

SPECIAL EDUCATIONAL NEEDS (INFORMATION) ACT 2008

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INTRODUCTION

The Special Educational Needs (Information) Act¹ (“the Act”) received Royal Assent in July 2008. It was introduced as a Private Member’s Bill² (“the Bill”) in December 2007.

This briefing paper looks at:

- The background and rationale for the Act;
- The information that is gathered, by whom and for what purpose; and
- Whether similar provisions for the collection of information are in operation in Northern Ireland or planned in policy proposals in the special educational needs (SEN) Review.

BACKGROUND

Statistics showed that in January 2007 almost 1.6 million pupils in England, or 19% of the total school population, were identified as having SEN. Pupils with SEN were proportionately more likely to be eligible for free school meals and their exam and test performance was below that of other pupils at every age group. SEN pupils were also around eight times as likely to be permanently excluded from school as pupils not identified as SEN³.

‘Treehouse’⁴ is a national charity that researches and lobbies for the education of children with autism. Treehouse reported in 2007⁵ that more than 60% of parliamentary questions about autism over the past 10 years had gone unanswered. This was attributed to a weakness in the Government’s evidence base and the charity argued that this would be true for other areas of SEN. The Treehouse report had concluded⁶:

We would therefore recommend that the Government commits to a review of the data currently collected on SEN, and in particular considers the need to drill down further to enable access to

¹ Special Educational Needs (Information) Act 2008 available at:
http://www.opsi.gov.uk/acts/acts2008/ukpga_20080011_en_1

² Special Educational Needs (Information) Bill available at:
<http://www.publications.parliament.uk/pa/cm200708/cmbills/026/2008026.pdf>

³ House of Commons Library Research Paper 08/10 on the Special Educational Needs (Information) Bill (25 January 2008) available at:
<http://www.parliament.uk/commons/lib/research/rp2008/rp08-010.pdf>

⁴ Treehouse website at: <http://www.treehouse.org.uk/>

⁵ Quoted by the Bill’s proposer at its second reading on 1 February 2008.

⁶ Ibid.

information about the type of SEN which will assist in an understanding of the type of needs there are and help local authorities to plan to meet these needs on a needs driven basis.

RATIONALE FOR THE BILL

The rationale for the introduction of the Bill was to provide information on the scale of SEN and allow for a standardisation of service provision across all local authorities. Its introduction was welcomed by Brian Lamb, author of the review of SEN and Disability Information⁷ who said “*This Act will allow us to get a clearer understanding about what works for children with additional needs and share good practice across schools. Crucially, it will help to raise expectations about what young people with SEN can achieve at school*”.

The Bill introduced proposals for two substantive provisions as amendments to the Education Act 1996. Under the heading “*Information about children with special educational needs*”, the first required the Secretary of State to exercise his powers to secure the provision of information about children in England with SEN to assist in improving their well-being. Secondly, the Bill introduced a requirement for the Secretary of State to have the information published in order to assist in improving the well-being of these children.

THE ACT

The Act amends the Education Act 1996⁸ in relation to the provision and publication of information about children with SEN. Sections 332C and 332D form the substantive amendments and although the Act extends to England and Wales, its provisions only apply to England.

Section 332C refers to the collection of information which would assist in improving the well-being of children with SEN in England. Section 332D refers to the dissemination of the information collected. It requires that it be published annually in such a form as will be most useful in improving the ‘well-being’ of children with SEN, provided the name of any child to which the information relates is not included.

Section 332E defines a “child” as a person under the age of 19 (whether or not the person is a registered pupil at a school). “Special needs information” means information about children in England with SEN and the provision made for them. The term “well-being” in the Act is in line with *Every Child Matters* outcomes⁹ and is defined as:

332E(4) Any reference to the well-being of children with special educational needs is a reference to their well-being so far as relating to –

⁷ Lamb Inquiry: Special educational needs and parental confidence: Report to the Secretary of State on the Lamb Inquiry Review of SEN and Disability Information (April 2009). Information on Inquiry and relevant documents available at:

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

⁸ Education Act 1996 available at:

http://www.opsi.gov.uk/ACTS/acts1996/ukpga_19960056_en_1

⁹ *Every Child Matters* outcomes are set out in section 10 of the *Children Act 2004*; be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being.

<http://www.everychildmatters.gov.uk/aims/>

- (a) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being.

The information will be collated by the Department for Children, Schools and Families (DfCSF) and will include data on outcomes for children with SEN as measured by the Every Child Matters framework¹⁰. The Office for Standards in Education (Ofsted) are conducting a review of SEN in 2009-10 and it is anticipated that it will identify what additional information will need to be collected to fulfil the statutory duty¹¹.

INFORMATION PREVIOUSLY COLLECTED IN ENGLAND

Prior to the Act, information was collected by DfCSF that included the outcomes of national tests for pupils with SEN. Statistics published by DfCSF prior to the Bill's introduction were mainly drawn from the School Census and SEN2 Survey. Statistics for 2008 included the number and percentage of SEN pupils across all schools in England; the percentage with statements in mainstream schools, special schools and independent schools; and numbers with SEN but without statements. Additional statistics included the primary reason for pupils' assessment of SEN, their gender, age and ethnic group. Additional analysis also included Local Authority level tables¹².

During the second stage debate on the Bill, its proposer¹³ argued that, although there were data sets and statistics about children with SEN, they only provided a snapshot. Further analysis of existing data and its annual publication would monitor provision, reflect progress and highlight areas for improvement¹⁴.

INFORMATION COLLECTED IN NORTHERN IRELAND

Legislation obliges Education and Library Boards to provide information in relation to school enrolments¹⁵. 'Guidance for Schools: Recording Children with Special Educational Needs'¹⁶ was published for use by schools from September 2005 and provides categories for recording SEN. It states that standard recording of information is essential to policy and provision planning and the monitoring of outcomes. It also makes responding to requests for SEN related information easier and gives responses to Parliamentary Questions on SEN as an example.

¹⁰ Ibid.

¹¹ Community care website for those involved in social care at:
<http://www.communitycare.co.uk/Home/>

¹² SEN statistics on the DfCSF website at:
<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000794/index.shtml>

¹³ Private Members Bill introduced by Sharon Hodgson, Labour MP for Gateshead East and Washington West.

¹⁴ Hansard report on Second Reading, 1 February 2008 available at:
<http://services.parliament.uk/bills/2007-08/specialeducationalneedsinformation/stages.html>

¹⁵ The Education and Libraries (Northern Ireland) Order 2003, Article 37.

¹⁶ Guidance for Schools: Recording Children with Special Educational Needs (Department of Education). Document available at: http://www.deni.gov.uk/sen_categories.pdf

The statistics and research section of the DE website¹⁷ contains information on the number of SEN children at schools of all types at Northern Ireland at NI, ELB and District Council level.

All schools in Northern Ireland are submitting their returns electronically for the 2009/10 School Census using the C2k Management Information System (MIS)¹⁸. All schools must record all pupils. In the case of mainstream schools with a 'special unit' they must record pupils in the unit with a statement of SEN and pupils who have been referred to the unit by an ELB for an assessment of SEN. Under the new coding system, children at Stages 3, 4 or 5 of the SEN assessment process must be recorded at a detailed level of classification. Children assessed as Stage 1 or 2 of the SEN assessment process can be recorded at a higher level of classification, but only where information for more detailed classification is not available¹⁹.

A separate letter was sent to principals of Special Schools for the 2009/10 census return requesting all special schools to submit their returns no later than 16 October 2009 using the C2k Management Information System (MIS) to ensure that all schools receive their appropriate level of funding. They are asked to include SEN details and entitlement to free school meals. All pupil's home postcodes are also required where possible *'as this is increasingly important for policy development across the Department'*²⁰.

PROPOSALS FOR INFORMATION COLLECTION IN SEN REVIEW CONSULTATION

The collection of information for monitoring and evaluating SEN policies and outcomes promotes the Education Management System (EMS) that has been developed as part of the 'eSchool Data Warehouse'²¹. It is proposed that this information gathering and management system be further developed across education with a major role in strategic planning and policy development, including SEN.

The proposals contained in *'Monitoring, Review, Evaluation and Accountability'*²² of the consultation document stress the importance of 'accountability' in relation to SEN provision and funding. DE proposals include a delegation of funding to schools to allow for flexibility and a degree of autonomy in early intervention strategies. As the funds will not be ring-fenced, there will be an additional need for transparency and accountability which the consultation document proposes will be the responsibility of a school's Board of Governors and Principal. It states that:

¹⁷ http://www.deni.gov.uk/index/32-statisticsandresearch_pg.htm

¹⁸ IT project in schools.

¹⁹ Additional Notes for the Department of Education Statistical Return 2009/10 available at:

http://www.deni.gov.uk/letter_6a_special_additional_notes_for_return-7.doc

²⁰ Letter to Principals of Special Schools, September 2009 on DE website at:

http://www.deni.gov.uk/letter_6_special_schools-10.doc

²¹ DE Circular Number 2009/04, 15 May 2009 'eSchool Data Warehouse' Information on the introduction of the new eSchools on-line data warehouse at:

http://www.deni.gov.uk/circular_2009.04_-_eschools_data_warehouse_-_english_version.pdf

²² Section 16 of *Policy Proposals Consultation Document: Every School a Good School: The Way Forward for Special Educational Needs and Inclusion* (August 2009) Department of Education. Document available at:

http://www.deni.gov.uk/every_school_a_good_school_the_way_forward_for_special_educational_needs_sen_and_inclusion_8211_consultation_document_english_pdf_434kb.pdf

In order to ensure that parents are confident that their child is receiving the provision needed to over-come possible barriers to learning, whether or not they have a CSP, it will be important (especially as the funding will not be ring-fenced in order to allow schools flexibility and increased autonomy) that appropriate and transparent accountability arrangements are established to prevent possible 'resource drift'. **It is proposed that the Board of Governors and the Principal will therefore be accountable to the ELBs/ESA for both the quality of provision and for the effective use of allocated funding²³.**

Proposals for quality indicators to be established, where appropriate with health and social service providers, will include issues that formed the rationale for the Bill in England. According to DE the agreed indicators will cover issues such as:

- a) the need for early identification and assessment;
- b) the effectiveness of intervention strategies employed;
- c) the monitoring of progress made by the child or young person;
and
- d) the effective use of funding and resources²⁴.

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²³ Paragraph 16.3 of the consultation document.

²⁴ Paragraph 16.5 of the consultation document.