

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

**2015 No. 62**

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 Large numbers of detained children and young people (under age 19) have special educational needs, approximately 18%<sup>1</sup> of those in custody have a statement compared to 3%<sup>2</sup> of children and young people overall in England, and over 60%<sup>3</sup> of children and young people in custody have speech, language and communication needs. To address these needs the Special Educational Needs and Disability (Detained Persons) Regulations 2015 “the 2015 Regulations” build on the structure and principles set out primarily in sections 70 to 75 of the Children and Families Act 2014. They require local authorities to have regard to facilitating these children and young people’s development, helping ‘them to achieve their best educational and other outcomes.’ They require local authorities to work together with other bodies to assess the education, health and care needs of children and young people with special educational needs, whether they are in or have been released from custody and to develop Education, Health and Care Plans (EHC Plans) where necessary, specifically relating to post-detention needs and provision. The 2015 Regulations set out the roles and responsibilities and required timeframes for local authorities and other responsible bodies. They also set out the mediation and appeals procedures for when a parent or young person disagrees with certain types of decision.

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 31(4), 36(11), 37(4), 44(7), 56(1), 71(11), 73(4), 74(3), 80(1) and 135(3) of the Children and Families Act 2014.

---

<sup>1</sup> [Jacobson, J., Bhardwa, B., Gyateng, T., Hunter, G., & Hough, M. \(2010\) Punishing Disadvantage: a profile of children in custody. London: Prison Reform Trust](#)

<sup>2</sup> [Special Educational Needs in England: January 2014 Statistical first release Department for Education and Office of National Statistics](#)

<sup>3</sup> Bryan K, F J (2007). Language and communication difficulties in juvenile offenders. IJDL, 42, 505–520 [NCBI abstract](#)

4.2 The Regulations largely mirror The Special Educational Needs and Disability Regulations 2014 [2014/1530]“the 2014 Regulations”. The 2014 Regulations help set out the arrangements for SEN relevant to children and young people in the community whilst the 2015 Regulations help set out the arrangements for SEN relevant to children and young people with special educational needs in custody. Given the average stay in custody is 85 days<sup>4</sup>, it is anticipated that most children and young people who start an assessment in detention under the 2015 Regulations will have this completed in the community under the 2014 Regulations.

4.3 The 2015 Regulations come into force on 1 April 2015

4.4 The 2015 Regulations are laid alongside a revised Special educational needs and disability code of practice (“the revised Code of Practice”) issued by the Secretary of State under section 77 of the Children and Families Act 2014. The Code of Practice has been revised to reflect the requirements of the 2015 Regulations and to help provide greater clarity to local authorities, the secure estate, health commissioning bodies, parents and others. The revised Code of Practice is also intended to come into force on 1 April 2015.

## **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 Children and Families Act 2014 extended the support given to children and young people with special educational needs to cover young offenders with special educational needs. The young offender section of the Act attracted considerable interest during its passage through Parliament. The 2015 Regulations provide much of the detail for the requirements specified in Sections 70-75 of Part 3 of the Children and Families Act 2014.

7.2 More children and young people in custody have special educational needs than their counterparts in the community and many have complex needs (see paragraph 2.1 above). However, these needs have frequently gone unmet due to the lack of awareness and lack of clearly defined responsibilities. The result is a disproportionate number of children and young people that have been detained, compared to those in the community, do not progress through education and training to employment and many reoffend. The result is costly for the country and blights the future of thousands of children and young

---

<sup>4</sup> [Youth Justice Statistics 2012/13 England and Wales Youth Justice Board /Ministry of Justice statistical bulletin 30 January 2014](#)

people. The 2015 Regulations alongside revised statutory guidance (set out in the revised Code of Practice – see paragraph 4.4 above) contribute to the government vision for Transforming Youth Custody to equip children and young people with the skills, qualifications and self-discipline they need to fulfil their potential and build a life free of crime. They do this by providing a new approach to identifying, assessing and arranging provision to meet these children and young people’s education, health and care needs.

7.3 The 2015 Regulations, which have been informed by those with an interest and expertise in supporting children and young people in custody, require local authorities to work with other responsible bodies (including Youth Offender Teams, NHS England, the person in charge of relevant youth accommodation) to assess the needs of detained children and young people who have special educational needs, within set timeframes. Where necessary, those needs must be met continuously in custody and on release. This is a new entitlement for detained children and young people who previously had to wait until they were released for any SEN needs, identified during their detention, to be addressed.

7.4 The 2015 Regulations set out the framework for assessing EHC needs and developing EHC Plans. They also set out the mediation and appeals procedures that must be available to the detained young person or if a child, their parent, if they are unhappy about certain types of decisions. The 2015 Regulations require the local authority to provide advice and guidance to support the detained child, their parent or the detained young person.

## **8. Consultation outcome**

8.1 The 2015 Regulations and the accompanying revised Code of Practice are informed by:

- a formal consultation in autumn 2014 (from 22 October to 19 November);
- two in-depth workshops with a broad range of professionals working with children and young people with SEN both in custody and in the community; and
- discussions with the Special Educational Consortium and with Governors and senior managers from the Young Person’s Estate and by working with an implementation group made up of SEN and disability and health representatives, local authorities and the secure estate.

The formal consultation was for a 4 week period as the Code of Practice, published in July 2014 and approved by Parliament, already broadly set out the proposed requirements for meeting the needs of young offenders. The draft of the July 2014 Code of Practice had itself been consulted upon over a 9.5 week period in 2013. The 2015 Regulations provide the detail to these requirements and therefore did not need a full 12 week consultation. The workshops and meetings that fed into the formal consultation provided all interested parties with an opportunity to contribute.

8.2 40 respondents took part in the written consultation. A majority found the draft Regulations and the draft Code were clear on the duties and requirements on local authorities, youth offending teams and other bodies responsible for meeting the needs of

detained children and young people. The respondents' main concern was to ensure the Regulations provided continuity for young offenders with special educational needs. As custodial sentences are on average only 85 days<sup>4</sup> it is important that any identified needs (education, health or care) are promptly and continuously met whether the person remains in or is released from custody. Additionally with the range of responsible bodies involved in assessment and provision for these young people, respondents sought clarity on roles and responsibilities. The government response sets out how the 2015 Regulations and the revised Code of Practice address these concerns. The government response is available from 29 January 2015 on gov.uk at: [The SEN and disability policy site](#).

## **9. Guidance**

9.1 The Secretary of State is issuing statutory guidance through the revised Code of Practice which will set out the statutory requirements on the relevant bodies. The Secretary of State has consulted on the revised Code of Practice alongside the 2015 Regulations. The revised Code has been laid before Parliament with the 2015 Regulations and these will respectively be commenced/in force from 1 April 2015.

9.2 Additionally the Department has invited bids from the voluntary sector which demonstrate they can raise awareness of reforms, develop and disseminate best practice and provide consultancy to support implementation. Grants are being funded for 2015-16.

## **10. Impact**

10.1 Any impact on business, charities or voluntary bodies will be in terms of their role as providers of services to detained children and young people with special educational needs. This may affect the terms of their contracts with education, health or care commissioning bodies reflecting the latter's new duties, but should not lead to any additional burdens on providers.

10.2 The Department for Education undertook an assessment of the additional burdens on local authorities arising from part 3 of the Children and Families Act 2014. As a result it is providing £45.2m in 2014-15 and £31.7m in 2015-16 additional funding to local authorities to cover the special educational needs and disability duties, which include additional duties to support detained children and young people. Although burdens have shifted from the 'host' local authority to the 'home' local authority this is not a new burden.

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 special educational needs and disability reforms, including the young offender reforms. Ofsted have been invited to formally inspect local areas on their effectiveness in fulfilling their new duties. The Ministry of Justice are advising the Department on the impact of the reforms on the young offenders secure estate.

## **13. Contact**

Andrew Baxter can be contacted at the Department for Education to answer queries regarding the instrument at [andrew.baxter@education.gsi.gov.uk](mailto:andrew.baxter@education.gsi.gov.uk) or telephone 020 7340 7454.