

Fact Sheet

Summary of amendments to Children and Families Act 2014 and SEND Regulations 2014, under the Coronavirus Act 2020

- The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 ('the Amendment Regulations') will amend four sets of Regulations for the period 1 May to 25 September 2020 (inclusive).
- Timescales for particular processes may be modified, if impacted by the potential transmission or incidence of Covid-19.
- The modified duty will then, depending on the process be:
 - for the body to discharge that duty 'as soon as reasonably practicable'
 - to discharge that duty 'as soon as practicable'
 - in other instances, such as regulation 8(1) of the Special Educational Needs and Disability Regulations 2014¹ for bodies needing to co-operate in the securing of an EHC needs assessment, to respond in a timely manner (in accordance with general public law principles)
- There is emphasis on continued co-production with parent/carers, children and young people and the importance of keeping parent/carers, children and young people informed.
- Local authorities, health services and the other bodies involved in the processes relating to EHC needs assessments and plans should communicate regularly with the families of those children and young people with EHC plans, or who are being assessed for plans or who apply for an EHC needs assessment. Where the changes in the law affect what families experience, they need clarity as to:
 - what provision will be secured for each child and young person and the reason for any difference from what is specified in the EHC plan
 - when decisions will be made as part of the various processes relating to EHC needs assessments and plans
- Emphasis on LA's ensuring SENDIASS is sufficiently resourced to support families, due to their '**critical role**' in supporting families.

The notice by the Secretary of State for Education (1st May – 31st May 2020 – to be reviewed monthly)

- The notice does not absolve local authorities (for special educational provision and social care) or health commissioning bodies (for health care provision) of their responsibilities under section 42: rather they must use their **'reasonable endeavours'** to secure or arrange the provision.
- This means that local authorities and health bodies must consider for each child and young person with an EHC plan **what they can reasonably provide in the circumstances during the notice period**. For some individuals, this will mean that the provision specified in their plan can continue to be delivered; but for others (because of the impact of coronavirus (COVID-19) on local authorities or health commissioning bodies) the provision may need temporarily to be different to that which is set out in their EHC plan.
- Once the notice expires on 25th September 2020, there will be a duty on the LA to resume full special educational provision, outlined in the EHCP.
- The Secretary of State for Education has listed some of the reasons why making the provision, within an EHCP might be more difficult to provide, in the notice:
 - the child or young person is not currently attending an early years provider, school, college or other setting
 - the following of 'social distancing' guidelines may disrupt education settings' normal programmes for those who are still attending and make certain interventions impractical
 - the resources and services to secure the provision are reduced, for example because of illness, self-isolation or the need to direct staff resource at responding to the pressures generated by coronavirus (COVID-19)
- In deciding what provision must be secured or arranged in discharge of its modified s42 duty, the local authority and health commissioning body should consider:
 - the specific local circumstances (such as workforce capacity and skills and that of others whose input is needed to EHC needs assessments and plans processes, temporary closures of education settings, guidance on measures to reduce the transmission of coronavirus (COVID-19) and other demands of the outbreak)
 - the needs of and specific circumstances affecting the child or young person
 - **the views of the child, young person and their parents over what provision might be appropriate**

- The local authority or health commissioning body **should keep a record of the provision it decides it must secure or arrange**. It should then:
 - **confirm to the parents or young person what it has decided to do and explain why the provision for the time being differs from that in the plan**
 - **keep under review whether the provision it is securing or arranging** means that it is still complying with the reasonable endeavours duty, recognising that the needs of a child or young person may change over time (particularly in the current circumstances) as may the availability of key staff or provision

- **The modified s42 duty relates to the provision for each individual child and young person**. Local authorities and health commissioning bodies **must not apply blanket policies about the provision to be secured or arranged**.

Examples of alternative arrangements:

- alterations to the frequency and timing of the delivery of provision in school, for example, moving to a part-time timetable
- a temporary placement in another school - mainstream or special. This will need to be with the agreement of the parent or young person and full account should be taken of the needs of the child or young person
- attendance at a local hub
- adjustments to home-to-school transport arrangements to support a modified school attendance timetable
- class sizes being significantly reduced to ensure social distancing can be applied in classrooms
- video class sessions for children to keep in touch with classmates and teaching staff
- a home learning reading programme, provided by a Special Educational Needs Coordinator (SENCo) and reviewed weekly
- provision of printed exercises or worksheets
- weekly phone or video contact from school staff to monitor home learning programmes, to provide feedback, and to make adjustments as necessary
- a school or college delivering direct education or support in the home where a young person is not able to attend school or college (subject to risk assessment and appropriate health protection measures)
- educational psychologists providing brief therapy interventions
- specialist SEN Teachers providing advice and support to parents in relation to autism, visual or hearing impairment or literacy programmes
- enlarged materials being provided in the home where a child or young person has a visual impairment.
- a speech and language therapist delivering sessions via video link

- a health visitor or school nurse providing health advice or developmental reviews via teleconferencing
- the parent and child travelling to receive the therapy at suitable premises, where this can be done in ways consistent with guidance on reducing the transmission of coronavirus (COVID-19)
- an occupational therapist or a physiotherapist video linking to a child's home and modelling exercises that the parents could do with their child
- occupational therapists providing webinars for school staff on topics such as sensory strategies or pre-writing skills, or a teletherapy service
- sending home accessible hard copy therapy programmes with additional phone support for parents and young persons to help them work through them
- where an EHC plan already includes a personal budget or a direct payment, widening its use to enable the purchase of equipment or other relevant material to support home learning
- exercise sessions by video
- provision of alternatives to short breaks by providing online resources and activities for young people
- loaning parents school equipment, such as specialist support equipment (seating equipment, IT equipment used at school etc) to be used at home to support learning
- counselling, or cognitive behaviour therapy, delivered over the phone once a week for 6 weeks by a mental health worker

Timescales for EHC needs assessments and plans Description of the changes to the Regulations

- To illustrate how the amendments to the law will work:
 - where it is not reasonably practicable or impractical to conclude an action within the statutory timescale – for example, 6 weeks for a decision whether to make an EHC needs assessment – because of the incidence or transmission of coronavirus (COVID-19), the local authority or other body to whom that deadline applies will instead have to complete the process either as soon as reasonably practicable or in line with any other timing requirement in the regulations being amended
 - where a local authority has decided that it is necessary to issue an EHC plan following an EHC needs assessment the duty has been to do so as soon as practicable but in any event within 20 weeks⁶ of an initial request. The Amendment Regulations⁷ provide that if the incidence or transmission of coronavirus (COVID-19) makes it impractical for the local authority to do so within the 20 weeks they must discharge their duty to do so as soon as practicable
 - where a request is made to a local authority to re-assess educational, health care and social care provision, the duty has been to notify the child's parent or the young

person within 15 days⁸ of the request. The gloss⁹ to the duty in Regulation 2A of the Amendment Regulations, that will change the way in which the provision should be read, applies here. It means that if it is not reasonably practicable to complete this process within the 15 days because of the incidence or transmission of coronavirus (COVID-19), the local authority must do so as soon as reasonably practicable

- The timescales in the Regulations being amended relate to the following:
 - the handling of requests for EHC needs assessments, decisions whether to issue plans and the preparation and issue of plans
 - annual reviews of plans
 - the processes relating to mediation
 - the processes where there is a change of local authority or health commissioning body for a plan
 - the process for a local authority reviewing for the first time the making and use of direct payments from a Personal Budget that is part of an EHC plan
 - the actions that the local authority and health commissioning body must take when the First-tier Tribunal makes non-binding recommendations in respect of certain types of health and social care matters within an EHC plan (as part of the National Trial, which continues)

Cases in progress on 1 May 2020

The Amendment Regulations will come into force on 1 May. If consideration of a request for an EHC needs assessment or one of the processes that may follow is in progress on that date, then the relevant exception to the timings in the Amendment Regulations could apply if coronavirus (COVID-19) had caused delay. This would depend on the facts of the case.

If the final deadline (such as the end of the 20 weeks) had passed before 1 May, the relaxations to timescales for a reason relating to coronavirus (COVID-19) made by the Amendment Regulations could not apply because they were not in force then.

The following remains unchanged:

A local authority must still consider requests for a new EHC needs assessment or a reassessment.

Where the local authority decides to carry out an EHC needs assessment, it must still secure all of the required advice and information in order to be able to issue a plan.

Section 19 of the Children and Families Act 2014, which requires local authorities to have regard to the views and wishes of a child, the child's parent or a young person when exercising its SEND functions under the Act, remains in force.

A local authority must continue to have regard to the guidance on the handling of delays in paragraph 9.43 ¹⁰ of the SEND Code of Practice. Where the circumstances relating to coronavirus (COVID-19) set out in the Amendment Regulations apply to more than one process, then an exception may apply to each of those processes. If a process with a statutory timescale begins where a delay relating to coronavirus (COVID-19) is likely, the local authority should advise the parent or young person of this.

One of the timescales relating to EHC plans¹¹ is giving parents or the young person at least 15 days to give views and make representations on the content of a draft plan. There is no change to the law here. Local authorities will wish to be alert to the circumstances of parents and young people in the time of the outbreak and to take this into account in setting the deadline. It may be harder for parents and young people to contact early years providers, schools and colleges, for example, to gather information relating to deciding their preference over setting. Parents and young people may themselves be ill or otherwise directly affected by the outbreak.

A final EHC plan must still include all of the required advice and information.

The provision set out in the final plan should be in line with the statutory requirements for any EHC plan and not be limited because of the circumstances of coronavirus (COVID-19).

Reviews and re-assessments of EHC plans must still take place (although there can in some circumstances be flexibility over the timing of an annual review, see paragraphs below)

Decisions, including those over the content of any EHC plan, must continue to be made in accordance with the statutory framework and be based on the individual needs, provision and outcomes for the child or young person. Local authorities must not apply blanket approaches in relation to EHC needs assessments or plans processes and decision-making. For example, local authorities cannot implement a general policy of refusing to consider new requests because of coronavirus (COVID-19). Neither can they make blanket decisions based on particular age groups of children and young people, those with certain types of need, or based on whether they are at home or in school

Further useful links:

<https://www.sendiass4bcp.org/resources/ehc-plans-guidance-on-temporary-legislative-changes.pdf>