



Education, health and care needs assessments and plans: Guidance on temporary legislative changes relating to Coronavirus (COVID-19)

Fact Sheet No: 39

MAY 2020

In short the main **temporary** changes are:

Section F - delivery of Special Educational Provision

Changing the duty (Section 42 Children's and Families Act) for Local Authorities to deliver Special Educational Provision (Section F of an EHC plan) from an **absolute** duty to that of **best endeavours**.

More flexible time lines

Giving the Local Authority some leeway as to when it must complete tasks by. 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**.

For further detail please read on

All sections highlighted in red are to raise awareness of the temporary changes.

All sections highlighted in purple are to make the reader aware of what has NOT changed.

Local authorities' and health bodies' decision-making process

COVID-19 may make it more difficult for a local authority or health commissioning body to secure the educational and health provision in an EHC plan as required by section 42 of the Children and Families Act 2014 (the 'modified s42 duty') because:

- 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)

The LA will also need to 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 and 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

Where the needs of the child and young person may have changed, it may be necessary for the local authority to conduct an early review of the EHC plan.

Securing or arranging provision in an EHC plan under the modified s42 duty

In some cases local authorities and health commissioning bodies may be able to secure or arrange the provision as set out in the EHC plan. Where, however, the full provision in an EHC plan cannot be delivered or delivered in the way described in the plan, local authorities, health commissioning bodies, education settings and others should explore with parents and the child or young person what provision can reasonably be secured or arranged. There should be a focus on:

- The provision that the EHC plan describes as needed by the individual child or young person
- The availability of those who should usually deliver what is needed
- What can be done to deliver provision differently

What constitutes reasonable endeavours will vary according to the needs of each child and young person and the specific local context. The following may be considered:

- Securing something different to the provision stated in the plan, for example in relation to availability of staff, availability of technology and any significant risk that may cause harm
- Location where provision is to be provided may be altered, for example early years provider, school, college, community setting, home or clinic
- Frequency and timing of provision may be altered or modified in the light of available staff and risks that may cause harm
- Method of delivery may be altered, for example virtual rather than face-to-face and smaller rather than larger groups for teaching (where this can be done following the guidance on reducing transmission of (COVID-19)
- Changes to the person delivering the provision, for example a learning assistant under virtual supervision rather than a specialist therapist or teacher

The types of arrangements that might be reasonable for local authorities and health commissioning bodies, working with education providers and other partners, to put in place will be dependent:

- On the needs of the child or young person
- The provision that is specified in a plan
- The specific local circumstances.
- The capacity of specialist staff to deliver particular interventions
- The extent of the arrangements schools can make to provide home learning programmes
- The availability of suitable IT equipment in the home.

Possible arrangements for educational support:

- 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 Co-ordinator (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 tele therapy 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

To make remote education accessible for all pupils staying at home during the outbreak, the government has announced a [major new package of support for online learning](#) that it is to provide

free laptops for vulnerable and disadvantaged children who do not have access to a laptop or tablet and are preparing for exams (in year 10); receive support from a social worker; or are a care leaver. For those in 16 to 19 education, providers including schools can already use their 16 to 19 Bursary Fund allocation to provide devices and connectivity for disadvantaged and vulnerable young people, where this is identified as a barrier to a student participating in education.

Timescales for EHC needs assessments and plans

In addition to the changes to the law about securing or arranging provision in EHC plans, from 1 May to 25 September 2020 (inclusive) the Regulations which provide most of the statutory timescales for the EHC needs assessments and plans processes will be modified. This modification is different to that delivered by the notice in a number of ways, notably:

- **The law is only changed where in a particular case it is not reasonably practicable or impractical for a local authority, health commissioning body or other body to discharge its duties for a reason relating to the incidence or transmission of coronavirus (COVID-19)**
- The modification is to the timing. 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. Some of the processes relating to EHC needs assessments and plans already have allowable exceptions to the timescales. The Secretary of State for Education must review the effectiveness of the changes to the regulations, which are for the period 1 May to 25 September 2020 (inclusive)
- 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 weeks⁵ of an initial request. The Amendment Regulations 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 gloss 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



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- 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)

The duties over timescales apply to:

- Local authorities (SEND and social care services), health commissioning bodies, those who provide advice and information for EHC needs assessments, including educational psychologists, other health professionals and education settings, parents or young persons (when requesting a mediation certificate) and mediation advisers

Usual process

The local authority needs to decide whether to proceed with an EHC needs assessment as soon as practicable and in any event within 6 weeks of a request. If the local authority ultimately decides, following an assessment, to issue a plan, it must issue the plan as soon as practicable and in any event within 20 weeks of the request for an assessment.

Exception relating to coronavirus (COVID-19) - If it is impractical for the local authority to meet the initial 6 week deadline because of a reason relating to the incidence or transmission of coronavirus (COVID-19), then it must instead reach that decision as soon as practicable.

When one process with a statutory deadline concludes and a further process begins: decision on whether to issue a plan following an EHC needs assessment - A reason related to the incidence or transmission of coronavirus (COVID-19) may make it impractical to complete the next stage of the process on time. In such a situation, the local authority will need to proceed to conclude the next stage as soon as practicable rather than within the statutory deadlines (16 weeks if it decides not to issue a plan, 20 weeks otherwise).

Cases in progress as of 1st May 2020

The Amendment Regulations came 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.

These temporary changes to the law only affect various statutory timescales for processes relating to EHC needs assessments and plans. All of the other key requirements relating to EHC needs assessments and plan processes remain unchanged.

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

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.

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The LA still has a duty to have regard to the views and wishes of the child/YP and the child's parents.

A local authority must continue to have regard to the guidance on the handling of delays.

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 plans 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 year's 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 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).

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 e.g. a general policy of refusing to consider new requests or make blanket decisions based on particular age groups of children/YP, those with certain types of need, whether they are at home or about the provision to be secured or arranged.

New ways of working to manage the EHCP Processes - Some local authorities are establishing virtual advisory panels by a secure virtual meeting platform to assist with decision-making. Many already have arrangements to share information in advance through secure electronic methods. Where sufficient recent information is not already available, professionals may be able to carry out observations of a child if he/she is still in a setting where this can be done in ways consistent with guidance on reducing the transmission of coronavirus (COVID-19). Alternatively, information could be gathered by phone or by a virtual meeting. To help manage demands on services, where services use templates for their advice and information, these might need to be adapted for use during the outbreak so that reports are more concise whilst still containing the essential information about the child or young person's needs, provision, and outcomes.

Annual reviews of EHC plans - Annual review requirements remain in place. However, there is extra flexibility for local authorities over the timing of these reviews. Where it is impractical for a local authority to complete an annual review of a plan within the prescribed timescales for a reason relating to the incidence or transmission of coronavirus (COVID-19), then the local authority must complete it as soon as reasonably practicable.

Annual reviews may need to take a different form e.g. holding the meeting by phone or virtual meeting and gathering information in a simpler format. However, it is important that they continue to ensure that the child or young person is at the centre of the process and can engage with the process in a meaningful way. A review meeting, even if by necessity briefer than usual, can be reassuring for parents, children and young people, through ensuring that their EHC plan is up-to-date so that they can receive appropriate provision. Key professionals should still be involved wherever possible and there may be the need to use previous information discussed with the family if no new information is available.

Local authorities should identify priorities for review, which may include:

- Children and young people with significant changes of need or circumstances
- Looked after children
- Children and young people in residential provision
- Children and young people in out of area provision, especially independent and non-maintained provision

Local authorities must already have completed this year's required transfer reviews for a child or young person moving between key phases of education (transfers into or between schools, moves from secondary school to a post-16 institution or apprenticeship, or moving between post-16 institutions). There is no change to the statutory deadlines for these reviews. Where, exceptionally, completion has been delayed, these transfer reviews need to be finalised as a priority.

The duty on education settings to admit (section 43): no change -An early year's provider, school, college or other setting named in an EHC plan must admit the child or young person. Where a setting is temporarily closed, the setting must still admit. In the case of a school or college, the child or young person must be placed on the roll and treated in the same way as other pupils or students in the setting. The government's [advice on SEND risk assessments](#) is that during the outbreak local authorities should consider the needs of those with an EHC plan, and make a risk assessment, consulting educational settings and parents or carers, to determine whether these children and young people can have their needs met at home and be safer there than attending an educational setting. In addition, the local authority must make reasonable endeavours to secure the provision in the EHC plan.

The timescale for education settings to respond to a proposal to name them in an EHC plan: No change - **The duty on early year's providers, schools and colleges to co-operate with the local authority in the performance of its SEND duties remains in place.** The expectation in the SEND Code of Practice that local authorities give early years providers, schools and colleges up to 15 days to respond to a proposal to name their institution in an EHC plan remains in place. The request to consider a placement that is sent to the setting for consultation over the naming of that setting will include the draft plan and all of the advice and information received as part of the assessment. This provides considerable levels of information about the individual's needs, provision and outcomes. In addition, the proposed setting can, as part of its consideration, make direct contact with the parent or young person to discuss the admission.



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Settings should remain able to engage effectively in this aspect of the EHC plan process and families might still reasonably expect this to happen as part of the timely completion of an EHC plan. However, staff absence because of illness, self-isolation etc. may affect the speed with which a setting can reply. In such circumstances, the setting needs to communicate with the local authority about a possible delay in responding.

Communication during this part of the process is key to effective decision-making. In parallel with sending the proposal to the setting, the local authority also makes phone contact. While settings may remain closed to pupils or students, they should still be making arrangements that enable them to continue to respond to consultations on future admissions during this period.

Complaints and rights of appeal of parents and young persons: no change - The vast majority of those with EHC plans are not currently attending their usual education setting. This may make it more difficult for the local authority or health commissioning body to secure or arrange the full range of provision in an EHC plan. It may also not be appropriate during the outbreak for local authorities, health bodies, educational psychologists and other professionals to provide their usual level of service delivery in relation to the EHC needs assessments and plans processes. **This is why the law in relation to these matters has temporarily been modified.** In most instances, families and the local authority or health body and their partners will be able to work together to agree a mutually satisfactory arrangement for the time being.

However, where a parent or young person may be dissatisfied about the actions of a local authority or health body over how they have discharged their modified s42 duty or about the timeliness with which processes relating to EHC needs assessments or plans have been progressed, then effective ways of resolving disagreement swiftly are crucial and wherever possible should use established decision-making mechanisms within the local area. The complaints mechanisms described in the [SEND Code of Practice](#) are unchanged, although the **Local Government and Social Care Ombudsman has temporarily suspended all casework activity.** Families will be able to use the local authorities or health commissioning body's complaints procedures who need to ensure that these procedures remain effective for the current context. IASS continues to support families in finding the best way forward but can support families if they wish to raise a complaint.

Rights of Appeal to the First-tier Tribunal (SEND): no change - The service aims to conclude as many appeals as possible particularly phase transfer transitions. The service will be using phone, video and other technology

The national trial is continuing and the tribunal will be able to make non-binding recommendations on the health and social care aspects of EHC plans. These recommendations need to be considered in the usual way by the responsible health and social care bodies and, where agreed, included in the final EHC plan. The modified s42 duty will then apply. **The changes will temporarily modify current timescales for actions that local authorities and health commissioning bodies must take where the tribunal makes non-binding recommendations in respect of certain types of health and social care matters within an EHC plan.**

Annually publishing a response to comments on the SEND Local Offer - The Amendment Regulations also provide that local authorities can take more than a year to publish their response to comments (from those with SEND and their parents) on their SEND Local Offer if it is not reasonably practicable to meet that deadline for a reason relating to the incidence or transmission of coronavirus (COVID-19). Where such an exception does apply, the local authority must publish the comments as soon as reasonably practicable.



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Contact details for IAS Manchester

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