

**EXPLANATORY MEMORANDUM TO  
THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY (AMENDMENT)  
REGULATIONS 2015**

**2015 No. 359**

**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**

2.1 This instrument amends the Special Educational Needs and Disability Regulations 2014 (“the 2014 Regulations”). It clarifies that the restriction on the disclosure of Education, Health and Care (EHC) plans applies to local authorities and sets out the appeal rights that must be included in a notice to a child’s parent and a young person following a review. These regulations also make amendments to the First-tier Tribunal’s powers and the time limits for compliance with orders. These amendments also seek to harmonise the duties on local authorities following appeals they have decided not to oppose with the duties and time limits that apply when an order is made by the First-tier Tribunal in favour of the appellant.

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

3.1 None

**4. Legislative Context**

4.1 This instrument amends the Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) and follows the Special Educational Needs (Miscellaneous Amendments) Regulations 2014 (SI 2014/2096).

**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 These amendment regulations address deficiencies in the 2014 Regulations.

7.2 The policy background to the special educational needs and disability reforms as a whole is set out in the 2014 regulations' explanatory memorandum to the committee referred to in (4) above. Improving parents' and young people's experience of the special educational needs and disability redress process was an important element of the reforms. The deficiencies that these amendments address, as set out in (2.1) above, while they were not raised during the consultation on the 2014 regulations, are required to ensure that parents and young people are clear about their appeal rights and that the First-tier Tribunal's powers and local authorities' duties are rational and consistent in all circumstances related to appeals.

## **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 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>.

8.2 The Department has consulted the Deputy President of the Health, Education and Social Care Chamber of the First-tier Tribunal about these amendment regulations. As the amendments are minor there is no requirement to consult on these regulations.

## **9. Guidance**

9.1 Statutory guidance on special educational needs and disability and, more specifically, on special educational needs appeals to the First-tier Tribunal (Special Educational Needs and Disability) is contained within the Special Educational Needs and Disability Code of Practice: 0 – 25 years. The current Code came into effect on 1 September 2014 and a revised version will come into effect on 1 April 2015.

## **10. Impact**

10.1 There will be no impact on business. The impact on charities or voluntary bodies will only be in so far as they support parents and young people in making appeals to the First-tier Tribunal.

10.2 An impact assessment, produced in March 2013 to support the introduction of the Children and Families Act 2014 into Parliament was attached to the memorandum to the 2014 regulations and is available online at <http://media.education.gov.uk/assets/files/pdf/s/sen%20evidence%20pack.pdf> 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 the implementation of the special educational needs and disability reforms introduced by the Children and Families Act 2014 through local authority implementation surveys and through local authority visits by a team of SEN advisers.

12.2 Under section 79 of the Act, the Secretary of State and the Lord Chancellor are carrying out a review of how well disagreements about the exercise of special educational needs and disability functions under the Act are being resolved. The Secretary of State and the Lord Chancellor must report back to Parliament by 1 April 2017. The Department will also report back to Parliament on the post-legislative impact of the Children and Families Act 2014 within five years of Royal Assent.

## **13. Contact**

Nigel Fulton at the Department for Education Tel: 0207 783 8266 or email: [nigel.fulton@education.gsi.gov.uk](mailto:nigel.fulton@education.gsi.gov.uk) can answer any queries regarding the instrument.