



Statutory Document No. 433/04

THE EDUCATION ACT 2001

THE EDUCATION (SPECIAL EDUCATIONAL NEEDS) REGULATIONS 2004

Approved by Tynwald

14th July 2004

Coming into operation

1st September 2004

In exercise of the powers conferred on the Department of Education by section 19(2) and (8) of, and paragraph 3 of Schedule 4 to, the Education Act 2001¹, and of all other enabling powers, the following Regulations are hereby made:—

General

1. Citation, commencement and interpretation

(1) These Regulations may be cited as the Education (Special Educational Needs) Regulations 2004 and, subject to section 58(1) of the Act, shall come into operation on the 1st September 2004.

(2) In these Regulations —

"the Act" means the Education Act 2001;

"assessment" means an assessment of a child's special educational needs;

"the child", in relation to a decision, assessment or report, means the child to whom the decision, report or assessment relates;

"report" means a report under section 19(1)(b) of the Act on the special educational provision to be made for a child.

Decision not to make assessment

2. Appeal against decision not to make assessment

(1) Where the Department gives to a child's parent notice under paragraph 1(3)(b) or 2(4)(b) of Schedule 4 to the Act of its decision not to make an assessment

(a) the parent may by notice in writing to the Department appeal against the decision; and

¹ 2001 c.33
Price £1.60

- (b) the notice shall include a statement of the right of appeal, and the manner in which and the time within which the appeal may be brought.
- (2) The appeal shall be heard and determined by a committee consisting of 2 or more persons appointed by the Department, none of whom shall be a person (or one of the persons) by whom the decision was made.
- (3) The committee may —
 - (a) uphold the decision, or
 - (b) quash the decision, in which case it shall in its decision direct the Department to make an assessment.

Assessments

3. Examination of child

- (1) For the purpose of making an assessment the Department may require that the child attend for an examination by —
 - (a) an officer of the Department, or
 - (b) some other person authorised by the Department,who in its opinion is suitably qualified to make the examination.
- (2) Before deciding who shall carry out the examination, the Department shall request the child's parent, if he has not already done so, —
 - (a) to inform the Department of any learning difficulty which he believes the child has, and
 - (b) to submit, or to require any other person to submit, to the Department any evidence, opinions or assessments relating to the child which he believes are relevant to the child's educational needs.
- (3) The examination shall take place at any reasonable time (to be fixed by the Department) at —
 - (a) the school at which the child is a registered pupil;
 - (b) the place where the child is living; or
 - (c) with the consent of the child's parent, any other place which the Department considers suitable.
- (4) The Department shall, not less than 21 days before the time fixed for the examination, give to the child's parent notice in writing of the time and place of the examination, and its likely duration.
- (5) The child's parent has the right to be present throughout the examination.
- (6) The child's parent shall ensure that the child attends for examination at the time and place specified in the notice under paragraph (4), and if the child fails without reasonable excuse to do so the parent is guilty of an offence and liable on summary conviction to a fine not exceeding £500.

4. Advice to be sought

(1) For the purposes of making an assessment under these Regulations the Department shall consider whether to obtain —

- (a) educational advice as provided for in regulation 5;
- (b) psychological advice as provided for in regulation 6;
- (c) medical advice as provided for in regulation 7; and
- (d) any other advice which may be appropriate for the purpose of making the assessment;

and, subject to paragraph (2), shall obtain any such advice as is mentioned in subparagraph (a), (b) or (c) if the child's parent requires it to do so.

(2) The Department need not obtain the advice referred to in paragraph (1)(a), (b) or (c) where —

- (a) it has obtained such advice within the preceding 12 months, and
- (b) the Department and the person from whom it was obtained are satisfied that the advice is sufficient for the purpose of making the assessment.

(3) Any advice referred to in paragraph (1) shall be given in writing, and shall relate to —

- (a) any matters, according to the nature of the advice, which appear to the person by whom it is given to be relevant to the child's educational needs (including his likely future needs);
- (b) how those matters affect the child's educational needs; and
- (c) the educational provision which is appropriate for the child in the light of those matters.

(4) A person from whom any advice referred to in paragraph (1) is sought

—

- (a) shall consult such persons, if any, as are specified by the Department as persons who have relevant knowledge of, or information relating to, the child; and
- (b) may consult such other persons as he thinks fit.

(5) When seeking from any person any advice referred to in paragraph (1), the Department shall provide him with copies of —

- (a) any representations made by the child's parent, and
- (b) any evidence, opinions or assessments submitted by or at the request of the parent.

5. Educational advice

(1) The educational advice referred to in regulation 4(1)(a) shall, subject to paragraphs (2) to (5), be sought from —

- (a) the head teacher of —

- (i) any school which the child is currently attending;
 - (ii) the school at which the child is a registered pupil (if different); and
 - (iii) any other school which the child has attended or at which he has been a registered pupil at any time within the preceding 18 months;
- (b) any other person responsible for educational provision for him; and
 - (c) if the Department thinks fit, a person appearing to the Department to have experience of teaching children with special educational needs or knowledge of the provision which may be called for to meet those needs.

(2) Where a head teacher giving advice under paragraph (1)(a) has not himself taught the child within the preceding 18 months, he shall first consult a teacher who has taught the child within that period.

(3) Advice given under paragraph (1)(a) shall include advice relating to any steps which have been taken by the school to identify and assess the special educational needs of the child and to make provision for the purpose of meeting those needs.

- (4) Where —
 - (a) it appears to the Department, in consequence of medical advice or otherwise, that the child is hearing impaired, visually impaired or both hearing and visually impaired, and
 - (b) any person giving advice under paragraph (1) is not qualified to teach a class of pupils who are hearing impaired, visually impaired or both hearing and visually impaired, as the case may be,

that person shall first consult a person who is so qualified.

(5) In paragraph (4) "hearing impaired", "visually impaired" and "both hearing and visually impaired" have the same meanings as in the Education (School Teachers' Qualifications) (England) Regulations 2003²; and for the purpose of that paragraph, a person is qualified to teach a class of any description if he is so qualified under regulation 6, 7 or 8 of those Regulations, as the case may be.

6. Psychological advice

(1) The psychological advice referred to in regulation 4(1)(b) shall be sought from a person —

- (a) employed by the Department as an educational psychologist, or
- (b) engaged by the Department as an educational psychologist in the case in question.

² SI 2003/1662

(2) Where a person giving advice under paragraph (1) has reason to believe that another psychologist has relevant knowledge of, or information relating to, the child, he shall first consult that other psychologist.

7. Medical advice

The advice referred to in regulation 4(1)(c) shall be sought from —

- (a) a registered medical practitioner, and
- (b) if the Department thinks fit, a person employed by the Department of Health and Social Security and appearing to the Department to be suitably qualified to give advice relating to the child.

8. Matters to be taken into account in making an assessment

When making an assessment the Department shall take into consideration -

- (a) any representations made by the child's parent;
- (b) any evidence, opinions or assessments submitted by or at the request of the parent, and
- (c) the advice obtained under regulation 4.

9. Completion and notification of assessment

(1) Subject to paragraph (2), where the Department is required by paragraph 1 or 2 of Schedule 4 to make an assessment, it shall do so —

- (a) as soon as practicable, and
- (b) in any event, within 12 weeks after the expiration of the period specified in a notice under paragraph 1(2)(a) or 2(3)(a) of that Schedule, unless it is prevented by circumstances beyond its control.

(2) An assessment shall be made in writing, and the Department shall as soon as it is made give a copy of it to —

- (a) every parent of the child; and
- (b) the head teacher of —
 - (i) any school which the child is currently attending;
 - (ii) the school at which the child is a registered pupil (if different).

(3) This regulation and regulation 10 apply to an assessment (including a varied assessment) made by the Department pursuant to a direction under regulation 10(3)(b) with the substitution, for the reference in paragraph (1)(b) to the expiration of the period there mentioned, of a reference to the giving of the direction.

10. Appeal against assessment

- (1) Where the Department makes an assessment —
 - (a) any parent of the child may by notice in writing to the Department appeal against the decision; and
 - (b) when it gives a copy of the assessment to the parent, the Department shall notify the parent in writing of his right of appeal, and the manner in which and the time within which the appeal may be brought.
- (2) The appeal shall be heard and determined by a committee consisting of 2 or more persons appointed by the Department, none of whom shall be a person (or one of the persons) by whom the assessment was made.
- (3) The committee may —
 - (a) uphold the assessment, or
 - (b) quash the assessment in whole or in part, in which case it shall in its decision direct the Department to make a new assessment or vary the assessment, as the case may be.

Reports

11. Parent's preference as to child's school

Before the Department prepares a report on the special educational provision to be made for a child, it shall in writing request the parent of the child, not later than 28 days after the request is made, to notify the Department in writing —

- (a) whether he wishes education to be provided for the child at a provided school, maintained school or special school, and
- (b) if so, at which school he wishes the education to be provided.

12. Form and content of report

A report shall be in writing and shall specify, in addition to the special educational provision mentioned in section 19(2) of the Act, —

- (a) the name of the child;
- (b) the child's date of birth;
- (c) the child's address;
- (d) any school which the child is currently attending;
- (e) the school at which the child is a registered pupil (if different);
- (f) any other school which the child has attended or at which he has been a registered pupil at any time within the preceding 18 months;
- (e) the names of the child's parents and their address or addresses (if different from the child's address); and
- (f) the special educational needs of the child, as stated in the assessment as a result of which the report is prepared.

13. Notice of proposed report etc.

(1) Where the Department is required to prepare a report, it shall give every parent of the child notice in writing of what it proposes to include in the report.

(2) Where the Department proposes to amend or cancel a report, it shall give every parent of the child notice in writing of the proposed amendment or cancellation.

(3) A notice under paragraph (1) or (2) shall include a statement of the parent's right of appeal, and the manner in which and the time within which the appeal may be brought.

(4) A notice under paragraph (1) shall state —

(a) the Department's reasons for specifying the special educational provision mentioned in the report pursuant to section 19(2) of the Act, and

(b) where —

(i) the parent of the child has expressed a preference as to the provided school, maintained school or special school at which he wishes education to be provided for the child, and

(ii) the Department has refused to specify the school in the report, its reasons for the refusal.

(5) A notice under paragraph (2) shall state the Department's reasons for amending or cancelling the report.

14. Appeal against report etc.

(1) Where the Department notifies the parent of a child of its proposal to prepare, amend or cancel a report —

(a) the parent may by notice in writing to the Department appeal against the proposal; and

(b) the Department may not prepare, amend or cancel the report, as the case may be, until the time within which an appeal may be brought has expired.

(2) The appeal shall be heard and determined by a committee consisting of

—

(a) one or more members of the Department appointed by the Department; and

(b) one or more officers of the Department appointed by the Department.

(3) The committee may —

(a) confirm the proposal,

(b) vary the proposal,

- (c) in the case of a proposal to amend or cancel a report, cancel the proposal, or
- (d) substitute a new proposal;

and the Department shall give effect to the decision of the committee.

15. Notification of report

(1) Where the Department prepares or amends a report, it shall as soon as it is made or amended give a copy of the report, or the report as amended, as the case may be, to every parent of the child.

(2) Where the Department cancels a report, it shall as soon as it is cancelled give notice in writing of the cancellation to every parent of the child.

Appeals

16. Appeals: general

(1) This regulation applies to an appeal under regulation 2, 10 or 14.

(2) A notice of appeal shall be given to the Department not later than 14 days after a copy of the assessment or the notice of the decision, as the case may be, is given to the parent.

(3) The appeal shall be heard as soon as practicable.

(4) The Department shall, not later than 14 days before the date fixed for the hearing, notify every parent of the child of the time and place of the hearing.

(5) Every parent of the child shall have the right —

- (a) to attend the hearing and to make representations in person or by a representative, and
- (b) to make written representations to the committee;

provided that any written representations shall be given to the Department not later than 7 days before the date fixed for the hearing.

(6) In determining the appeal the committee —

- (a) shall have regard to any representations made by a parent of the child and by the Department; and
- (b) may act by a majority.

(7) The committee shall give its decision in writing, and state its reasons, and the Department shall send a copy of the decision to every parent of the child.

(8) Subject to the provisions of this regulation, the committee may determine its own procedure.

Restriction on disclosure

17. Restriction on disclosure of assessments and reports

(1) An assessment or report shall not be disclosed without the consent of a parent of the child except —

- (a) where it appears to the Department that the disclosure is in the interests of the child;
- (b) for the purposes of any appeal under these Regulations;
- (c) for the purposes of educational research which, in the opinion of the Department, may advance the education of children with special educational needs, if, and only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, a report otherwise than in a form which does not identify any individual concerned (including, in particular, the child concerned and any parent of his);
- (d) on the order of any court or for the purposes of any criminal investigation or proceedings;
- (e) to the Department of Health and Social Security for the purpose of the exercise in relation to the child of any functions of that Department under the Children and Young Persons Act 2001³;
- (f) on request, to one of Her Majesty's Inspectors of Schools or to any person carrying out, at the request of the Department, an inspection of a school at which the child is or has been a registered pupil.

(2) The arrangements for keeping assessments and reports shall be such as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.

(3) In this regulation any reference to an assessment or report includes a reference to any representations, evidence, advice or information appended or annexed to the assessment or report.

MADE 8th June 2004

S C Rodan

Minister for Education

³ 2001 c.20

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision with respect to the assessment of the special educational needs of children, reports on special educational provision to be made for children, and appeals by parents relating to assessments and reports.