



Coronavirus Act 2020, Children's Health & Social Care, SEN & EHCPs | An Update 19 May 2020

Welcome



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The Coronavirus Act 2020 – Recap...

- Unprecedented times, unprecedented measures.
- What does it impact?
 - Hospital discharge process.
 - NHS Continuing Healthcare & NHS Funded Care for Adults.
 - Local Authority funded care/Social Care for Adults.
 - **Special Educational Needs provision and EHCPs – these changes are now in force.**
 - Mental health but changes not yet in force.
 - Mental capacity and best interests decision-making.
- Note, despite the fact the Coronavirus Act 2020 & Regulations do not make specific provision for changes to children's social care, **updated new guidance has been published in respect of Children's social care provision***

*Note: updated guidance amends the guidance flagged in previous webinar.

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- Changes to special educational needs provision and EHCPs under the Children & Families Act 2014 (CFA 2014) are now effective. The Secretary of State has issued the required 'Notice' to trigger these changes.
- Effective? From 1 May 2020 until 25 September 2020. The effectiveness of the Regulations has to be reviewed during this period.
- Key change: Essentially, the 'Notice' modifies the absolute duty to secure SEN (Section 42 CFA 2014) to a duty of 'reasonable endeavours'.
- Practical effect(s) or implication?(s)
 - A downgrading or watering down of a Local Authority's absolute duty to provide SEN provision as specified in a child or YP's EHCP.

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- Practical implications?
 - A downgrading or watering down of a Local Authority's absolute duty to provide SEN provision as specified in a child or YP's EHCP.
 - Instead, absolute duty becomes one of 'reasonable endeavours'.
 - Modification to timings.
 - There is a significant relaxation of the deadlines for various aspects of the EHCP process during the period in which these changes are in force. Local Authority can therefore delay when ordinarily delay would not be acceptable.

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- Reasons?
- According to the 'Notice' the Secretary of State says it is appropriate and proportionate to introduce the change because:
 - Local authorities have reduced staff resources.
 - Many children and YP with EHCPs are being educated at home.
 - Education is probably disrupted.
 - Some CCGs (health bodies) have had to redeploy staff to reprioritise services.

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- Reasons?
- According to the 'Notice' the Secretary of State goes further to state there are no alternatives to issuing the 'Notice' because:
 - May not be sufficient specialist staff to deliver all provision remotely.
 - Some provision may not be possible to deliver remotely using video calling technology.
 - *'Even if a remote equivalent were to be provided for each aspect of provision specified in a plan, this would not constitute securing the provision as specified'.*

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- Reasons?
- According to the 'Notice' the Secretary of State believes the modifications are proportionate essentially because it is said they allow Local Authorities and CCGs (health bodies) to adapt to the changing situation and needs of their local area.
- Guidance explains the changes in more detail.

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- The Guidance: [Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to Coronavirus \(COVID-19\) 30 April 2020](#)
- According to the Guidance, Local Authorities should consider:
 - The specific local circumstances.
 - The needs and specific circumstances affecting the child or YP.
 - The views of the child, YP and their parents regarding what provision might be appropriate.

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- The Guidance
- There is a framework for 'reasonable endeavours':
 - What? Differences in the provision stated in the plan.
 - Where? Location where provision is to be provided may be altered.
 - How? Frequency and timing of provision may be altered or modified.
 - When? Method of delivery may be altered, such as to employ video technology.
 - By whom? Changes to the person delivering the provision.

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- The Guidance
- Modifications to timescales.
- 'Coronavirus exception'.
- According to the 'Coronavirus exception' where it is not 'reasonably practicable' for a Local Authority to meet a requirement for a reason relating to the incidence or transmission of coronavirus, any action to be taken within a specified period of time or by a certain day is to be read instead as a requirement for such action to be taken as soon as 'reasonably practicable'.

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- The Guidance
- Modifications to timescales – key changes:
 - The determination of requests for EHC needs assessments, decisions whether to issue EHCPs and preparation and issue of plans.
 - Annual reviews of EHCPs.
 - Processes relating to mediation.
 - Actions that a Local Authority and CCG must take when the Tribunal makes non-binding recommendations under the National Trial.

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- The Guidance
- Modifications to timescales.
- Example: Previously where a Local Authority decided it is necessary to issue an EHCP following an EHC needs assessment, it must do so as soon as practicable but in any event within 20 weeks of the initial request.
- Now, if the incidence or transmission of COVID-19 makes this impractical (i.e. to meet the 20 week deadline), it must discharge its duty 'as soon as practicable'.

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- What has not changed?
- The substantive requirements relating to assessing needs & issuing EHCPs have not changed.
- You must still be given at least 15 calendar days to give your views and make representations on the content of a draft EHCP.
- Rights of appeal to the SEND Tribunal remain unaffected albeit the Tribunal has temporarily moved to fully digital working.
- Requirement to conduct EHCP annual reviews – this may change in the future.
- Duty on education settings to admit a child or YP remains.
- Timescale for education settings to respond to a proposal to name them in a plan.

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- Key message: *Do not panic!*
- A Local Authority will not be able to wash its hands of your child or YP!
- In practical terms, these changes mean that until the Notice expires, a Local Authority does not have an absolute duty to provide Section F (SEN provision) to meet the specified Section B (SEN needs) of a child or YP. Instead, it is a duty of 'reasonable endeavours'.
- Guidance states: *"It is only some aspects of the law on EHC needs assessments and plans that have changed temporarily [...] the duties in law over EHC needs assessments and plans have not been turned off"*.
- Creative thinking is needed. For example, if speech and language therapy is required to meet communication needs, it may be that rather than this being provided for at school, it is delivered by skype, zoom, or through collaboration with parents.

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- The Guidance provides a non-exhaustive list of possible 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 Co-ordinator (SENCo) and reviewed weekly*

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- The Guidance provides a non-exhaustive list of possible alternative arrangements
 - *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*

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- The Guidance provides a non-exhaustive list of possible alternative arrangements
 - *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*

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- The Guidance provides a non-exhaustive list of possible alternative arrangements
 - *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*

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- Children's social care duties have not changed.
- [Coronavirus \(COVID-19\): guidance for children's social care services \(updated 6 May 2020\)](#) provides practical guidance for social workers with regard to how to meet needs within the constraints of the pandemic.
- Guidance clearly states: *"The duties to our most vulnerable children that are set out in primary legislation [...] remain in place but we recognise that we are operating in a challenging context"*.
- In addition, *"It is, [...] especially important that these children [vulnerable children] continue to receive the services and support they need, although the way in which this is delivered may need to change and adapt to reflect the current circumstances"*.

Further Questions?

If you have any questions or concerns, please email Patsy: patsy@thedcf.org.

Depending on the number of queries received, a follow up Q&A webinar will be held.

In the meantime, stay safe.

Thank you for listening.