

Temporary Changes to SEND Legislation

Coronavirus (Covid-19) has had a major impact on the workload of healthcare professionals, local authorities, education settings, and other professional bodies.

As a result, the government has introduced new guidance on ***temporary** changes to some SEND duties and timescales.

(*see below regarding the scheduled timescales)

Summary of changes

There are two temporary changes to the SEND legislation.

1. The duty to secure special educational provision and health care provision in accordance with an EHC plan (section 42 of the Children and Families Act 2014) is replaced by a duty to use 'reasonable endeavours' to do so.

What this means:

Before Covid-19, there was an absolute duty on local authorities to on the provision in section F of any EHC plan. Now, there is no obligation, but the local authority (LA) must use all reasonable endeavours to deliver the provision in section F.

This means that if the provision is not in place, and the LA or health commissioning body can show they used their reasonable endeavours to try and put it in place, they would not necessarily be breaching the law.

This change is effective from 1 May 2020 to 20 June 2020 (extended from 31 May 2020).

What this does not mean:

This does not mean the LA can pause, delay or stop the provision in section F of any EHC plan due to Covid-19.

2. Timescales in relation to processes for EHC assessments and plans have been changed so that where it has not been reasonably practicable to meet a time limit due to Covid-19, the specific time limit will not apply but the process must be completed as soon as reasonably practicable.

What this means:

The new guidance around the process of EHC needs assessments and EHC plans means the actual process still has to happen, but the LA has to complete them as soon as they practically can.

For example, instead of being able to provide any EHC needs assessment decision in six weeks, this may take within eight or ten weeks. Parents/carers must be kept informed at all times.

This change is effective from 1 May to 25 September 2020.

What this does not mean:

This does not mean the LA can pause, delay or stop processes relating to EHC needs assessments and EHC plans due to Covid-19.

The full [guidance on temporary legal changes to EHC needs assessments and plans](#) is available on GOV.UK.

Key messages from the guidance

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.

A heightened need for effective, timely communication between LAs, health commissioning bodies, families, and all others involved in EHC needs assessment processes and plans.

LAs and health commissioning bodies must not apply blanket policies about the provision to be secured or arranged.

The ongoing importance of co-production with children and young people with SEND and their parents.

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.

Conclusion

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.*

Answers and Questions

What is the reason for these changes?

Covid-19 has had a major impact on the workload of healthcare professionals, local authorities, education settings, and other professional bodies. Because of this, the government is legislating so that there is a balance during the Covid-19 situation between children and young people with SEND and the demands on services.

What are 'reasonable endeavours'?

The guidance does not define 'reasonable endeavours' but in general, this means that during the notice period (currently 1 – 20 June 2020) the LA needs to do whatever it reasonably can to put provision in place.

This includes considering alternative arrangements and thinking creatively of ways to secure the provision in the current climate.

They must consider this for each child or young person with an EHCP and not say it's the same rules for all children (blanket policy).

What are some examples of alternative arrangements?

Here are a few examples from the government guidance of alternative arrangements:

- Changing how often and when provision is delivered in school, e.g. moving to a part-time timetable.
- Arranging a temporary placement in another school, mainstream or special, with the agreement of the parent or young person.
- 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.

Which EHCP timeframes have been affected by the changes?

Below are the instances where statutory timeframes are affected.

- the six weeks to assess for an EHC needs assessment
- the 10 weeks following on from that if local authorities were going to assess
- to issue a decision whether or not to assess
- the issuing of draft EHC plans
- issuing of finally EHC plans
- children transferring between local authorities
- annual review decisions within four weeks

The modification is to the timing only.

What hasn't changed?

Apart from the changes mentioned, the rest of SEND legislation has not changed.

The guidance also confirms which key elements of the processes over EHC needs assessments and plans are unchanged.

This includes that a local authority:

- must still consider requests for a new EHC needs assessment
- must still secure all of the required advice and information in order to be able to issue a plan
- must listen to the views and wishes of a child, the child's parent or a young person when carrying out its SEND functions under the Children and Families Act 2014

If my child has an EHC plan, does the LA have a legal duty to deliver that provision?

Yes. The LA must use reasonable endeavours depending on the circumstances of the child and what is stated in the EHCP.

However, given the likely significant disruption to staffing, it may be very difficult for schools or the LA to deliver precisely the provision in the EHC plan.

Does the LA still need to carry out EHC needs assessments?

Yes. However, the deadlines which previously applied to LAs when considering EHC needs assessment requests have been relaxed and they need to complete this process as soon as reasonably practical in the current climate.

Importantly, the change on timeframes only apply for the notice period (1-31 May 2020) they do **not** apply where the deadline had already passed before 1 May 2020.

Can the LA choose ignore timeframes?

No. The timeframes are only modified – the local authority must be able to show that it is not possible to meet the specific timeframe because:

- It has not reasonably practicable/impractical to meet the timeframes
- The reason it is not reasonably practical/impractical is because of incidence or transmission of Coronavirus

If they cannot prove both issues, then they will need to meet the specified timeframes as normal.

Even if they can show this, they will still need to complete the process as soon as they can.

Will annual reviews still need to be carried out?

Yes. Annual reviews can go ahead as planned, but this may be done in a different way for example by phone or video call, or justifiably delayed.

The reason for any delay on annual reviews must be “*relating to the incidence or transmission of coronavirus (COVID-19)*”.

If you feel there is an urgent need to amend the provision or placement in the child or young person's EHC plan, speak to the school and the LA about this to see what review mechanisms could be put in place.

What if my child is moving to a new education setting?

If your child is moving to a new education setting, this should go ahead as planned. The new school will need to complete a new risk assessment to see if it's safer for your child to be educated at home during the crisis. You should be involved in the decision making.

An early years setting, school, college or other setting named in an EHC plan must admit the child or young person.

Will SEND Tribunal appeals continue?

Complaints and rights of appeal of parents and young persons to tribunal or mediation aren't affected.

How long will these changes be in place?

Both sets of changes were effective from 1 May 2020.

The modification to section 42 will be renewed by the government monthly to make sure it is still appropriate.

The timescale amendments are in place until 25 September 2020.

Visit [Gov.uk](https://www.gov.uk) for the full guidance on temporary legal changes to EHC needs assessments and plans