

EXPLANATORY MEMORANDUM TO
THE SPECIAL EDUCATIONAL NEEDS (MISCELLANEOUS AMENDMENTS)
REGULATIONS

2014 No. 2096

- 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 This instrument sets out the types of provision where a local authority is not required to prepare a personal budget for a child or young person with an EHC plan. It also amends errors within the Special Educational Needs (Personal Budgets) Regulations 2014 and clarifies requirements for the review of Education, Health and Care Plans (in the Special Educational Needs and Disability Regulations 2014).

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

3.1 This instrument addresses the Committee's 6th Report (16 July 2014) in relation to the Special Educational Needs and Disability Regulations 2014 and the draft Special Educational Needs and Disability Code of Practice.

4. Legislative Context

4.1 This instrument amends the Special Educational Needs (Personal Budgets) Regulations 2014 and the Special Educational Needs and Disability Regulations 2014. In doing so, it seeks to meet commitments given in the Department's memoranda to the Joint Committee included at Appendix A and Appendix C of the above report.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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 policy background is set out in the memoranda to the committee referred to in (4) above.

8. Consultation outcome

8.1 The Department held a formal public consultation that ran from 4 October 2013 to 9 December 2013 covering draft regulations, the SEN Code of Practice and transitional arrangements to be made under Part 3 of the Children and Families Act 2014. That consultation was part of a process of an extensive dialogue with key stakeholders that started many months before the formal consultation and one that has continued with the drafting of the SEN Code of Practice which was laid in draft. The Department's response to the consultation is available online at

<https://www.gov.uk/government/consultations/special-educational-needs-sen-code-of-practice-and-regulations>

9. Guidance

9.1 Guidance on personal budgets and review of Education, Health and Care plans is contained in the SEN and Disability Code of Practice approved by Parliament on 30th July 2014 in the form which it was considered by the Committee.

10. Impact

10.1 Any impact on business, charities or voluntary bodies will be in their role as providers of services to children and young people who have special educational needs and disabilities. Personal budgets allow budget holders to make purchases from a variety of service providers including from the local authority, independent or third sector providers. It does not affect providers' ability to provide services but may mean that service users choose alternative options.

10.2 An impact assessment, produced in March 2013 to support the introduction of the 2014 act into Parliament, is attached to this memorandum. The Department has undertaken a further assessment under new burdens arrangements and will provide £45.2m for local authorities in 2014-15 and a further £31.7m in 2015-16 to implement the SEN reforms.

10.3 An Impact Assessment has not been prepared 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 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 processes (including the use of personal budgets). The Department has appointed pathfinder champions from the authorities that have tested the reforms. They are working 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 carry out a review of how effectively disagreements about the exercise of functions under the Act are being resolved.

13. Contact

Andrew Baxter at the Department for Education Tel: 020 7340 7454 or email: andrew.baxter@education.gsi.gov.uk can answer any queries regarding the instrument.