

## EXPLANATORY MEMORANDUM TO

### THE EDUCATION (SPECIAL EDUCATIONAL NEEDS CO-ORDINATORS) (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 1387

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families (DCSF) and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the Instrument

2.1 The effect of the Regulations will be that, when they come into effect from 1 September 2009, all newly appointed Special Educational Needs Co-ordinators (SENCOs) in maintained schools in England must undertake nationally approved training. For these purposes a person is newly appointed if they have less than a total of twelve months experience in the role. A person is given three years to complete the training. After that point in time the governing body will be required to ensure that the person only remains as the SENCO if they hold the relevant qualification. The three-year period to complete the training provides flexibility to suit the individual circumstances of SENCOs and schools – for example, those with caring responsibilities – though in most cases the course will be completed within a year on a part-time basis, assuming no credit is given for previous experience and qualifications.

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

3.1 None

#### 4. Legislative Context

4.1 The Regulations are being brought into effect to implement specific recommendations by the then Education and Skills Select Committee. The third report of the Committee on SEN (July 2006, HC 478-1, paragraphs 322-323) recorded a number of concerns in relation to the role and status of SENCOs, including:

- They should in all cases be qualified teachers; and
- They should be appropriately trained.

4.2 In their response to the Select Committee (October 2006, Cm 6940, paragraphs 20-23), the then DfES Ministers declared their intention to make regulations relating to the role, responsibilities, experience and training required of SENCOs and, further, gave specific commitments to both Houses during the passage of the Education and Inspections Bill (HoL, 19 October 2006, column 960 and HoC, 2 November 2006, column 542) to introduce a requirement for nationally accredited training. Section 173 of the Education and Inspections Act 2006 amended the SEN provisions of the Education Act 1996 to require governing bodies to designate a member of staff as the person responsible for co-ordinating SEN provision for pupils. It also provided a power to make regulations requiring governing bodies of community, foundation or voluntary schools or maintained nursery schools to ensure that SENCOs have prescribed qualifications or prescribed experience, or both, and conferring on them other functions relating to SENCOs.

4.3 The Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945), requiring SENCOs to be qualified teachers, were laid before Parliament on 21 November 2008. They come into force on 1 September 2009. The Explanatory Memorandum to these Regulations stated that the DCSF planned to consult on further regulations to provide for mandatory training for all new SENCOs.

## **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 Government is committed to improving outcomes for children with SEN and disabilities. SENCOs have a central role to play in schools to ensure effective provision for children with SEN and disabilities and that individual children's needs are met. They are an important point of contact with parents too. The former Education and Skills Select Committee expressed serious concerns about the role, status and training of SENCOs and said that it should be strengthened. Ensuring that SENCOs are qualified teachers, together with the future requirement that all new SENCOs undertake nationally accredited training, responds to those concerns.

7.2 The DCSF is committed to ensuring that the school workforce has the skills needed to meet the needs of children with SEN and disabilities. A number of initiatives are underway to improve teacher knowledge and confidence in teaching pupils with SEN and disabilities in both initial teacher training and in continuous professional development. The DCSF does not currently collect information about the level of qualification of SENCOs. What evidence there is suggests that, though some SENCOs receive very good quality training, others have received little preparation – or no preparation at all - for this important role. The DCSF is keen to address this patchiness in provision as SENCOs do an important and difficult job and they deserve support.

7.3 The Training and Development Agency (TDA) consulted between June and October 2008 on a draft specification for the nationally approved training and courses will be available from September 2009. The DCSF believes that the policy objective of raising the profile and status of the SENCO role in maintained schools requires specific legislation. The proposals were warmly welcomed by the majority of respondents to the consultation on the draft Regulations.

7.4 It would not be feasible to extend the training requirement to all SENCOs in maintained schools, but it would be open to SENCOs who have been in post for more than a year to undertake the course.

7.5 These Regulations will be of interest to schools, local authorities and organisations representing SENCOs and SEN more generally, but are not likely to generate much media interest.

## **8. Consultation outcome**

8.1 Consultation on the draft Regulations ran from 13 March to 22 May 2009. The published response to the Select Committee's report committed to consulting social partners in framing the new SENCO regulations. This has meant that, in this instance, the consultation ran for ten weeks rather than the usual twelve. 87 responses came from SENCOs (28, 32%), head teachers (14, 16%), local authority managers (10, 11%), other teachers (4, 5%) and governors (4, 5%).

Responses were also received from teacher representative organisations, voluntary SEN organisations, the National Governors' Association, the General Teaching Council and Ofsted. A summary of the responses to the consultation and the Government's response can be found on the DCSF website at

<http://www.dcsf.gov.uk/consultations/index.cfm?menu=3&title=Archive%20and%20results>

8.2 There was clear support from respondents to the proposal that all SENCOs in maintained schools in England should undertake the training within one year of first being appointed. 89 % of respondents to the question whether the requirement for a nationally approved qualification was clear answered 'Yes'. 89% of respondents to the question whether it was clear to whom the training requirement applies also said 'Yes'. A number of respondents commented that all SENCOs should be required to undertake the training.

8.3 67% agreed with the proposal that a three-year period of latitude in which to complete the qualification was reasonable and helpful to schools and to newly appointed SENCOs. Of those who disagreed or who were unsure, 5 commented that the period of latitude should be shorter. 4 responses commented that that a longer period of latitude was needed. A small number of respondents were uncertain because much would depend on the nature and detail of the courses.

## **9. Guidance**

9.1 DCSF intends to issue brief non-statutory guidance explaining some of the issues relating to the training requirement the new obligation Dissemination will be via the weekly email to local authorities, bi-weekly email to schools, the Teachernet website and direct communication with national organisations

## **10. Impact**

10.1 A final Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring and review**

12.1 Ofsted inspections will continue to monitor arrangements made by schools in relation to SEN and disability.

## **13. Contact**

Chris Hirst at the Department for Children, Schools and Families, Tel: 020 7783 8262 or e-mail: [chris.hirst@dcsf.gsi.gov.uk](mailto:chris.hirst@dcsf.gsi.gov.uk) , can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>DEPARTMENT FOR CHILDREN, SCHOOLS AND FAMILIES</b>	<b>Title:</b> <b>Impact Assessment of: The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009</b>	
<b>Stage:</b> Final	<b>Version:</b> Final v.3	<b>Date:</b> 5 June 2009
<b>Related Publications:</b> Education Act 1996, Education and Inspections Act 2006, The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009		

**Available to view or download at:**

<http://www.dcsf.gov.uk/consultations/>

**Contact for enquiries:** Chris Hirst

**Telephone:** 020 7783 8262

**What is the problem under consideration? Why is government intervention necessary?**

20% of pupils in maintained schools have SEN or disabilities. Special Educational Needs Co-ordinators (SENCOs) have a key role to ensure effective provision for children and disabilities, and they are an important point of contact with parents. The former Education and Skills Select Committee expressed concerns that there are inconsistencies in the role, status and training of SENCOs in schools. Some SENCOs carry out this key role with little or no training. The Government wants to strengthen the role of SENCOs by ensuring they undertake nationally approved training.

**What are the policy objectives and the intended effects?**

To improve outcomes for children with SEN and disabilities by ensuring more effective provision to meet individual needs. Also to respond to the former Select Committee's recommendation that SENCOs be appropriately trained. The regulations require SENCOs new to the role - defined as within one year of appointment - to undertake nationally approved training, which will link in with the new Masters in Teaching and Learning to be rolled out from September 2009.

**What policy options have been considered? Please justify any preferred option.**

Two options have been considered:

1. To make no change to the current arrangements, ie that there is no specific requirement for the SENCO to undertake training;
2. To introduce such a requirement.

The second option meets the Government's objectives of strengthening the role of SENCOs to improve workforce skills and parental confidence in relation to meeting the needs of children with SEN and disability.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** From September 2012, three years after coming into force. This allows for the elapse of the three year period of latitude.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

*Sarah McCarthy-Fry* .....Date: 8th June 2009

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' Cost of meeting course fees and supply cover for elements of training undertaken during school year. No national data on numbers of SENCOs new to the role who will need to undertake the training. Evidence base, below, relies on a small scale survey.		
	<b>One-off</b> (Transition) <b>Yrs</b>			
	£		2	
	<b>Average Annual Cost</b> (excluding one-off)			
	£ 8.6m	<b>Total Cost (PV)</b>	£ Not estimated	
Other <b>key non-monetised costs</b> by 'main affected groups' N/A				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'		
	<b>One-off</b> <b>Yrs</b>			
	£ N/A			
	<b>Average Annual Benefit</b> (excluding one-off)			
	£ N.A	<b>Total Benefit (PV)</b>	£ N/A	
Other <b>key non-monetised benefits</b> by 'main affected groups' Strengthening and enhancing the role of the SENCO, leading to more effective provision for the 1.5 million children in England who have statements or SEN without statements. The progress of children with SEN, by narrowing the gap in educational achievement with their peers, is critical to achievement of the 2020 goals.				

### Key Assumptions/Sensitivities/Risks

Mandatory training applies only to SENCOs new to the role - defined as within one year of appointment as SENCO for the first time. Training would be at Masters level and could supply 60 credit towards the new MTL. Training of existing SENCOs would be for local determination.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ N/A
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	1 September 2009			
Which organisation(s) will enforce the policy?	Governing bodies			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of	£ 8.6m	Decrease of	£
<b>Net Impact</b>			£ 8.6m

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The effect of the draft Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 is to require that special educational needs co-ordinators (SENCOs) in community, foundation, voluntary and maintained nursery schools in England undertake nationally approved training. There are currently a number of courses and qualifications offered to SENCOs at various levels, but the overall picture lacks consistency. Some SENCOs are well trained, while others say they received little or no training for a demanding job.

The then Education and Skills Select Committee recorded some concerns about the SENCO role in schools in its third report (July 2006), recommending that SENCOs in all cases should be qualified teachers and that they should be appropriately trained. The Government concurs with this view. SENCOs have a key role to play within schools to ensure effective provision for the 20% of pupils who have SEN and disabilities, and the Government wishes to strengthen the role and status of SENCOs in schools. It also wishes to ensure that those taking up the role are prepared for it.

The Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945), laid on 21 November 2008 and due to come into force on 1 September 2009, require that SENCOs be qualified teachers. These regulations amend the first set of regulations to further require that SENCOs new to the role – defined here as within one year of taking up appointment – must obtain the qualification with the title (for the purposes of the regulations) “The National Award for Special Educational Needs Co-ordination” within three years. Governing bodies must ensure that the person designated as SENCO holds the qualification.

The Training and Development Agency for Schools consulted on a draft course specification in the autumn of 2008 and courses will run from September 2009. Courses will typically take a year to complete on a part-time basis, though credit can be given for appropriate prior experience and qualifications and the regulations allow up to three years to acquire the nationally approved qualification to provide flexibility to meet individual circumstances.

Consultation on the draft regulations ran from 13 March to 22 May 2009 and attracted 87 responses, the majority of which expressed clear support for the training requirement.

It is difficult to estimate likely numbers of those teachers new to the SENCO role who will need to undertake the nationally approved training or the costs of supporting them. Data on SENCOs is not collected nationally either by either DCSF or the General Teaching Council for England. In the absence of national data we have used the 2007 nasen survey *The recruitment, induction and retention of SENCOs* to gauge likely demand for training. nasen asked SENCOs whether they would be leaving the profession in the next five years. They estimated, on the basis of 160 responses, that around 38% of primary and 44% of secondary SENCOs would be leaving the profession by 2012; extrapolating this nationally would suggest a need to replace some 6,650 primary and 1,480 secondary SENCOs over that (three year) period – 8,130 in total.

Taking the average of the course fees for a range of current courses and adding the costs of 12 days supply cover for a year’s part-time course (on the basis of a teacher obtaining no credit for prior learning), together with administration costs, we estimate that training would cost £3,175 per teacher. Applying this to the 8,130 potential new SENCOs over a three year period produces an estimate of costs of £25.8m. We have no way of establishing when individual SENCOs are due to leave or where they are based.

DCSF has earmarked funding over 2009-10/2010-11 for this training.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

## Annexes