



# Children and Families Act 2014

## 2014 CHAPTER 6

### PART 3

#### CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS OR DISABILITIES

##### *Education, health and care plans*

#### **37 Education, health and care plans**

- (1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—
  - (a) the local authority must secure that an EHC plan is prepared for the child or young person, and
  - (b) once an EHC plan has been prepared, it must maintain the plan.
- (2) For the purposes of this Part, an EHC plan is a plan specifying—
  - (a) the child's or young person's special educational needs;
  - (b) the outcomes sought for him or her;
  - (c) the special educational provision required by him or her;
  - (d) any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;
  - (e) in the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (as it applies by virtue of section 28A of that Act);
  - (f) any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs, to the extent that the provision is not already specified in the plan under paragraph (e).
- (3) An EHC plan may also specify other health care and social care provision reasonably required by the child or young person.

- (4) Regulations may make provision about the preparation, content, maintenance, amendment and disclosure of EHC plans.
- (5) Regulations under subsection (4) about amendments of EHC plans must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended under those regulations.

### **38 Preparation of EHC plans: draft plan**

- (1) Where a local authority is required to secure that an EHC plan is prepared for a child or young person, it must consult the child's parent or the young person about the content of the plan during the preparation of a draft of the plan.
- (2) The local authority must then—
  - (a) send the draft plan to the child's parent or the young person, and
  - (b) give the parent or young person notice of his or her right to—
    - (i) make representations about the content of the draft plan, and
    - (ii) request the authority to secure that a particular school or other institution within subsection (3) is named in the plan.
- (3) A school or other institution is within this subsection if it is—
  - (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an Academy;
  - (d) an institution within the further education sector in England;
  - (e) a non-maintained special school;
  - (f) an institution approved by the Secretary of State under section 41 (independent special schools and special post-16 institutions: approval).
- (4) A notice under subsection (2)(b) must specify a period before the end of which any representations or requests must be made.
- (5) The draft EHC plan sent to the child's parent or the young person must not—
  - (a) name a school or other institution, or
  - (b) specify a type of school or other institution.

### **39 Finalising EHC plans: request for particular school or other institution**

- (1) This section applies where, before the end of the period specified in a notice under section 38(2)(b), a request is made to a local authority to secure that a particular school or other institution is named in an EHC plan.
- (2) The local authority must consult—
  - (a) the governing body, proprietor or principal of the school or other institution,
  - (b) the governing body, proprietor or principal of any other school or other institution the authority is considering having named in the plan, and
  - (c) if a school or other institution is within paragraph (a) or (b) and is maintained by another local authority, that authority.
- (3) The local authority must secure that the EHC plan names the school or other institution specified in the request, unless subsection (4) applies.

- (4) This subsection applies where—
- (a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or
  - (b) the attendance of the child or young person at the requested school or other institution would be incompatible with—
    - (i) the provision of efficient education for others, or
    - (ii) the efficient use of resources.
- (5) Where subsection (4) applies, the local authority must secure that the plan—
- (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person, or
  - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.
- (6) Before securing that the plan names a school or other institution under subsection (5) (a), the local authority must (if it has not already done so) consult—
- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
  - (b) if that school or other institution is maintained by another local authority, that authority.
- (7) The local authority must, at the end of the period specified in the notice under section 38(2)(b), secure that any changes it thinks necessary are made to the draft EHC plan.
- (8) The local authority must send a copy of the finalised EHC plan to—
- (a) the child's parent or the young person, and
  - (b) the governing body, proprietor or principal of any school or other institution named in the plan.

#### **40 Finalising EHC plans: no request for particular school or other institution**

- (1) This section applies where no request is made to a local authority before the end of the period specified in a notice under section 38(2)(b) to secure that a particular school or other institution is named in an EHC plan.
- (2) The local authority must secure that the plan—
- (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person concerned, or
  - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.
- (3) Before securing that the plan names a school or other institution under subsection (2) (a), the local authority must consult—
- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
  - (b) if that school or other institution is maintained by another local authority, that authority.
- (4) The local authority must also secure that any changes it thinks necessary are made to the draft EHC plan.

- (5) The local authority must send a copy of the finalised EHC plan to—
- (a) the child's parent or the young person, and
  - (b) the governing body, proprietor or principal of any school or other institution named in the plan.

#### **41 Independent special schools and special post-16 institutions: approval**

- (1) The Secretary of State may approve an institution within subsection (2) for the purpose of enabling the institution to be the subject of a request for it to be named in an EHC plan.
- (2) An institution is within this subsection if it is—
- (a) an independent educational institution (within the meaning of Chapter 1 of Part 4 of ESA 2008)—
    - (i) which has been entered on the register of independent educational institutions in England (kept under section 95 of that Act), and
    - (ii) which is specially organised to make special educational provision for students with special educational needs,
  - (b) an independent school—
    - (i) which has been entered on the register of independent schools in Wales (kept under section 158 of the Education Act 2002), and
    - (ii) which is specially organised to make special educational provision for pupils with special educational needs, or
  - (c) a special post-16 institution which is not an institution within the further education sector or a 16 to 19 Academy.
- (3) The Secretary of State may approve an institution under subsection (1) only if its proprietor consents.
- (4) The Secretary of State may withdraw approval given under subsection (1).
- (5) Regulations may make provision about giving and withdrawing approval under this section, in particular—
- (a) about the types of special post-16 institutions which may be approved under subsection (1);
  - (b) specifying criteria which an institution must meet before it can be approved under subsection (1);
  - (c) about the matters which may or must be taken into account in deciding to give or withdraw approval;
  - (d) about the publication of a list of all institutions who are approved under this section.

#### **42 Duty to secure special educational provision and health care provision in accordance with EHC Plan**

- (1) This section applies where a local authority maintains an EHC plan for a child or young person.
- (2) The local authority must secure the specified special educational provision for the child or young person.

- (3) If the plan specifies health care provision, the responsible commissioning body must arrange the specified health care provision for the child or young person.
- (4) “The responsible commissioning body”, in relation to any specified health care provision, means the body (or each body) that is under a duty to arrange health care provision of that kind in respect of the child or young person.
- (5) Subsections (2) and (3) do not apply if the child’s parent or the young person has made suitable alternative arrangements.
- (6) “Specified”, in relation to an EHC plan, means specified in the plan.

#### **43 Schools and other institutions named in EHC plan: duty to admit**

- (1) Subsection (2) applies if one of the following is named in an EHC plan—
  - (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an Academy;
  - (d) an institution within the further education sector in England;
  - (e) a non-maintained special school;
  - (f) an institution approved by the Secretary of State under section 41.
- (2) The governing body, proprietor or principal of the school or other institution must admit the child or young person for whom the plan is maintained.
- (3) Subsection (2) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of SSFA 1998.
- (4) Subsection (2) does not affect any power to exclude a pupil or student from a school or other institution.

#### **44 Reviews and re-assessments**

- (1) A local authority must review an EHC plan that it maintains—
  - (a) in the period of 12 months starting with the date on which the plan was first made, and
  - (b) in each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section.
- (2) A local authority must secure a re-assessment of the educational, health care and social care needs of a child or young person for whom it maintains an EHC plan if a request is made to it by—
  - (a) the child’s parent or the young person, or
  - (b) the governing body, proprietor or principal of the school, post-16 institution or other institution which the child or young person attends.
- (3) A local authority may also secure a re-assessment of those needs at any other time if it thinks it necessary.
- (4) Subsections (1) and (2) are subject to any contrary provision in regulations made under subsection (7)(b).

- (5) In reviewing an EHC plan maintained for a young person aged over 18, or deciding whether to secure a re-assessment of the needs of such a young person, a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved.
- (6) During a review or re-assessment, a local authority must consult the parent of the child, or the young person, for whom it maintains the EHC plan.
- (7) Regulations may make provision about reviews and re-assessments, in particular—
  - (a) about other circumstances in which a local authority must or may review an EHC plan or secure a re-assessment (including before the end of a specified phase of a child's or young person's education);
  - (b) about circumstances in which it is not necessary for a local authority to review an EHC plan or secure a re-assessment;
  - (c) about amending or replacing an EHC plan following a review or re-assessment.
- (8) Regulations under subsection (7) about re-assessments may in particular apply provisions of or made under this Part that are applicable to EHC needs assessments, with or without modifications.
- (9) Regulations under subsection (7)(c) must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended following a review.

#### **45 Ceasing to maintain an EHC plan**

- (1) A local authority may cease to maintain an EHC plan for a child or young person only if—
  - (a) the authority is no longer responsible for the child or young person, or
  - (b) the authority determines that it is no longer necessary for the plan to be maintained.
- (2) The circumstances in which it is no longer necessary for an EHC plan to be maintained for a child or young person include where the child or young person no longer requires the special educational provision specified in the plan.
- (3) When determining whether a young person aged over 18 no longer requires the special educational provision specified in his or her EHC plan, a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved.
- (4) A local authority may not cease to maintain an EHC plan for a child or young person until—
  - (a) after the end of the period allowed for bringing an appeal under section 51 against its decision to cease to maintain the plan, where no such appeal is brought before the end of that period;
  - (b) after the appeal has been finally determined, where such an appeal is brought before the end of that period.
- (5) Regulations may make provision about ceasing to maintain an EHC plan, in particular about—

- (a) other circumstances in which it is no longer necessary for an EHC plan to be maintained;
- (b) circumstances in which a local authority may not determine that it is no longer necessary for an EHC plan to be maintained;
- (c) the procedure to be followed by a local authority when determining whether to cease to maintain an EHC plan.

#### **46 Maintaining an EHC plan after young person's 25th birthday**

- (1) A local authority may continue to maintain an EHC plan for a young person until the end of the academic year during which the young person attains the age of 25.
- (2) “Academic year” means the period of twelve months ending on the prescribed date.

#### **47 Transfer of EHC plans**

- (1) Regulations may make provision for an EHC plan maintained for a child or young person by one local authority to be transferred to another local authority in England, where the other authority becomes responsible for the child or young person.
- (2) The regulations may in particular—
  - (a) impose a duty on the other authority to maintain the plan;
  - (b) treat the plan as if originally prepared by the other authority;
  - (c) treat things done by the transferring authority in relation to the plan as done by the other authority.

#### **48 Release of child or young person for whom EHC plan previously maintained**

- (1) This section applies where—
  - (a) a child or young person who has been subject to a detention order (within the meaning of section 562(1A)(a) of EA 1996) is released,
  - (b) on the release date, a local authority in England becomes responsible for him or her, and
  - (c) an EHC plan was—
    - (i) maintained for him or her immediately before the start of the detention, or
    - (ii) kept for him or her under section 74 during the detention.
- (2) The local authority must—
  - (a) maintain the plan, and
  - (b) review the plan as soon as reasonably practicable after the release date.
- (3) Subsection (2)(b) is subject to any contrary provision in regulations under section 44(7)(b).

#### **49 Personal budgets and direct payments**

- (1) A local authority that maintains an EHC plan, or is securing the preparation of an EHC plan, for a child or young person must prepare a personal budget for him or her if asked to do so by the child's parent or the young person.

- (2) The authority prepares a “personal budget” for the child or young person if it identifies an amount as available to secure particular provision that is specified, or proposed to be specified, in the EHC plan, with a view to the child’s parent or the young person being involved in securing the provision.
- (3) Regulations may make provision about personal budgets, in particular—
  - (a) about requests for personal budgets;
  - (b) about the amount of a personal budget;
  - (c) about the sources of the funds making up a personal budget;
  - (d) for payments (“direct payments”) representing all or part of a personal budget to be made to a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, in order to secure provision to which the budget relates;
  - (e) about the description of provision to which personal budgets and direct payments may (and may not) relate;
  - (f) for a personal budget or direct payment to cover the agreed cost of the provision to which the budget or payment relates;
  - (g) about when, how, to whom and on what conditions direct payments may (and may not) be made;
  - (h) about when direct payments may be required to be repaid and the recovery of unpaid sums;
  - (i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment;
  - (j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.
- (4) If the regulations include provision authorising direct payments, they must—
  - (a) require the consent of a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, to be obtained before direct payments are made;
  - (b) require the authority to stop making direct payments where the required consent is withdrawn.
- (5) Special educational provision acquired by means of a direct payment made by a local authority is to be treated as having been secured by the authority in pursuance of its duty under section 42(2), subject to any prescribed conditions or exceptions.
- (6) Subsection (7) applies if—
  - (a) an EHC plan is maintained for a child or young person, and
  - (b) health care provision specified in the plan is acquired for him or her by means of a payment made by a commissioning body under section 12A(1) of the National Health Service Act 2006 (direct payments for health care).
- (7) The health care provision is to be treated as having been arranged by the commissioning body in pursuance of its duty under section 42(3) of this Act, subject to any prescribed conditions or exceptions.
- (8) “Commissioning body”, in relation to any specified health care provision, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person.



**50 Continuation of services under section 17 of the Children Act 1989**

After section 17 of the Children Act 1989 (provision of services for children etc) insert—

**“17ZG Section 17 services: continued provision where EHC plan maintained**

- (1) This section applies where, immediately before a child in need reaches the age of 18—
  - (a) a local authority in England is providing services for the child in the exercise of functions conferred by section 17, and
  - (b) an EHC plan is maintained for the child.
- (2) The local authority may continue to provide services for the child in the exercise of those functions after the child reaches the age of 18, but may not continue to do so after the EHC plan has ceased to be maintained.
- (3) In this section “EHC plan” means a plan within section 37(2) of the Children and Families Act 2014.”