

Education, Health and Care Plans: Guidance on temporary legislative changes relating to Coronavirus (COVID-19)



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Department
for Education

André Imich, SEN and Disability Professional Adviser, DfE

Why temporary changes are needed

- The Government has legislated on SEND so as to strike the right balance during the outbreak of coronavirus (COVID-19) between:
 - the needs of children and young people with SEND to be protected and receive the right support in a timely way; and
 - managing the demands on local authorities (LAs) and health bodies to respond to the outbreak.



The guidance - target audience

- Parents, carers, young people, and parent carer forums;
- SEND Information Advice and Support Services (SENDIASS);
- Local authorities (LAs);
- Health commissioning bodies;
- Early years settings, schools, colleges and other education settings;
- Others who contribute advice and information to EHC needs assessments, such as educational psychologists and other health care professionals; and
- Mediation advisers.



Two changes to SEND legislation

1. Section 42 of the CFA 2014 (duty to secure special educational **provision** and health care **provision** in accordance with EHC plan): the duty on LAs or commissioning health bodies to secure or arrange the provision is temporarily modified to a duty to use 'reasonable endeavours' to do so.
2. The SEND (Coronavirus) (Amendment) Regulations 2020 amend Regs that specify **timescales** that principally relate to EHC needs assessments and plans. Where it is not reasonably practicable, or is impractical, to meet that time limit for a reason relating to the incidence or transmission of coronavirus, the specific time limit will not apply - process must be completed as soon as reasonably practicable.



Timing of changes

- Both sets of changes are effective from 1 May 2020.
- They cannot be applied retrospectively.
- The s42 modification must be renewed monthly, where the SoS decides it is still appropriate and proportionate.
- The timescale amendments are in place until 25 September 2020.



The guidance emphasises:

- Only some aspects of the law on EHC needs assessments and plans have changed temporarily.
- Duties in law over EHC needs assessments and plans have not been ‘turned off’ - all other aspects of SEND law remain in place.
- The ongoing importance of co-production with children and young people with SEND and their parents.
- The impact of coronavirus may mean that the process and provision in place previously may need to change for the time being.
- A heightened need for effective, timely communication between LAs, health commissioning bodies, families, and all others involved in EHC needs assessment processes and plans.



The importance of co-production

- Co-production, and effective communication, remain key at this challenging time, both at the strategic level and in relation to individual cases.
- Parent carer forums have an important role, working with LAs and health commissioning bodies, to gather and feed in parents' views on what can realistically be provided to children and young people when the usual ways of working are under such strain.



Reasonable endeavours

- LAs and health bodies must use their 'reasonable endeavours' to secure or arrange the provision in an EHC plan.
- LAs and health bodies must consider for each child and young person with an EHC plan what they need to provide during the notice period.
- For some, this will mean that the provision specified in their plan can continue to be delivered.
- For others, this may result in a child or young person's provision being different to that which is set out in their EHC plan, for some, or all, of the time that the notice is in force.



Reasonable endeavours – individually applied

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



Reasonable endeavours - decision-making

In deciding what provision must be secured or arranged in discharging its modified s42 duty, the LA and health commissioning body should consider:

- the specific local circumstances, e.g. workforce capacity and skills and that of others whose input is needed; temporary closures of education settings; guidance on measures to reduce the transmission of coronavirus;
- the needs of and specific circumstances affecting the child or young person; and
- the views of the child, young person and their parents over what provision might be appropriate.



Reasonable endeavours: alternative arrangements

Alternative arrangements will be dependent on:

- the needs of the child or young person,
- the provision that is specified in a plan, and
- the specific local circumstances.

Delivery is dependent on a range of factors, e.g.:

- the availability and capacity of specialist staff to deliver particular interventions,
- the extent of the arrangements schools can make to provide home learning programmes, and
- the availability of suitable IT equipment in the home.



Reasonable endeavours - a possible framework for considering provision

What?	Securing something different to the provision stated in the plan, e.g.. in relation to availability of staff, availability of technology and any significant risk that may cause harm
Where?	Location where provision is to be provided may be altered – early years setting, school, college, community setting, home, clinic
When?	Frequency and timing of provision may be altered or modified in the light of available staff and risks that may cause harm
How?	Method of delivery may be altered, e.g.. virtual rather than face-to-face and smaller rather than larger groups for teaching (in line with the guidance on reducing transmission of coronavirus)
By Whom?	Changes to the person delivering the provision, e.g.. a learning assistant under virtual supervision rather than a specialist therapist or teacher

Reasonable endeavours - Examples of alternative arrangements

- Alterations to the frequency and timing of the delivery of provision in school, e.g. moving to a part-time timetable.
- A temporary placement in another school - mainstream or special, with the agreement of the parent or young person.
- Attendance at a local hub.
- Video class sessions for children to keep in touch with classmates and teaching staff.
- Home learning reading programme, provided by SENCo, reviewed weekly.
- EPs providing brief therapy interventions.
- Specialist SEN Teachers providing advice and support to parents re autism, visual or hearing impairment or literacy.
- A SaLT delivering sessions via video link.
- An OT video linking to a child's home and modelling exercises that the parents could do with their child.



Record-keeping and communication

The LA and health commissioning body should:

- keep a record of the provision it decides it must secure or arrange;
- confirm to the parents or young person what it has decided to do, and explain why the provision differs from that in the plan for the time being;
- keep under review whether the provision it is securing or arranging means that it is still complying with the reasonable endeavours duty, and takes account of the changing circumstances for the child, and for services.



Timescales for EHC needs assessments and plans

- The law is changed **only** where, in a particular case, it is not reasonably practicable, or it is impractical, for a LA, health commissioning body or other body to discharge its duties for a reason relating to coronavirus;
- The modification is to the timing **only**. Where it is not reasonably practicable or impractical to conclude an action within the statutory timescale – e.g.. 6 weeks for a decision whether to make an EHC needs assessment - for a reason relating to the incidence or transmission of coronavirus (COVID-19), the LA 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 any of the regulations being amended.



Timescales for EHC needs assessments and plans – key areas affected

- Handling of requests for EHC needs assessments;
- Decisions whether to issue plans;
- The preparation and issue of plans;
- Annual reviews of plans;
- The processes relating to mediation;
- The process for a LA reviewing for the first time the making and use of direct payments from a Personal Budget that is part of an EHC plan; and
- The timing of actions that the LA and health commissioning body must take when the First-tier Tribunal makes non-binding recommendations in respect of health and social care matters within an EHC plan.



Implications for assessments and making of EHC plans

- Each case needs to be determined based on its own circumstances - there is no blanket lifting of the timescale requirements.
- LAs and health bodies cannot make blanket policies, such as “We are unable to provide EP or SaLT advice in 6 weeks”.
- Where there is a delay due to reasons related to coronavirus, LAs and health bodies must complete the action as soon as is practicable.
- Decisions, including those over the content of an 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.



Delays: Follow the Code of Practice

LA must continue to have regard to the SEND Code of Practice (9:43):

- *The child's parent or the young person should be informed if exemptions apply.*
- *LAs should aim to keep delays to a minimum and as soon as the conditions that led to an exemption no longer apply the LA should endeavour to complete the process as quickly as possible.*
- *All remaining elements of the process must be completed within their prescribed periods, regardless of whether exemptions have delayed earlier elements.*

Where the circumstances relating to coronavirus set out in the Amendment Regulations apply to more than one process, then an exception may apply to each of these processes.



Annual reviews of EHC plans

- Annual review requirements remain in place.
- 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.
- Where it is impractical for a LA to complete an annual review of a plan within the prescribed timescales for a reason relating to coronavirus, then the LA must complete it as soon as reasonably practicable.
- Annual review meetings may need to take a different form.
- 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.



Priorities for review

- LAs should identify priorities for review, which may include:
 - children and young people with significant changes of need or circumstance;
 - looked after children;
 - children and young people in residential provision; and
 - children and young people in out of area provision, especially independent and non-maintained provision.
- LAs must already have completed this year's required transfer reviews for a child or young person moving between key phases of education. 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 years setting, 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 – child or young person must be placed on the roll and treated similarly to other pupils or students in the setting.
- LAs 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.
- LA and health must make reasonable endeavours to secure the provision in the EHC plan.



Timescale for education settings to respond to a proposal to name them in an EHC plan: no change

- The expectation that early years settings, schools, and colleges have up to 15 days to respond to a proposal to name their institution in an EHC plan remains in place, and settings should be able to engage effectively in this aspect of the process.
- LA must send the proposed setting the draft plan and all advice and information received, which includes information about the individual's needs, provision and outcomes. The proposed setting can also make direct contact with the family.
- Communication during this part of the process is key to effective decision-making. We recommend that in parallel with sending the proposal to the setting, the LA also makes phone contact.
- Where the setting expects a possible delay in responding, it needs to communicate with the LA early.



Complaints and rights of appeal of parents and young persons: no change

- No new complaints systems or processes.
- It is particularly important that there are effective ways of resolving disagreements about how a LA or health body have discharged their modified s42 duty, or about timeliness.
- In the first instance, families will be able to use the LA's or health commissioning body's complaints procedures. LAs and health commissioning bodies need to ensure that these procedures remain effective for the current context.
- SENDIASS will continue to have a key role to play in supporting families in finding the best way forward.



Annually publishing a response to comments on the Local Offer

- The changes to the Regulations provide that LAs can take more than a year to publish their response to comments on their Local Offer, if it is not reasonably practicable to meet that deadline for a reason relating to coronavirus.
- Where such an exception does apply, the LA must publish the comments as soon as reasonably practicable.



Further Coronavirus (COVID-19) publications

- [EHC needs assessments and plans: guidance on temporary legislative changes relating to coronavirus \(COVID-19\)](#)
- [Coronavirus \(COVID-19\): guidance on vulnerable children and young people](#)
- [Coronavirus \(COVID-19\): SEND risk assessment guidance](#)
- [Coronavirus \(COVID-19\): guidance on isolation for residential educational settings](#)
- [COVID-19 guidance for educational settings](#)
- [Coronavirus \(COVID 19\): list of online education resources for home education](#)
- [Coronavirus \(COVID-19\): guidance for children's social care services](#)



Final tips

- Read the guidance
- Brief all SEND staff and other front line SEND staff
- Publish information on the local offer – co-produce with PCF
- Avoid blanket policies
- Keep records about decisions
- Keep in touch with parents and young people
- Keep in touch with schools and colleges
- Support preparation for September transfers
- Keep creating solutions - “Necessity is the mother of invention”.

