

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (SPECIAL EDUCATIONAL NEEDS CO-ORDINATORS) (ENGLAND)
REGULATIONS 2008**

2008 No. 2945

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families (DCSF) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 The Regulations provide that, from 1 September 2009, all Special Educational Needs Co-ordinators (SENCOs) in maintained schools in England must be qualified teachers, head teachers or acting head teachers. A two-year transitional period until September 2011 will allow time to gain qualified teacher status. The Regulations also require school governing bodies to determine the role of the SENCO in relation to the leadership and management of the school and to determine the key responsibilities of the SENCO monitor the effectiveness of the SENCO in carrying them out.

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

3.1 None

4. Legislative Context

4.1 There had previously been a presumption (expressed in the SEN Code of Practice and elsewhere), but no specific legal requirement, that SENCOs should be qualified teachers. The third report of the then Education and Skills Select Committee on SEN (July 2006, HC 478-1, paragraphs 322-323) recorded a number of concerns in relation to the role and status of SENCOs:

- SENCOs should in all cases be qualified teachers;
- They should be in a senior management position in the school, as recommended by the SEN Code of Practice;
- SENCOs should be appropriately trained.

4.2 In their response to the Select Committee (October 2006, Cm 6940, paragraphs 20-23), the then DfES Ministers declared their intention to make regulations relating to the role, responsibilities, experience and training required of SENCOs and, further, gave specific commitments to both Houses during the passage of the Education and Inspections Bill (HoL, 19 October 2006, column 960 and HoC, 2 November 2006, column 542) to introduce a requirement that all SENCOs should be qualified teachers. Section 173 of the Education and Inspections Act 2006 amended the SEN provisions of the Education Act 1996 to require governing bodies to designate a member of staff as the person responsible for co-ordinating SEN provision for pupils. It also provided a power to make regulations requiring governing bodies of community, foundation or voluntary schools or maintained nursery schools to ensure that SENCOs have prescribed qualifications or prescribed experience, or both, and conferring on them other functions relating to SENCOs.

4.3 The document that accompanied the draft Regulations when they went out to consultation explained that it had been DCSF's original intention to require that SENCOs be members of the senior leadership teams (SLT) of schools. However, social partners expressed concerns about the practicalities, and in the light of those Ministers agreed that guidance would recommend that,

where the SENCO was not a member of the SLT, a member should be designated as champion of SEN and disability issues within the school.

4.4 The consultation document also explained that, though the Training and Development Agency (TDA) had begun development work on a specification for nationally accredited training courses, legal advice was that it was not possible to introduce a mandatory training requirement for SENCOs until the requirements of it are known with certainty. TDA consultation on a draft specification for courses closed on 15 October 2008. DCSF plans to consult on further regulations to provide for mandatory training for all new SENCOs.

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 The Government is committed to improving outcomes for children with SEN and disabilities. SENCOs have a central role to play in schools to ensure effective provision for children with SEN and disabilities and that individual children's needs are met. The former Education and Skills Select Committee expressed serious concerns about the role, status and training of SENCOs and said that it should be strengthened. Ensuring that SENCOs are qualified teachers, together with the future requirement that all new SENCOs undertake nationally accredited training, responds to those concerns.

7.2 Some of the functions of the role will continue to be undertaken by other staff, including support staff, and they will continue to make a significant and important contribution to improving the achievement and well-being of pupils with SEN and disabilities. The Government believes, however, that the key SENCO role is influencing teaching practice and ensuring that teaching approaches are suitably differentiated to meet individual pupil needs. This needs the input of a qualified teacher.

7.3 The DCSF does not collect information about the level of qualification of SENCOs and the very little information that exists outside the DCSF is either anecdotal or based on very small studies. The DCSF and the TDA have estimated that the number of SENCOs who are not qualified teachers is very low – about 1-2% of the teacher population, or about 315 individuals. A number of the 434 responses to the consultation on the draft Regulations were from SENCOs who were teaching assistants or from head teachers who employed a non-teacher SENCO, but this provides little basis for any re-calculation. Despite the apparent low number of non-teacher SENCOs, the Government believes that the policy objective of raising the profile and status of the SENCO role in maintained schools requires specific legislation. The clear presumption in the SEN Code of Practice, to which local authorities and schools must have regard, that the SENCO should be a qualified teacher has not prevented schools from appointing non-teaching staff to this role.

7.4 These Regulations will be of interest to schools, local authorities and organisations representing SENCOs and SEN more generally, but are not likely to generate much media interest.

8. Consultation outcome

8.1 Consultation on the draft Regulations ran from 25 March to 17 June 2008. Of the 434 responses, the majority were from SENCOs (170, 39%), followed by head teachers (83, 19%), local authority managers and staff (75, 17%), other teachers (29, 7%), governors (23, 6%) and non-teaching staff (18, 4%). Responses were also received from voluntary SEN organisations and teacher organisations. A summary of the responses to the consultation and the Government's response can be found on the DCSF website at [insert link]

8.2 Overall there was clear support for the thrust of the proposals. The proposed lead-in period before the regulations come into force and the two year period of latitude to allow existing SENCOs to qualify as teachers were welcomed by 66% and 70% of respondents to these questions respectively.

8.3 82% of respondents to the question whether the requirements as to who may be a SENCO were clear answered 'Yes'. 14% of those responding to this question said it was essential that that a SENCO should be a qualified teacher. They also said that it was important that the SENCO had a good understanding of the curriculum and understood the classroom situation. They believed that it was important that the SENCO had some credibility with teachers when they were offering them advice and suggesting teaching and learning strategies to be used in the classroom. Opposed to that, 27% of respondents, including a number of non-teacher SENCOs and head teachers employing a teaching assistant as SENCO, thought their current arrangements worked well and saw no reason for change.

8.4 Some responses from governor interests thought the requirement for governing bodies to monitor specific SENCO activities was burdensome and went against the grain of a move to a more strategic governor role in relation to school management. The Department's response is that guidance accompanying the Regulations will make it clear that, in practical terms, the monitoring function can be met by relatively straightforward steps - for example, reports to the governing body from the head teacher, regular discussion between the SEN governor and the SENCO or the governors inviting the SENCO to attend meetings at regular intervals to report.

9. Guidance

9.1 DCSF intends to issue non-statutory guidance explaining the new obligation to local authorities and schools in the form of a covering letter accompanying the Regulations. Dissemination will be via the weekly email to local authorities, bi weekly email to schools and being posted on the Teachernet website.

10. Impact

10.1 A final Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 In September 2011 the transition phase will be complete and all SENCOs in maintained schools will be required to be qualified teachers, head teachers or acting head teachers. At that point the forthcoming training requirement for SENCOs new to the post will be in force. Ofsted inspections will continue to monitor arrangements made by schools in relation to SEN and disability.

13. Contact

Chris Hirst at the Department for Children, Schools and Families, Tel: 020 7783 8262 or e-mail: chris.hirst@dcfs.gsi.gov.uk , can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DEPARTMENT FOR CHILDREN, SCHOOLS AND FAMILIES	Title: Impact Assessment of : The Education (Special Educational Needs Co-ordinators) (England) Regulations 2008	
Stage: Final	Version: FinalV.4	Date: 02/10/2008
Related Publications: Education Act 1996, Education and Inspections Act 2006		

Available to view or download at:

<http://www.dcsf.gov.uk/consultations/>

Contact for enquiries: Chris Hirst

Telephone: 020 7783 8262

What is the problem under consideration? Why is government intervention necessary?

Special Educational Needs Co-ordinators (SENCOs) have a key role to play within schools to ensure effective provision for children and disabilities. The Education and Skills Select Committee have expressed concerns that there are inconsistencies in the role, status and training of SENCOs in schools. The Government wants to strengthen the role of SENCOs within the leadership and managements arrangements in schools by ensuring that the SENCO role is carried out by a qualified teacher.

What are the policy objectives and the intended effects?

To improve outcomes for individual children with SEN and disabilities by ensuring effective co-ordination arrangements at school level. The regulations require the SENCO to be either a qualified teacher, the head teacher, or appointed acting head teacher, or a person carrying out the role for at least six months before the regulations come into force, who has shown reasonable prospect of becoming a qualified teacher within a period of two years from the coming into force date.

What policy options have been considered? Please justify any preferred option.

Two options have been considered:

1. To make no change to the current arrangements, i.e. that there is no specific requirement for the SENCO to be a qualified teacher;
2. To introduce such a requirement.

The second option meets the Government's objective of strengthening the role of SENCOs within the leadership and management arrangements for schools.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? From September 2011, two years after coming into force. This allows for the elapse of the two year transitional period.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Sarah McCarthy-Fry

Sarah McCarthy-FryDate: 13.11.08

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Cost of school staffing adjustments in the two year transitional period.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">One-off (Transition)</td> <td style="text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£ 4.8m</td> <td style="text-align: center;">2</td> </tr> </table>		One-off (Transition)	Yrs	£ 4.8m	2
	One-off (Transition)		Yrs			
	£ 4.8m		2			
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Average Annual Cost (excluding one-off)						
£						
Total Cost (PV)	£ Not estimated					
Other key non-monetised costs by 'main affected groups' N/A						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">One-off</td> <td style="text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£ Not known</td> <td></td> </tr> </table>		One-off	Yrs	£ Not known	
	One-off		Yrs			
	£ Not known					
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Average Annual Benefit (excluding one-off)						
£ Not known						
Total Benefit (PV)	£ N/A					
Other key non-monetised benefits by 'main affected groups' Strengthening and enhancing the role of the SENCO, leading to more effective provision for the 1.5 million children in England who have statements or SEN without statements. The progress of children with SEN, by narrowing the gap in educational achievement with their peers, is critical to achievement of the 2020 goals.						

Key Assumptions/Sensitivities/Risks

An estimated very small number of schools where the SENCO is not a qualified teacher may need to undertake staffing adjustments.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ Not estimated
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What is the geographic coverage of the policy/option?	England								
On what date will the policy be implemented?	1 September 2009								
Which organisation(s) will enforce the policy?	Governing bodies								
What is the total annual cost of enforcement for these organisations?	£								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	No								
What is the value of the proposed offsetting measure per year?	£ 0								
What is the value of changes in greenhouse gas emissions?	£ 0								
Will the proposal have a significant impact on competition?	No								
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> <tr> <td style="text-align: center;">Are any of these organisations exempt?</td> <td style="text-align: center;">Yes/No</td> <td style="text-align: center;">Yes/No</td> <td style="text-align: center;">N/A</td> </tr> </table>	Micro	Small	Medium	Large	Are any of these organisations exempt?	Yes/No	Yes/No	N/A
Micro	Small	Medium	Large						
Are any of these organisations exempt?	Yes/No	Yes/No	N/A						

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The intention of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 is to require that special educational needs co-ordinators (SENCOs) in community, foundation, voluntary and maintained nursery schools in England be qualified teachers or head teachers (it is possible to be a head teacher without full qualified teacher status (QTS) if the head teacher was appointed before the qualification was introduced). Head teachers do in some cases carry out the role of the SENCO, especially in smaller primary schools.

Consultation on the draft regulations ran from 25 March to 17 June 2008. A total of 434 responses were received, the majority from SENCOs and head teachers. Other respondents included local authority managers and staff, other teachers, governors, non-teaching staff, governors, teacher unions and SEN voluntary sector bodies. A breakdown and analysis of responses, together with the government's response to the consultation can be found in the archive section of the DCSF consultation website.

Overall there was clear support for the thrust and implementation timing of the proposals. The regulations will come into force on 1 September 2009, to allow schools that may be affected to make any necessary staffing adjustments. After that, there will be a further period of grace two years to allow for any non-qualified teacher SENCOs who the governing body considers to be a promising candidate to gain qualification.

The then Education and Skills Select Committee recorded some concerns about the SENCO role in schools in its first report (July 2006), recommending that SENCOs in all cases should be qualified teachers. The Government concurs with this view. SENCOs have a key role to play within schools to ensure effective provision for children with SEN and disabilities, and the Government wishes to strengthen the role of SENCOs within the leadership and management arrangements in schools. Aspects of the role - which can be appropriately supported by non-teaching staff either as individuals or as part of a team - which the DCSF considers should fall to qualified teachers include:

- Ensuring that needs are identified and met at School Action and School Action Plus stages;
- Developing and monitoring, with the head teacher, governing body, senior leadership team, staff and pupils, the school's SEN policy so that the needs of children with SEN and disabilities can be reflected in whole-school policies and planning;
- Advising the head teacher, governing body and senior leadership team on securing and deploying resources to support provision for children with SEN and disabilities;
- Ensuring teaching staff gets the advice they need on modifying teaching approaches and strategies, planning and delivering interventions for children with SEN and disabilities, including leading by direct example and by direct involvement where necessary, coaching mentoring and supporting the development needs of others, including support staff.

The role will be further strengthened by the introduction, in September 2009, of mandatory nationally accredited training for all SENCOs new to the role. The Training and Development Agency for Schools' consultation on a draft course specification closes on 15 October 2008.

As the contribution of non-teaching staff in schools has increased in recent years, it may be that in some instances the SENCO role is currently carried out by a Teaching Assistant or member of the school's support staff. Very little information exists information on the number of non-QTS or head teacher SENCOs. The DCSF view is that the number of non-teacher SENCOs is likely to be much lower – 1% to 2% - some 315 staff in total. A number of responses to the consultation were from non-teacher SENCOs or head teachers in a school where the SENCO was not a qualified teacher, but such partial, low incidence evidence provides no grounds or secure basis for re-calculation.

It is therefore difficult to cost the adjustments to school staffing or cover arrangements to accommodate the new requirement with any degree of precision. If a school has a Teaching Assistant in the SENCO role, it will be necessary to redeploy them for part of their time and assign an existing teacher to undertake the leadership and management elements, "backfilling" if necessary any teaching time relinquished to carry out the SENCO role. Assuming that backfilling of teacher time amounts to 25% of a full time post (again, precise figures are hard to determine as the demands of the role will vary according to the size and type of the school), it will cost around £2.4m a year. The calculation is based on a cover rate of £160 per day (current recommended rate for Standards Fund grant purposes), equating to £7,125 at 0.25 FTE x 315, = £2.245 million.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes