

EXPLANATORY MEMORANDUM TO
THE CHILDREN AND FAMILIES ACT (TRANSITIONAL AND SAVING
PROVISIONS)(AMENDMENT) ORDER 2015

2015 No. 505

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 The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014 “the Transitional Order” sets out the statutory framework by which children and young people with SEN in England transfer from the provisions under Part 4 of the Education Act 1996 and section 139A to C of the Learning Skills Act 2000, to the SEN provisions contained within Part 3 of the Children and Families Act 2014.

2.2 This instrument amends the Transitional Order to take account of the reforms set out in sections 70 – 75 of the Children and Families Act 2014 and the Special Educational Needs and Disability (Detained Persons) Regulations 2015 (2015 No. 62), to children and young people in youth custody or leaving youth custody who already have a statement of SEN.

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 This Order is made under section 137 (1) of the Children and Families Act 2014

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is not subject to any Parliamentary 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 extended the support given to children and young people with SEN to cover young offenders sentenced or remanded by the Courts to relevant youth accommodation. This is of particular importance as children and young people with SEN are disproportionately represented in the secure estate and many have complex needs that have gone unmet both in the community and whilst they are detained. The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (2015 No. 62) provide for the introduction of the reforms from 1st April 2015; this Order amends the existing transitional process to take into account children and young people in the secure estate who have a statement of SEN.

8. Consultation outcome

8.1 The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (2015 No. 62) and associated statutory guidance were the subject of a formal consultation from 22 October 2014 to 19 November 2014 and further in-depth discussions with a broad range of professionals working with children and young people with SEN both in the community and in custody. They were also the subject of discussions with the Special Educational Consortium, senior managers and Governors from the secure estate and an implementation group made up of SEN and disability and health representatives, local authorities and the secure estate. Respondents found that the regulations and guidance were clear. Their main concern was to ensure continuity for young offenders with SEN. The above regulations and this Order address that concern. The government response to the consultation is available at <https://www.gov.uk/government/consultations/sen-and-disability-detained-persons-regulations-and-revised-code>

Drafts of this Order and the statutory guidance on transition has been shared with [SEC/CDC] and the implementation group.

9. Guidance

9.1 The Secretary of State for Education has issued statutory guidance, through the revised SEN and Disability Code of Practice 0 -25, on the reforms to the system including for young offenders. In addition, the Department for Education has updated its non-statutory guidance on transition to reflect the requirements in this Order. This guidance is available at www.gov.uk/government/publications/send-managing-changes-to-legislation-from-september-2014.

10. Impact

10.1 Any impact on business, charities or voluntary providers will be in terms of their role as providers of services to detained persons with SEN. This may affect the terms of

their contracts with education, health or care commissioning bodies but should not lead to any additional burdens.

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 SEN and disability duties, including those in relation to young offenders.

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 reforms, including for young offenders. Ofsted has been invited to formally inspect local areas on their effectiveness of fulfilling their new duties. The Ministry of Justice are advising the Department on the impact of the reforms on the secure estate.

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.