

# **SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 – Special Educational Needs**

#### **Sections 1 to 10 and Schedules 1 & 8**

#### ***Schedule 8: Minor and consequential amendments***

66. This Schedule makes a number of amendments to the EA which are minor or consequential, arising from this Act.

67. **Paragraphs 6, 7 and 8** amend sections 325, 328 and 329 respectively to provide for regulations to prescribe what information is to be included by the LEA in notices to parents informing them of their right of appeal against a decision:

- not to make a statement of SEN for their child (s.325);
- not to comply with a request from a parent to make an assessment or re-assessment of a child with a statement (s.328); and
- not to comply with a request from a parent to make an assessment of a child without a statement (s.329).

They also allow regulations to make provisions about time limits for serving notices under sections 325 and 328; time limits in relation to service of notices under section 329 will be dealt with by regulations under paragraph 3 of Schedule 26 to the EA as amended by paragraph 14 of Schedule 8.

68. **Paragraphs 9 and 10** amend paragraphs 8 and 11 respectively of Schedule 27 to the EA to provide for regulations to be made prescribing the information to be provided by the LEA in notices to a parent when:

- informing a parent of his right to appeal against the refusal to substitute a maintained school named in a statement (paragraph 8); and
- informing a parent of his right to appeal against a decision to cease to maintain a statement (paragraph 11).

69. **Paragraph 11** amends section 323(1)(a) and paragraph 4(1) of Schedule 26 to the EA to require an LEA to inform parents when it is considering whether to make an assessment. LEAs are currently required to do this when they are proposing to make an assessment. Parents often assume this to mean that the LEA is definitely going ahead with an assessment when this may not be the case. The new wording clarifies the situation.

70. **Paragraph 12** makes a technical change to clarify the law. It makes it clear that under section 347 of the EA an LEA does not have to obtain the Secretary of State's consent

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

to a child being educated in an independent school, if the child's parents are themselves making the arrangements to send their child to that school.

71. [Paragraph 13](#) makes a number of changes to section 336 of the EA, ensuring that the power to regulate SENDIST procedure for SEN appeals is the same as that in respect of DDA claims. In particular it provides for hearings before the Tribunal to be in private except in prescribed circumstances, and for an SEN appeal to be heard with a DDA claim.
72. [Paragraph 14\(2\)](#) makes changes to paragraph 3 of Schedule 26 to the EA as a result of the changes made to Schedule 27 by section 10 of and Schedule 1 to the Act.
73. [Paragraph 14\(3\)](#) replaces paragraphs 3(3) and (4) of Schedule 26 to the EA to provide for regulations to be made prescribing time limits within which an LEA must:
  - inform parents that it is considering whether to make an assessment or re-assessment, whether in response to a request from a parent or school, or otherwise;
  - reach its decision on whether or not to make such an assessment; and
  - carry out an assessment or re-assessment where it has decided to do so.

At present, regulations on time limits only become effective when an LEA has made a decision to make an assessment or re-assessment.

74. [Paragraph 15](#) amends section 441 of the EA so that an amendment to a statement required as a result of a school attendance order will be made following the new procedures for amendments made after periodic reviews set out in Schedule 27 to the EA as amended by section 10 of and Schedule 1 to the Act.