

Changes to the law on SEND - update

All content is accurate as of Monday 4th May 2020.

The Secretary of State has taken emergency powers in the Coronavirus Act 2020 to allow him to issue notices which disapply or modify current legislation in relation to schools and the EHCP process.



2 Disapplication Notices have been issued in relation to the following;

- **School attendance** – parents cannot be prosecuted for their child's/children's non-school attendance during the period specified in the notice
- **School inspections** – temporarily suspends OFSTED routine inspections and the duty on governing bodies/proprietors of academies to arrange inspections in relation to schools designated as having a religious character and disapplies requirements for Local Authorities to produce a statement of action

2 modification notices have been issued in relation to the following;

- **School registration** – modifies pupil registration so a person is not to be treated as a pupil at a school merely because education is provided for them at the school on a temporary basis and so the child is not to be registered as a pupil at the host school
- **EHC plans legislation** – modifies the duty on Local Authorities to secure special educational provision to one of 'reasonable endeavours'.

The disapplication and modification notices last for a month because that is all the Secretary of State is allowed to issue them for. They MUST be reviewed and re-issued if necessary, or expire at the end of that month. That's why all of the notices are 1st-31st May.

The government has also issued The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 to temporarily amend the timescales for EHC assessments and plans. The amendments come into force on 1st May 2020 and are due to expire on 25th September 2020. These regulations make temporary changes to the following existing regulations;

- The Special Educational Needs and Disability Regulations 2014 (S.I. 2014/1530)
- The Special Educational Needs (Personal Budgets) Regulations 2014 (S.I. 2014/1652)
- The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (S.I. 2015/62)
- The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 (S.I. 2017/1306)

Annex A of 'Changes to the law on education, health and care needs assessments and plans due to coronavirus' details specific amendments under each regulation.

<https://www.gov.uk/government/publications/changes-to-the-law-on-education-health-and-care-needs-assessments-and-plans-due-to-coronavirus/annex-a-details-of-the-amendments-to-the-existing-regulations>

The full DfE guidance is available here:

[Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to coronavirus \(COVID-19\)](#)

Key summary:

Was	Now	Notes for good practice
'best endeavours'	'reasonable endeavours'	Good practice to document why best endeavours can't be met.
6 weeks to determine whether to assess (Regulation 4 and 5)	"The local authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus."	Document why it is impractical to do so.
Conducting Annual Reviews	<p>Amendment of the Special Educational Needs and Disability Regulations 2014</p> <p>11. After regulation 18 (circumstances in which a local authority must review an EHC plan) insert— "Circumstances in which it is not necessary to review an EHC plan</p> <p>18A.—(1) It is not necessary for a local authority to review an EHC plan in accordance with section 44(1) of the Act if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus. (2) Where paragraph (1) applies, a local authority must instead conduct such reviews as soon as reasonably practicable."</p>	<p>SENCOs will need to consider each AR that is due on a case by case basis and if it is impractical to review because of an incidence or transmissions of coronavirus then it must be completed as soon as reasonably practical.</p> <p>Document what alternative options have been considered, i.e. could a review be done remotely, via papers etc? If not, we need clear evidence and reasoning why this is not possible and we need to link it to the incidence or transmission of COVID-19.</p> <p>Examples in the guidance include using a simpler format to gather information electronically and holding meetings by phone or virtually.</p>
Direct payments to be reviewed within three months.	Where there is incidence of coronavirus a review is to take place as soon as reasonably practicable	Clearly document why a review is unable to take place.
Detained persons.	<p>Amendments for detained persons are available</p>  <p>Practical Law - detained persons.pdf</p>	
Timescales	Any requirement in any of the regulations specified in paragraph (3) for 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.	Clearly document why timescales will not be met due to incidence or transmission of COVID-19.