

Changes to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013:

Proposed changes to allow temporary changes outside statutory guidance to local-authority-maintained schools' SEND provision: A response from the Special Educational Consortium

The Special Educational Consortium (SEC) is a membership organisation that comes together to protect and promote the rights of disabled children and young people and those with special educational needs (SEN). Our membership includes the voluntary and community sector, education providers and professional associations. SEC believes that every child and young person is entitled to an education that allows them to fulfil their potential and achieve their aspirations.

SEC identifies areas of consensus across our membership and works with the Department for Education, Parliament, and other decision-makers when there are proposals for changes in policy, legislation, regulations and guidance that may affect disabled children and young people and those with SEN. Our membership includes nationally recognised experts on issues including assessment and curriculum, schools and high needs funding, the SEN legal framework, exclusions and alternative provision. SEC is pleased to be able to respond to this consultation on proposed changes to the School Organisation Regulations.

The consultation

SEC has a number of concerns about the consultation itself: the information about the consultation was not advertised in the usual way through DfE bulletins; it was not widely circulated; there was no dedicated webpage holding information about the consultation and, where SEC members tried to find information about the consultation, it was difficult to do so.

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The proposals

SEC recognises the need to update the means of notification, and to advertise proposed changes digitally. SEC supports these proposals and agrees that changes should also be advertised through schools to ensure that those who have limited or no digital access are not adversely affected. Taking into account our concerns, below, SEC would also wish to see this approach extended so that it is required for proposals by the LA as well as by schools.

SEC has a number of concerns about some of the other proposals:

Strategic planning

SEC has concerns that the strategic planning of provision for pupils with SEN and disabilities across a local area is under significant pressure and could be further undermined by the proposed changes. The implementation of the Children and Families Act has triggered a significant increase in the use of and demand for high needs funding, EHC plans, Alternative Provision and other non-school alternatives, such as Elective Home Education. Any change to provision within a local area affects every other form of local provision. With such pressures on local provision, it is vital that there is a planned approach, taking account of provision based in Academies, therefore involving Regional Schools Commissioners, as well as maintained schools.

SEC is very clear that any temporary change affecting pupils with SEN and disabilities should be part of, and contribute to the achievement of, a longer term local strategy designed to secure the highest possible quality of provision for pupils with SEN and disabilities. Any temporary change should therefore be consulted on as part of that longer-term strategy, and taking into account a number of other considerations, below.

Equality Act considerations

It is important that any proposals should be considered in the light of Equality Act duties and, in particular, the LA's accessibility plan and the Public Sector Equality Duty. Proposals should show how they will contribute to the achievement of the LA's accessibility plan; they should also show how they will contribute to the achievement of PSED objectives, set by public bodies locally, showing how they will have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other prohibited conduct;
- improve equality of opportunity; and
- foster good relations between different groups of people: those who share a protected characteristic and those who do not.

These considerations need to be taken into account and therefore need to be considered under the statutory procedures and tested locally through consultation.

SEN and disability improvement test

SEC is aware that Guidance issued in 2006(?), *Planning and Developing Special Educational Provision*, provided for an *SEN Improvement Test*, requiring that proposals for changes show how they would:

- improve access to education and associated services, including the curriculum, wider school activities, facilities and equipment, with reference to the LA's accessibility strategy
- improve access to specialist staff, both education and other professionals
- improve access to suitable accommodation
- improve supply of suitable places.

This type of test should be applied to any proposal affecting provision for pupils with SEN or disabilities, whether temporary or permanent, and needs to be fully consulted on to secure the highest degree of local consensus.

Temporary becomes permanent

SEC has concerns that temporary changes could become permanent by stealth, and, in effect become a way of avoiding local scrutiny through consultation and by being tested publicly against Equality Act and SEN requirements.

SEC takes the view that proposed changes, whether temporary or permanent need to be subjected to a wider and more open consultation, as well as the full range of local tests through the statutory process.

Further information

SEC would be happy to provide clarification or further information.

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