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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations relate to the assessment of special educational needs and to statements of such needs under Part IV of the Education Act 1996. They replace with modifications, and for England only, the Education (Special Educational Needs) Regulations 1994, which are revoked for England (*regulation 27*).

The Regulations make provision for a head teacher to delegate his functions under them generally to a qualified teacher, or in a particular case to the staff member who teaches the child (*regulation 3*).

The Regulations also supplement the procedural framework for making an assessment and a statement contained in Part IV of the Education Act 1996 and Schedules 26 and 27 thereto. Detailed provision is made for the service of documents by post (*regulation 4*). The Regulations require copies of notices of a local education authority's proposal to make an assessment, their decision to make an assessment or notices of a parent's or responsible body's request for an assessment, to be served on the social services authority, the health authority and the head teacher of the child's school, or the head of SEN if a child is receiving relevant nursery education (*regulation 6*). Subject to exceptions, they require local education authorities to carry out various steps in making an assessment or a statement within prescribed time limits, including the provision of prescribed information (*regulations 12 and 17 respectively*).

The Regulations provide that local education authorities in making an assessment of a child's special educational needs must seek advice from the child's parent, educational advice, medical advice, psychological advice, advice from the social services authority and any other advice which they consider appropriate for the purpose of arriving at a satisfactory assessment (*regulation 7*). If such advice has been obtained on making a previous assessment within the last 12 months and certain persons are satisfied that it is sufficient, it is not necessary to obtain new advice (*regulation 7(5)*). Provision is made as to the persons from whom educational, medical and psychological advice must be sought (*regulations 7 to 10*). It is provided that in making an assessment an authority shall take into consideration representations from the parent, evidence submitted by the parent, and the advice which has been obtained (*regulation 11*).

Provision is made for a child without a statement admitted to a special school for the purpose of an assessment to remain there once the assessment is complete (*regulation 13*).

The Regulations prescribe the draft of a notice to be served on a parent with a draft statement of special educational needs or amended statement, or amendment notice (*regulations 14 and 15 and Part A and B of Schedule 1 respectively*). The form and content of a statement is also prescribed (*regulation 16*).

Detailed provision is made as to how an annual review of a statement by a local education authority under section 328 of the Education Act 1996 is to be carried out (*regulations 18 to 22*). Local education authorities are required to send composite lists of pupils requiring annual reviews to head teachers and health and social services in advance of each term and to the Connexions Service annually (*regulation 18*). Special provision for reviews is made where the review is the first review after a child has commenced his tenth year of compulsory education. Regulation 20 requires authorities to ensure that statements are amended by 15 February in the year of a child's transfer between phases of his schooling.

The Regulations provide for the transfer of a statement from one local education authority to another (*regulation 23*). The duties of the transferor are transferred to the transferee, and within 6 weeks of the

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

transfer the transferee must serve a notice on the parent informing him of the transfer, whether they propose to make an assessment, and when they propose to review the statement (*regulation 23(2), (3) and (4)*). It is provided that where it would not be practicable to require the transferee to arrange for the child's attendance at a school specified in the statement they need not do so, but can arrange for attendance at another school until it is possible to amend the statement (*regulation 23(6)*).

There are restrictions on the disclosure of statements and steps are to be taken to avoid unauthorised persons having access to them (*regulation 24*).

Regulation 25 sets out time limits which authorities must comply with orders made by the Special Educational Needs Tribunal, and regulation 26 sets out time limits which authorities must take specified action following their concession of certain appeals to the Tribunal.

Provision is made from the transition from the regime imposed by the 1994 Regulations to the regime imposed by these Regulations (*regulation 28*). Broadly, any action taken under the 1994 Regulations can be completed under those regulations. If an assessment has been commenced before 1st September 2001 the local education authority may continue to make the assessment under the 1994 Regulations. However if the assessment is not complete before 1st January 2002 these Regulations will apply to the assessment as if it had been commenced under them on that date (*regulation 28(3)*).