospital special school. *Section 316A(2)(b)* provides that regulations can prescribe circumstances in which a child, admitted for the purpose of assessment, can remain in a special school after the assessment is carried out. It is envisaged that these regulations will deal with the child's position in the period after the assessment

*These notes refer to the Special Educational Needs And Disability
Act 2001 (c.10) which received Royal Assent on 11 May 2001*

is carried out but before any decision is taken about whether a statement is necessary, and once any decision about a statement is made.

48. *Sections 316A(3) and (4)* explain how the new section 316 interacts with Schedule 27 to the EA (making and maintenance of statements). *Section 316A(3)* ensures that section 316 does not affect the operation of paragraph 3 of Schedule 27 (parent's right to express a preference for a maintained school) or section 348 (provision of special education at non-maintained schools). LEAs will not be prevented from naming independent or non-maintained special schools in statements by the requirement to educate children with SEN in mainstream schools. Parents continue to have the right to make representations for a non-maintained school to be named in their child's statement and, where the LEA agree, they must fund the placement in a non-maintained school. *Section 316A(4)* makes it clear that if an LEA do not name the parent's choice of maintained school in a statement their choice of school is governed by the provisions of section 316. *Sections 316A(5) and (6)* further strengthen the right to a mainstream place by requiring schools and LEAs, when seeking to demonstrate that inclusion would be incompatible with the efficient education of other children, to show that there are no reasonable steps they could take to prevent the inclusion of a child with a statement from having that effect. *Section 316A(7)* means that if an LEA have named a maintained school in a statement (and so the child must be admitted in accordance with section 324) the school cannot subsequently rely on the exception in section 316(3), i.e. that the child's inclusion would be incompatible with the efficient education of other children. *Section 316A(8)* requires schools and LEAs to heed guidance about section 316 and section 316A to be provided by the Secretary of State in England and, in Wales, the NAW. *Section 316A(9)* provides that the guidance must in particular include advice on reasonable steps maintained schools and LEAs should consider to prevent inclusion being incompatible with the efficient education of other pupils. The effect of *Section 316A(10)* is that regulations for Wales made under section 316A will be made by the NAW. *Section 316A(11)* explains what "authority" means in the section.