

**EXPLANATORY MEMORANDUM TO
THE HARBOUR SCHOOL ORDER 2007**

2007 No. 3205

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This Order is made under section 2 of the Education Act 2002.
 - 2.1.1 In relation to Portsmouth City Council (the local authority), article 3(a) provides that section 316A(2)(c) of the Education Act 1996 is relaxed.
 - 2.1.2 Article 3(b) (also in relation to Portsmouth City Council) relaxes the requirement in regulation 12A(1)(c) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001. (See explanation at paragraph 7.5 below).
 - 2.1.3 Article 5 modifies those provisions so that the head teacher of The Harbour School is subject to the same requirements as the Portsmouth City Council.
 - 2.1.4 Article 6 modifies those provisions so that other local authorities who place pupils at The Harbour School are subject to the same requirements as the Portsmouth City Council.
 - 2.1.5 Article 7 provides that regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 is modified so as to allow pupils at The Harbour School to remain on the register of their original school if appropriate.
 - 2.1.6 Article 8 provides that pupils admitted to The Harbour School pursuant to the relaxation provided for in the Order shall be deleted from the admissions register of The Harbour School after 12 months.
 - 2.1.7 Article 9, in respect of the Portsmouth City Council and other authorities who place pupils at The Harbour School, modifies the requirement in regulation 12A(3) of the 2001 Regulations.
 - 2.2 Article 10 specifies that the Order ceases to have effect on 16th December 2010.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Order is made under section 2 of the Education Act 2002 as amended by Schedule 16 to the Education and Inspections Act 2006. The purpose of Chapter 1 of

the 2002 Act (which includes section 2) is to facilitate the implementation of innovative projects that may (in the opinion of the Secretary of State) contribute to the raising of educational standards. Specifically, section 2 gives the Secretary of State the power, upon the application of one or more qualifying bodies, to suspend (and make consequential modifications to) particular provisions of education legislation, or to relax the requirements of such legislation, in order to further such innovative projects. Orders made under section 2 have effect for the period specified in the order, which cannot exceed 3 years. Section 3(2) allows the Secretary of State, on one occasion only, to extend the period for which an order has effect by a period of not more than three years.

4.2 Article 3(a) of the Order (in respect of the applicant local authority) relates to the requirement for a child with SEN to be educated in a mainstream school unless a statutory exception applies. A child does not have to be educated in a mainstream school if, inter alia, he is admitted to a special school following a change in his circumstances. The relaxation in this article has the effect that a child can be admitted to The Harbour School without there first being a change in his circumstances, in order to provide timely, flexible and targeted short-term programmes which address the needs of pupils with challenging behaviour or underlying learning needs. This is expected to reduce the number of permanent exclusions from mainstream schools, and further improve the attainment of pupils whilst at The Harbour School and on return to mainstream school.

4.3 Article 3(b) of the Order (in respect of the applicant local authority) relaxes the requirement that, for a child to be admitted to a maintained special school, they must either have a statement of special educational needs; be admitted solely for assessment; or have a change in his circumstances. The effect of this relaxation is to provide a child, who does not fit into one of these categories, with relatively short term intensive learning and behaviour management programmes to address their underlying learning needs and to prepare them for successful return to mainstream school. In practice, this could be for a period of up to twelve months. The expectation is that most of these pupils will re-integrate to mainstream provision, but this enables a period of assessment that will better help to identify, in the small number of cases where it is appropriate, pupils unable to cope with mainstream provision.

4.4 Article 5 applies to the head teacher of The Harbour School, and Article 6 applies where local authorities other than the Portsmouth City Council (which applied to the Secretary of State to make the order), place pupils at The Harbour School. They respectively benefit from modifications so that the requirement for there to be a change in the child's circumstances is treated as if it were omitted.

4.5 Article 7 of the Order modifies regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751). This modification makes further provision to allow pupils who have been dual registered at The Harbour School to remain on the register of their original school, in order for them to be allowed to return to mainstream provision once their short-term intensive learning or behaviour management programme at The Harbour School is complete.

4.6 Article 8 of the Order modifies regulation 8 of the Pupil Registration Regulations (as cited in paragraph 4.5) so that a pupil admitted pursuant to this Order is automatically deleted from the admission register of The Harbour School after a period of 12

months. This is to prevent a pupil remaining at The Harbour School for a prolonged period without any active consideration being given as to whether a statement of special educational needs may be required. This modification does not prevent the re-admission of the pupil under any of the grounds set out in regulation 12A as it normally operates.

4.7 Article 9 of the Order modifies the requirement whereby the admission of a child to a special school (in accordance with the relaxation of the requirements in regulation 12A as set out above in paragraph 4.3) needs to be reviewed termly so that for the applicant school it need only be reviewed annually.

5. Territorial Extent and Application

5.1 This instrument applies to The Harbour School, 151 Locksway Road, Milton, Portsmouth, Hampshire, PQ4 8LD, the Portsmouth City Council, Children's Services Authority, Civic Offices, Guildhall Square, Portsmouth, P01 2PX and any other local education authority encompassed by Article 5.

6. European Convention on Human Rights

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

7. Policy background

7.1 The power to innovate ("the Power") provides schools, local authorities, further education colleges and foundations with the opportunity to apply to the Secretary of State to lift regulatory requirements in education legislation for a time-limited period (by means of a Power to Innovate Order), so they can trial a specific innovative project that has the potential to raise educational standards. The Power is the result of concerns that innovative ideas can be unintentionally thwarted by detailed regulations and legislation. It is intended to facilitate the implementation of these ideas and to ensure that no opportunity is lost to trial innovative proposals that could raise standards. It is intended that lessons learned will be used for further deregulation for the system as a whole.

7.2 The Harbour School is a new community Special School which will provide 190 school places for pupils with Behavioural, Emotional and Social Development (BESD) needs. When the Power to Innovate Order is made and takes effect, the school will operate solely as a Special School and include places for children from pupil referral type placements. The new arrangements will allow the local authority to provide a more flexible and coherent service for children, young people and their families and better match children's needs to provision. There will be reduced points of contact for external agencies, thereby facilitating improved access to, and sharing of, information about young people involved with the service. Decisions regarding placement/provision will be swifter and more efficient as there will only be one management structure determining access. This is expected to reduce the length of time some young people currently find that they are out of school waiting placement.

- 7.3 Bringing together resources and expertise from the special school and Pupil Referral Units in the area will provide greater opportunity to deploy skilled staff effectively and efficiently according to the needs of young people and other circumstances at any given time. The intensive support given to pupils attending the school is expected to improve the timescales within which excluded or such other children return to mainstream school. The local authority expects that the arrangement would improve the opportunities, standards of achievement and self-esteem of all the pupils in the school. The proposal creates opportunities for economies of scale, which would positively impact on the quality of resources and staff available to these pupils. Pupils will receive more effective, targeted and specialist support.
- 7.4 Many of the children newly placed at the school shall have a statement of SEN naming The Harbour School in Part 4. Regulation 12A(1)(b) and (c) of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 will continue to enable the admission of children for the purposes of assessment or following a change of circumstances, as set out in those regulations. However, regulation 12A(1)(c) is being relaxed so that for certain pupils, who are excluded from mainstream schools and / or who remain on the roll of a mainstream school, it will not be necessary for there to be a statement of special educational needs specifying placement at The Harbour School for up to the first 12 months of a child's placement at the School - nonetheless it follows from the graduated approach set out in the SEN Code of Practice that there will be children at the school who either already have been, or who are assessed as requiring statements of special educational need during that time. , Unless they are admitted for assessment purposes or following a change in their circumstances as set out in regulation 12A, only those children whose statements of special educational needs specify The Harbour School as their school would remain at the school for longer than 12 months. Additionally, pupils currently on the roll of The Harbour School who will already have statements of SEN must continue to have statements and must continue to have their statements reviewed on at least an annual basis.
- 7.5 Before making an application under the power to innovate provisions of the Education Act 2002, applicants must consult such persons as appear to them to be appropriate. The local authority circulated widely a formal consultation document and held discussions with all BESD providers in the city alongside mainstream schools, voluntary and statutory agencies, parents, school staff and Trade Unions. Schools and colleges were supportive of the proposals, recognising the benefits of a more coherent support service. The response of parents / carers overall was fairly limited. Generally they were content with the current position and wanted assurance that the new arrangement was 'not going to be worse' than current provision. A number recognised that the new arrangements would help identify 'problems' earlier and allow for swifter intervention. Staff and Unions agreed with the proposals; although initially worried about job losses (which was not the case) they were kept fully informed throughout and are no longer voicing concerns. Parents and teachers were reassured that the most emotionally vulnerable would be provided for separately until ready to re-integrate. Officials at the Department for Children, Schools and Families consulted the Special Educational Needs Consortium and they also support the proposal on the understanding that the school provision is being delivered across several sites.

8. Impact

8.1 A full Impact Assessment has not been carried out in this case. The geographic coverage of the order is local, and it is not intended to have an effect across the whole sector. An initial assessment has indicated that the impact of the changes in terms of costs and benefits will be negligible for the sector as a whole. Any future changes in policy to encompass the entire sector will be accompanied by a full Impact Assessment.

9. Contact

Gary Fincham at the Department for Children, Schools and Families, Tel: 020 7925 5354 or e-mail: gary.fincham@dcsf.gsi.gov.uk can answer any queries regarding the instrument.