

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 3 - children and young people in England with special Educational Needs OR DISABILITIES

Detained Persons

Section 70: Application of Part to detained persons

306. This section sets out which sections of this Part apply to those in custody, namely children and young people that are detained in pursuance of a court order or an order of recall made by the Secretary of State (*subsection (1)*).
307. *Subsection (3)* provides a power for regulations to apply any provision of this Part with or without modifications and *subsection (4)* places a duty on the Secretary of State to consult with the Welsh Ministers before making those regulations if they apply provision under the Part to those detained in Wales.
308. This section defines key terms such as “detained person” (a child or young person under 19 who is detained in a young offender institution, secure training centre or secure children’s home), “detained person’s EHC needs assessment” and “appropriate person”.
309. *Subsection (7)* provides a power for the Secretary of State to make regulations to modify the definition of “the home authority” which is set out in the Education Act 1996. This power might be required for instance where a detained person with an EHC plan is also a looked after child.

Section 71: Assessment of post-detention education, health and care needs of detained persons

310. This section mirrors section 36 and allows the detained young person or a detained child’s parent, or the person in charge of the secure accommodation to request an EHC needs assessment. It requires the home local authority to consider whether an assessment is necessary where such a request has been made or where someone else has brought the child or young person to the authority’s attention. This section sets out the local authority’s duties when making their decision about whether to carry out an assessment and in carrying out any subsequent assessment of the child or young person. In making a decision on whether an assessment is necessary, the local authority must consult with the child’s parents or the young person and the person in charge of the secure accommodation in which the child or young person is detained.
311. If the local authority decides not to carry out an assessment they must inform the child’s parents or the young person and the person in charge of the secure accommodation in which the child or young person is detained with their reasons for the decision. If they intend to carry out an education, health and care needs assessment they must inform the child’s parents or the young person and the person in charge of the secure

accommodation in which the child or young person is detained to make sure that they are aware of their rights to have their own views considered by the local authority (either orally or in writing).

312. The local authority must carry out an assessment if, after taking account of any views expressed and evidence submitted, it thinks that the child or young person has or may have special educational needs and that it may be necessary for special educational provision to be made for them through an EHC plan on their release from detention. The parent or young person and the person in charge of the secure accommodation in which the child or young person is detained should be informed of the outcome of the assessment and whether the local authority intends to prepare an EHC Plan.
313. Regulations may specify how assessments for EHC plans will apply in custody.

Section 72: Securing EHC plans for certain detained persons

314. This section places a duty on the detained person's home local authority to secure an EHC plan if the detained person's EHC needs assessment concludes that one is necessary. Sections 37(2) to (5), 33(2) to (7) and 38 to 40 will apply in relation to an EHC plan secured for a detained person as they would for a child or young person who is not detained.

Section 73: EHC plans for certain detained persons: appeals and mediation

315. This section provides a right of appeal for detained persons. It enables the parents of children and young people to appeal to the First Tier Tribunal about: a decision by their local authority not to secure an EHC needs assessment; a decision not to secure an EHC plan after an assessment; the school or institution named in the plan; or if no school or institution is named in the plan. Regulations may make provision about appeals made to the Tribunal under this section. Section 52(2) to (5) applies when a detained young person or the parent of a detained child appeals under this section.
316. This section also sets out that where the parent or young person wants to make an appeal to the Tribunal and wishes to pursue mediation, the local authority must arrange for mediation, ensure that the mediation is conducted by an independent person and participate in the mediation. If the mediation issues include education and/or social care then the local authority must arrange the mediation, ensure it is conducted by an independent person and the local authority. An independent person, in this context, is someone who is not employed by a local authority in England or a clinical commissioning group or the National Health Service Commissioning Board.

Section 74: Duty to keep EHC plans for detained persons.

317. This section requires home local authorities to keep an EHC plan for a young person while they are detained in relevant youth accommodation. The local authority must arrange appropriate special educational provision and the health services commissioner appropriate health care provision. This is the provision specified in the EHC plan. If it is not practicable to arrange this provision, provision which corresponds as closely as possible to that in the EHC plan must be arranged. Where the provision specified in the EHC plan is no longer appropriate, provision must be arranged which reasonably appears to be appropriate.

Section 75: Supply of goods and services: detained persons

318. This section allows local authorities in England to supply goods and services to any other authority or person making special educational provision for a detained person. This is to help the local authority meet their duties under section 70. The local authority may set the terms and conditions for the supply of the goods and services.