

EXPLANATORY MEMORANDUM TO
THE SPECIAL EDUCATIONAL NEEDS (CONSEQUENTIAL AMENDMENTS TO
SUBORDINATE LEGISLATION) ORDER 2014

2014 No. 2103

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This order makes amendments to secondary legislation in consequence of Part 3 of the Children and Families Act 2014 (Children and Young People in England with Special Educational Needs or Disabilities) which establishes a new special educational needs (SEN) and disability system from 1 September 2014 and a new Special Educational Needs and Disability Code of Practice: 0 – 25 years.

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

3.1 None

4. Legislative Context

4.1 The current system for children with special educational needs is set out in part 4 of the Education Act 1996. This applies to England and Wales. From 1 September 2014, Part 4 will be repealed in respect of England and Part 3 of the Children and Families Act will progressively replace the current system of SEN statements in schools and Learning Difficulty Assessments in further education with Education, Health and Care plans. Part 4 of the Education Act 1996 will continue to apply to Wales. In addition the new Special Educational Needs and Disability Code of Practice: 0 to 25 years, approved by Parliament on 29 July 2014, will replace the two categories of school SEN support; currently School Action and School Action Plus, with an overall SEN support category in England. This order amends all secondary legislation across several government departments such as the Department for Work and Pensions, the Home Office and the Department for Business Innovation and Skills that refers to Part 4 of the Education Act 1996 to give effect to these changes.

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 Some 230,000 children have SEN statements in schools and a further 1.3 million children have SEN without statements. An estimated 190,000 young people have

learning difficulties or disabilities in further education. In March 2011, the Government published a Green Paper on special educational needs setting out proposals for reform of the SEN system. The Government decided on a programme of reform because of failings in the current system, such as, late identification of needs, agencies not working together to meet children's needs, the adversarial nature of the system and the cliff edge between the SEN support system in schools and in further education. The Department for Education (DfE) received nearly 2,500 responses to the consultation on the Green Paper. The SEN part of the Children and Families Bill underwent pre-legislative scrutiny in late 2012 with the Bill being published in February 2013. Consultation took place on a draft of the new SEN and Disability Code of Practice between October and December 2013 and DfE received some 700 responses. A shorter consultation on a revised draft Code took place between April and May 2014 and around 200 responses were received. The response to the consultation can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319071/SEN_D_code_of_practice_0_to_25_years_response.pdf

7.2 Part 3 of the Children and Families Act 2014 addresses many of the problems set out in the SEN Green Paper. It lays duties on local authorities to take account of the views, wishes and aspirations of disabled children, young people and those with SEN and their parents when carrying out their SEN duties, it requires local authorities and health commissioning bodies to jointly commission services for disabled children and young people and those with SEN, it requires local authorities, working with their partners, to publish a "local offer" of services available in their areas across education, health and social care for these children and young people and it brings together the framework for support for children and young people with SEN in schools and further education.

7.3 For individual children and young people, Part 3 provides for a new, more participative assessment process resulting, where necessary, in cross-agency Education, Health and Care plans. The parents of children with plans and young people with plans will have the option of a personal budget through which they will have control over how some of the provision set out in the plan will be delivered. The Act also provides for the option of mediation to parents and young people before they register appeals about Education, Health and Care assessments and plans with the First-tier Tribunal (SEN and Disability).

8. Consultation outcome

8.1 Details of the consultation process for the SEN reforms are given in paragraph 7.1. No formal consultation has taken place on the consequential amendments included in this order. However, where applicable, the changes have been discussed with and agreed by relevant government departments.

9. Guidance

9.1 No guidance is being issued on the amendments included in this order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. The order simply updates references in regulations to reflect the Children and Families Act 2014 and the new Special Educational Needs and Disability Code of Practice: 0 to 25 years.

10.2 The impact on the public sector is nil. This order simply updates references in regulations to reflect the Children and Families Act 2014 and the new Special Educational Needs and Disability Code of Practice: 0 to 25 years.

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

11. Regulating small business

The legislation does not place any additional burdens on small businesses as it simply makes consequential amendments to align the legislation with Part 3 of the 2014 Act.

12. Monitoring & review

12.1 The Government will review the impact of the Children and Families Act 2014 as a whole as part of its commitment to conduct post-legislative scrutiny on new legislation. No specific monitoring or review processes are planned for the amendments made by this Order, as they are purely consequential in nature and reflect the change in terminology arising from the introduction Part 3 of the Act and the new Code of Practice .

13. Contact

Nigel Fulton at the Department for Education, tel: 0207 783 8266 or email: nigel.fulton@education.gsi.gov.uk can answer any queries regarding the instrument