

EXPLANATORY MEMORANDUM TO
THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY REGULATIONS

2014 No. 1530

1. This explanatory memorandum has been prepared by the Department for Education 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 These Regulations set out the detailed requirements on local authorities for assessing children and young people's education, health and care needs and where necessary drawing up Education, Health and Care plans. They set out requirements on schools for identifying and supporting children and young people with special educational needs and also the arrangements for resolving disagreements, including mediation and appeals to an independent tribunal where parents and young people do not agree with decisions made by their local authority. They provide a power for the Secretary of State to pilot providing children with a direct right of appeal. They set out the way in which local authorities and health bodies should review support for disabled children and young people and those with special educational needs and also set out how local authorities and schools must publish information concerning the support which is available. for those who require them.

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

3.1 None.

4. **Legislative Context**

4.1 The Regulations are being made under the powers conferred by sections 30(8) and (9), 34(6), 36(11), 37(4), 41(5), 44(7), 45(5), 47(1) and (2), 51(4), 56(1), 67(3), 69(3)(a) and 80(1) of the Children and Families Act 2014. They are subject to the negative resolution procedure. The Regulations relating to the local offer and EHC plans (sections 30 and 37) make reference to the Special Educational Needs (Personal Budget) Regulations 2014 which set out requirements to be followed in respect of personal budgets for parents of children with Education, Health and Care Plans and young people with such plans. The Regulations will come into force on 1 September 2014.

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 Part 3 of the Children and Families Act 2014 sets out a package of reforms for the support of children and young people with special educational needs. The reforms, first proposed in the 2011 Green Paper: *Support and Aspiration a new approach to special educational needs and Disability*, will implement a new approach which seeks to join up provision for special educational needs and disabilities across education, health and social care from birth to 25 and improve the outcomes achieved by children and young people. Help will be offered at the earliest possible point, with children and young people with SEN and disabilities and their parents or carers fully involved in decisions about their support. This should lead to better outcomes and more efficient ways of working.

7.2 The policy intention behind the provisions of Part 3 is to improve the educational and other outcomes achieved by children and young people who have special educational needs or a disability through:

- New arrangements for commissioning services for children and young people who have special educational needs or are disabled jointly across education, health and social care;
- A transparent ‘local offer’ of services from birth to 25 for children and young people who have special educational needs or are disabled, to be developed in partnership with children, parents and young people – so that families can find up to date information about support without having to search for it and can influence local decisions so that services may become more responsive to local needs;
- A more streamlined assessment process, co-ordinated across education, health and care, with a single Education, Health and Care Plan for those with more complex needs up to age 25 where necessary (replacing the current, separate systems of Statements and Learning Difficulties Assessments); and
- Greater choice and control for parents and young people over the support they receive, including the offer of a personal budget for those with Education, Health and Care Plans. There are, as mentioned, separate regulations which set out the substance of these personal budgets.

7.3 There has been considerable public interest in the reforms with some 2500 responses to the 2011 Green Paper; over 700 responses to a public consultation on a draft Special Educational Needs Code of Practice and draft Regulations between October and December 2013; and 218 responses to a further consultation on a revised draft. This formal consultation

activity formed part of a broader, continuous process of consultation and discussion with a wide range of people and organisations with an interest in special educational needs and disability, including children and young people, parents and carers, early years professionals, schools and colleges, local authorities, health bodies and voluntary and community sector organisations, which took place from March 2012 onwards.

8. Consultation outcome

8.1 The Government's response to consultation on the draft regulations (including the Special Educational Needs (Personal Budgets) Regulations 2014) accompanies the laying of the Regulations and the Special Educational Needs and Disability Code of Practice before Parliament. The web link to where all three can be found is located in the Explanatory memorandum on the Code. In summary, in answer to almost all questions in the consultation on draft regulations over 50 % of respondents agreed that they were clear, appropriate and fit for purpose. Where respondents were not sure, changes have been made to the Regulations to further clarify the requirements, for example in relation to when children and young people without EHC plans may remain in special schools and special post-16 institutions following EHC assessments and on timescales for EHC assessments.

9. Guidance

9.1 The Secretary of State will issue a Code of Practice to provide guidance to those with functions under Part 3, as per section 77 of the Act. The draft Code must be laid before Parliament and approved before a resolution of each House before it can be issued.

10. Impact

10.1 Any impact on business, charities or voluntary bodies will be in terms of their role as providers of services to children and young people who have special educational needs or are disabled.

10.2 An Impact Assessment, produced in March 2013 to support the introduction of the Act into Parliament, is attached to this memorandum. The Department undertook a further assessment of the additional burdens on local authorities arising from part 3 of the Act and is providing funding of £45.2 million in 2014-15, with indicative funding of £31.7m in 2015-16 .

10.3 An Impact Assessment has not been prepared specifically for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Education is monitoring implementation of the special

educational needs and disability reforms through regular surveys of local authorities' readiness and preparations. It is considering how best to further monitor implementation from September 2014 including arrangements for the local offer and the education, health and care needs assessment and planning process. The Department has appointed Pathfinder Champions from the local pathfinders that have tested the reforms. They will work alongside a range of voluntary and community sector organisations commissioned by the Department as delivery partners, to provide targeted advice and support to local authorities until March 2015.

12.2 Under section 79 of the Act, the Secretary of State for Education and the Lord Chancellor will be carrying out a review of how effectively disagreements about the exercise of functions under the Act are being resolved. A report of that review will be published by September 2017 at the latest.

13. Contact

Phil Snell at the Department for Education (phil.snell@education.gsi.gov.uk) can answer any queries regarding the instrument.