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STATUTORY INSTRUMENTS

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**2014 No. 2270**

**EDUCATION, ENGLAND**

**The Children and Families Act 2014 (Transitional  
and Saving Provisions) (No. 2) Order 2014**

*Made* - - - - *26th August 2014*

*Coming into force* - - *1st September 2014*

The Secretary of State, in exercise of the powers conferred by section 137(1) of the Children and Families Act 2014<sup>(1)</sup>, makes the following Order:

**PART 1**

**Preliminary**

**Citation and commencement**

**1.**—(1) This Order may be cited as The Children and Families Act 2014 (Transitional and Saving Provisions) (No. 2) Order 2014.

(2) This Order comes into force on 1st September 2014.

**Interpretation**

**2.**—(1) In this Order—

“the 2001 Regulations” means the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001<sup>(2)</sup>;

“the 2014 Act” means the Children and Families Act 2014;

“the commencement date” means 1st September 2014;

“compulsory school age” has the same meaning as in section 8 of EA 1996;

“infant school” means a primary school which provides education for children who are of compulsory school age but have not attained the age of eight, even though it may also provide education for children below compulsory school age;

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(1) 2014 c. 6.

(2) S.I. 2001/3455.

“junior school” means a primary school which provides education for children who are of compulsory school age and who have attained the age of eight;

“statement” means a statement of special educational needs made and maintained under section 324 or 331 of EA 1996;

“the SEND Regulations 2014” means the Special Educational Needs and Disability Regulations 2014<sup>(3)</sup>;

“special school” has the same meaning as in section 6(2) of EA 1996;

“year 6” means a year group in which the majority of children will, in the school year, attain the age of 11;

“year 9” means a year group in which the majority of children will, in the school year, attain the age of 14;

“year 10” means a year group in which the majority of children will, in the school year, attain the age of 15.

(2) References in this Order to “the old law” are to the following as they had effect in relation to England immediately before the commencement date—

- (a) Chapter 1 of Part 4 and Chapter 5A of Part 10 of EA 1996,
- (b) regulations made under either of those Chapters (or section 569 of that Act so far as it had effect in relation to that Chapter), and
- (c) any other provision of or made under an Act that, at that time, had effect for the purposes of or in relation to—
  - (i) a provision of either of those Chapters or such regulations, or
  - (ii) a person to whom either of those Chapters or such regulations applied.

(3) References in this Order to “the new law” are to—

- (a) Part 3 of the 2014 Act,
- (b) an order or regulations made under that Part (or section 135 of that Act so far as it has effect in relation to that Part), and
- (c) any other provision of or made under an Act<sup>(4)</sup> that has effect for the purposes of or in relation to—
  - (i) a provision of that Part or such an order or regulations, or
  - (ii) a person to whom that Part or such an order or regulations applies.

(4) For the purposes of this Order an appeal is finally determined if—

- (a) a decision is made by a tribunal or court on the appeal, and
- (b) if a request may be made to review the decision or it may be further appealed, the period (or each of the periods) for doing so expires without a review being requested or further appeal being brought.

(5) Expressions used in this Order which are defined for the purposes of Part 3 of the 2014 Act have the same meaning as in that Part.

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<sup>(3)</sup> S.I. 2014/1530.

<sup>(4)</sup> This includes the Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 S.I. 2014/2103.

## PART 2

### Assessment or statement declined before commencement

#### Assessment or statement declined before commencement

3.—(1) This Article applies if—

- (a) a request is made to a local authority under section 36(1) of the 2014 Act in respect of a child or young person, or
- (b) a local authority otherwise becomes responsible for a child or young person.

(2) The local authority does not need to comply with section 36(3) of the 2014 Act in respect of the child or young person if, within the period of six months ending with the date on which the request is made or the authority otherwise becomes responsible for him or her, a local authority has—

- (a) decided under section 329 or 329A of EA 1996 that it is not necessary to make an assessment (or further assessment) under section 323 of that Act in respect of the child or young person, or
- (b) decided not to make a statement of the special educational needs of the child or young person following an assessment under section 323 or 331 of that Act in respect of him or her.

## PART 3

### Children etc without statement on commencement: assessments in progress

#### Application of Part 3

4.—(1) This Part applies in relation to a child or young person in the area of a local authority in England if no statement was maintained for the child or young person under section 324 or 331 of EA 1996 immediately before the commencement date.

(2) This Part has effect despite the disapplication by section 81 of and Schedule 3 to the 2014 Act of Chapter 1 of Part 4 of EA 1996 in relation to children in the area of a local authority in England.

#### Consideration of whether to make assessment not completed before commencement date

5.—(1) This Article applies in relation to a child or young person to whom this Part applies if—

- (a) before the commencement date a local authority—
  - (i) served notice on the parent of the child or young person that it was considering whether to make an assessment of the educational needs of the child or young person under section 323 of EA 1996, or
  - (ii) was considering whether to make an assessment under section 331 of that Act, but
- (b) the authority did not complete that consideration before that date.

(2) The old law continues to have effect in relation to the child or young person until the relevant time.

(3) The new law does not have effect in relation to the child or young person until that time.

(4) The relevant time is—

- (a) where the local authority decides not to make an assessment, the time when the authority informs the parent of the child or young person of that fact;

- (b) where an assessment is made and the authority makes a statement as a result of the assessment, the time when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
- (c) where an assessment is made, the authority decides not to make a statement as a result of the assessment and no appeal under section 325 of EA 1996 is brought against that decision within the period allowed for bringing such appeals, the end of that period;
- (d) where an assessment is made, the authority decides not to make a statement as a result of the assessment and such an appeal is brought within that period—
  - (i) if the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
  - (ii) if, on the final determination of the appeal, it is dismissed, when it is dismissed;
  - (iii) if, on the final determination of the appeal, the local authority is ordered to make and maintain a statement, when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
  - (iv) if, on the final determination of the appeal, the local authority is ordered to reconsider whether it is necessary for the authority to determine the special educational provision which any learning difficulty the child or young person may have calls for, the time found by applying this paragraph following the reconsideration.
- (5) The following provisions of this Article apply in place of paragraphs (2) to (4) if—
  - (a) the local authority notifies the child’s parent or the young person that it proposes to determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan, and
  - (b) the child’s parent or the young person gives his or her consent to that course of action.
- (6) The consideration is to be treated for all purposes as consideration for the purpose of determining whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (7) Anything done in relation to the consideration is to be treated as having been done under Part 3 of the 2014 Act and the SEND Regulations 2014 (and the local authority need not have complied with section 36(4) of that Act).
- (8) Regulation 5 of the SEND Regulations 2014 has effect as if paragraph (1) of that regulation required the local authority to notify the child’s parent or the young person of its decision whether it is necessary to secure an EHC needs assessment for the child or young person as soon as is practicable and in any event within the period of 6 weeks beginning with the day on which the child’s parent or the young person gave his or her consent under paragraph (5)(b).

#### **Request for assessment not determined before commencement date**

- 6.—**(1) This Article applies in relation to a child or young person to whom this Part applies if, before the commencement date, a request was made for a local authority to make an assessment in relation to the child or young person under section 323 or 331 of EA 1996 and—
- (a) the authority had not decided whether to make such an assessment before that date, or
  - (b) the authority had decided to make such an assessment before that date, but the assessment had not begun before that date.
- (2) The old law continues to have effect in relation to the child or young person until the relevant time.
- (3) The new law does not have effect in relation to the child or young person until the relevant time.
- (4) The relevant time is—

- (a) where the local authority decides not to make an assessment under section 323 of EA 1996 and no appeal under section 329(2) or 329A(8) of that Act is brought against that decision within the period allowed for bringing such appeals, the end of that period;
  - (b) where the authority decides not to make an assessment under section 323 of EA 1996 and such an appeal is brought within that period—
    - (i) if the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
    - (ii) if, on the final determination of the appeal, it is dismissed, when it is dismissed;
    - (iii) if, on the final determination of the appeal, the local authority is ordered to arrange for an assessment to be made in respect of the child, the time found by applying sub-paragraphs (d) to (f) following the assessment;
  - (c) where the authority decides not to make an assessment under section 331, when it informs the parent of the child or young person of that fact;
  - (d) where an assessment is made and the authority makes a statement as a result of the assessment, the time when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
  - (e) where an assessment is made, the authority decides not to make a statement as a result of the assessment and no appeal under section 325 of EA 1996 is brought against that decision within the period allowed for bringing such appeals, the end of that period;
  - (f) where an assessment is made, the authority decides not to make a statement as a result of the assessment and such an appeal is brought within that period—
    - (i) if the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
    - (ii) if, on the final determination of the appeal, it is dismissed, when it is dismissed;
    - (iii) if, on the final determination of the appeal, the local authority is ordered to make and maintain a statement, when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
    - (iv) if, on the final determination of the appeal, the local authority is ordered to reconsider whether it is necessary for the authority to determine the special educational provision which any learning difficulty the child may have calls for, the time found by applying sub-paragraphs (d) and (e) and this sub-paragraph following the reconsideration.
- (5) But the following provisions of this Article apply in place of paragraphs (2) to (4) if—
- (a) the local authority notifies the child’s parent or the young person that it proposes to treat the request as a request for an EHC needs assessment, and
  - (b) the child’s parent or the young person gives his or her consent to that course of action.
- (6) The request is to be treated for all purposes as a request for an EHC needs assessment.
- (7) Anything done in relation to the request is to be treated as having been done under Part 3 of the 2014 Act and the SEND Regulations 2014.
- (8) Regulation 5 of the SEND Regulations 2014 has effect as if paragraph (1) of that regulation required the local authority to notify the child’s parent or the young person of its decision whether it is necessary to secure an EHC needs assessment for the child or young person as soon as is practicable and in any event within the period of 6 weeks beginning with the day on which the child’s parent or the young person gave his or her consent under paragraph (5)(b).

### **Assessment not completed before commencement date**

7.—(1) This Article applies in relation a child or young person to whom this Part applies if an assessment by a local authority under section 323 or 331 of EA 1996 of the educational needs of the child or young person was begun but not completed before the commencement date.

(2) For this purpose an assessment was completed before that date if, before that date and in the light of the assessment—

- (a) the local authority made a statement of the special educational needs of the child or young person, or
- (b) the local authority gave notice to the parent of the child or young person that they did not propose to make such a statement.

(3) The old law continues to have effect in relation to the child or young person until the relevant time.

(4) The new law does not have effect in relation to the child or young person until the relevant time.

(5) The relevant time is—

- (a) where the local authority makes a statement for the child or young person as a result of the assessment, the time when the old law ceases to apply in relation to him or her by virtue of Part 5 of this Order;
- (b) where the authority decides not to make a statement as a result of the assessment and no appeal under section 325 of EA 1996 is brought against that decision within the period allowed for bringing such appeals, the end of that period;
- (c) where the authority decides not to make a statement as a result of the assessment and such an appeal is brought within that period—
  - (i) if the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
  - (ii) if, on the final determination of the appeal, it is dismissed, when it is dismissed;
  - (iii) if, on the final determination of the appeal, the local authority is ordered to make and maintain a statement, when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
  - (iv) if, on the final determination of the appeal, the local authority is ordered to reconsider whether it is necessary for the authority to determine the special educational provision which any learning difficulty the child may have calls for, the time found by applying this paragraph following the reconsideration.

(6) But the following provisions of this Article apply in place of paragraphs (3) to (5) if—

- (a) the local authority notifies the child's parent or the young person that it proposes to treat the assessment as an EHC needs assessment, and
- (b) the child's parent or the young person gives his or her consent to that course of action.

(7) The assessment is to be treated for all purposes as an EHC needs assessment.

(8) Anything done in relation to the assessment is to be treated as having been done under Part 3 of the 2014 Act.

(9) Where, following the assessment, the local authority decides that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan, the notification given in accordance with section 36(9) of the 2014 Act must be given before the end of the period of 18 weeks beginning with the relevant date.

(10) Where, following the assessment, an EHC plan is prepared for the child or young person, the local authority must send the finalised EHC plan to—

- (a) the child’s parent or the young person,
- (b) the governing body, proprietor or principal of any school, other institution or provider of relevant early years education named in the EHC plan, and
- (c) the responsible commissioning body,

before the end of the period of 26 weeks beginning with the relevant date.

(11) In paragraphs (9) and (10) “the relevant date” means—

- (a) where the assessment followed the local authority’s consideration under section 323 of EA 1996 of whether to make an assessment, the date on which the authority served notice under subsection (1) of that section on the parent of the child or young person;
- (b) where the assessment followed a request under section 329(1) or 329A(1) of that Act, the date on which the request was made;
- (c) where the assessment was made under section 331 of that Act, the date on which the authority decided to carry out the assessment.

(12) Paragraphs (9) to (11) have effect in place of regulation 10(1) or 13(2) of the SEND Regulations 2014 (as the case may be); but this Article does not otherwise affect the operation of that regulation.

## PART 4

### Children etc without statement on commencement: appeals in progress

#### **Appeals against decision not to comply with request to carry out assessment**

8.—(1) Paragraph (2) applies if immediately before the commencement date—

- (a) the parent of a child or young person had the right to appeal under section 329(2) of EA 1996 (appeal against refusal to assess educational needs at request of child’s parent) against a decision of a local authority in England, but had not brought such an appeal, or
- (b) the parent of a child or young person for whom no statement was maintained under section 324 of that Act had the right to appeal under section 329A(8) of that Act (appeal against refusal to assess educational needs at request of responsible body) against a decision of a local authority in England, but had not brought such an appeal.

(2) The parent may, within the period that was allowed for bringing the appeal, decide to bring it under section 51 of the 2014 Act instead; and, if the parent does so, the appeal is to proceed as if the local authority had decided not to secure an EHC needs assessment for the child or young person in response to a request under section 36(1) of that Act.

(3) Paragraph (4) applies if immediately before the commencement date—

- (a) the parent of a child or young person had brought an appeal under section 329(2) of EA 1996 against a decision of a local authority in England, but the appeal had not been finally determined, or
- (b) the parent of a child or young person for whom no statement was maintained had brought an appeal under section 329A(8) of that Act against a decision of a local authority in England, but the appeal had not been finally determined.

(4) If the parent consents, the appeal may proceed as an appeal under section 51 of the 2014 Act and as if the local authority had decided not to secure an EHC needs assessment for the child or young person in response to a request under section 36(1) of the 2014 Act.

(5) The following provisions of this Article apply if—

- (a) paragraph (2) applies, but within the period mentioned in paragraph (1) the parent decides to bring the appeal under section 329(2) or 329A(8) of EA 1996, or
  - (b) paragraph (3) applies, but the parent does not consent to the appeal proceeding as an appeal under section 51 of the 2014 Act.
- (6) Despite the disapplication by section 81 of and Schedule 3 to the 2014 Act of Chapter 1 of Part 4 of EA 1996 in relation to children in the area of a local authority in England, the old law continues to have effect in relation to the child or young person until the relevant time.
- (7) The new law does not have effect in relation to the child or young person until the relevant time.
- (8) The relevant time is—
- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
  - (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
  - (c) where, on the final determination of the appeal, the local authority is ordered to arrange for an assessment to be made in respect of the child under section 323 of EA 1996, the time found by applying Article 7(5) as if the assessment had begun before the commencement date.

#### **Appeals against decision not to make statement**

- 9.—(1) This Article applies if immediately before the commencement date—
- (a) the parent of a child or young person had the right to appeal under section 325 of EA 1996 against a decision of a local authority in England not to make a statement for the child or young person, but had not brought such an appeal, or
  - (b) the parent of a child or young person had brought an appeal under section 325 of EA 1996 against a decision of a local authority in England not to make a statement for the child or young person, but the appeal had not finally been determined.
- (2) Despite the disapplication by section 81 of and Schedule 3 to the 2014 Act of Chapter 1 of Part 4 of EA 1996 in relation to children in the area of a local authority in England, the old law continues to have effect in relation to the child or young person until the relevant time.
- (3) The new law does not have effect in relation to the child or young person until that time.
- (4) If no appeal is brought within the period allowed for bringing such appeals, the relevant time is the end of that period.
- (5) If an appeal is or has been brought within that period, the relevant time is—
- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
  - (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
  - (c) where, on the final determination of the appeal, the local authority is ordered to make and maintain a statement, when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
  - (d) where, on the final determination of the appeal, the local authority is ordered to reconsider whether it is necessary for the authority to determine the special educational provision which any learning difficulty the child may have calls for, the time found by applying Article 7(5) as if the resulting assessment had begun before the commencement date;
  - (e) where on the final determination of the appeal an order is made under paragraph (6), when the order is made.
- (6) On the appeal the First-tier Tribunal may order the local authority to make and maintain an EHC plan instead of a statement.

- (7) The First-tier Tribunal may make an order under paragraph (6) only with the consent of—
- (a) the child’s parent or the young person, and
  - (b) the local authority.

### **Appeals against determination to cease to maintain statement**

**10.**—(1) This Article applies if immediately before the commencement date—

- (a) the parent of a child or young person had the right to appeal under paragraph 11 of Schedule 27 to EA 1996 against a determination of a local authority in England to cease to maintain a statement for the child or young person, but had not brought such an appeal, or
- (b) the parent of a child or young person had brought an appeal under paragraph 11 of Schedule 27 to EA 1996 against a determination of a local authority in England to cease to maintain a statement for the child or young person, but the appeal had not finally been determined.

(2) Despite the disapplication by section 81 of and Schedule 3 to the 2014 Act of Chapter 1 of Part 4 of EA 1996 in relation to children in the area of a local authority in England, the old law continues to have effect in relation to the child or young person until the relevant time.

(3) The new law does not have effect in relation to the child or young person until that time.

(4) If no appeal is brought within the period allowed for bringing such appeals, the relevant time is the end of that period.

(5) If an appeal is or has been brought within that period, the relevant time is—

- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
- (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
- (c) where, on the final determination of the appeal, the local authority is ordered to continue to maintain the statement, when the old law ceases to apply in relation to the child or young person by virtue of Part 5 of this Order;
- (d) where paragraph (7) applies, when the authority make the determination referred to in that paragraph.

(6) Paragraph (7) applies if on the final determination of the appeal, the local authority is ordered to continue to maintain the statement.

(7) The local authority may, with the consent of the child’s parent or the young person, determine that the statement is to have effect as an EHC plan specifying the educational provision specified in the statement.

## **PART 5**

### **Children etc with statement on commencement: transfer to new regime**

#### **Continued application of EA 1996 in relation to pre- and post-commencement statements**

**11.**—(1) This Part applies in relation to a child or young person in the area of a local authority in England if—

- (a) immediately before the commencement date, a statement was maintained for the child or young person under section 324 or 331 of EA 1996, or
- (b) on or after that date a statement under section 324 or 331 of that Act comes to be maintained for the child or young person as a result of the operation of Part 3 or 4 of this Order.

(2) Despite the disapplication by section 81 of and Schedule 3 to the 2014 Act of Chapter 1 of Part 4 of EA 1996 in relation to children in the area of a local authority in England—

- (a) the statement continues to have effect, and
  - (b) the old law continues to have effect in relation to the child or young person.
- (3) The new law does not have effect in relation to the child or young person.
- (4) Paragraphs (2) and (3) are subject to the following provisions of this Part.

#### **Duty to secure EHC needs assessment for children transferring to post-16 institution in 2015**

**12.**—(1) This Article applies to a child to whom this Part applies and who is expected to transfer to a post-16 institution during 2015.

(2) The local authority that maintains the child's statement must secure that an EHC needs assessment for the child is carried out and concluded before 31st May 2015.

(3) The time when an EHC needs assessment is concluded for the purposes of this Part depends on whether, in the light of the assessment, the local authority decides it is necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

(4) If the local authority decides this is necessary, the assessment is concluded when the local authority sends a copy of the finalised 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, or the provider of early years education, named in the plan.

(5) If the local authority decides this is not necessary, the assessment is concluded when the local authority notifies the child's parent or young person of that fact.

(6) This Article is subject to Articles 16, 23 and 28.

#### **Duty to consider EHC needs assessment for children in year 6**

**13.**—(1) This Article applies to a child to whom this Part applies and—

- (a) who is in year 6—
  - (i) in the next school year to begin after 31st July 2015, or
  - (ii) in the next school year to begin after 31st July 2016, and
- (b) did not transfer from middle to secondary school when they entered year 6.

(2) The local authority that maintains the child's statement must—

- (a) consult the child and the child's parent on whether to secure an EHC needs assessment for the child in that year, and
- (b) have regard to any views expressed by the child or the child's parent on that question.

(3) If, following the consultation, the local authority decides that an EHC needs assessment should be carried out in that year, the EHC needs assessment must be concluded before the end of the school year in which the child is in year 6.

(4) This Article is subject to Articles 16 and 23.

#### **Duty to secure EHC needs assessment for other children etc in period 2015-2018**

**14.**—(1) This Article applies to a child or young person to whom this Part applies, other than a child to whom Article 12 applies.

(2) Paragraph (3) applies to the child or young person if during 2016 or 2017—

- (a) he or she is expected to transfer to a different phase of education, or
  - (b) he or she comes to be in year 9.
- (3) The local authority that maintains the statement for the child or young person must secure that an EHC needs assessment for him or her is carried out and concluded—
- (a) where the child is expected to transfer to a post-16 institution in that period, before 31st March in the calendar year in which the transfer takes place,
  - (b) where the child or young person is otherwise expected to transfer to a different phase of education in that period, before 15th February in the calendar year in which the transfer takes place, or
  - (c) where the child comes to be in year 9 in that period, before the child begins year 10.
- (4) If the child or young person falls within paragraph (2) more than once in that period—
- (a) paragraph (3) requires an EHC needs assessment for the child or young person to be carried out and concluded before the earliest date that is applicable to him or her under that paragraph, but
  - (b) that paragraph does not require more than one assessment to be carried out for him or her in that period.
- (5) If the child or young person does not fall within paragraph (2) in the period mentioned in that paragraph, the local authority that maintains the statement for the child or young person must secure that an EHC needs assessment for him or her is carried out and concluded before 1st April 2018.
- (6) For the purposes of this Article a child transfers to a different phase of education if the child transfers—
- (a) from relevant early years education to school,
  - (b) from infant to junior school,
  - (c) from primary to middle school,
  - (d) from primary to secondary school,
  - (e) from middle to secondary school,
  - (f) from school to a post-16 institution,
  - (g) from mainstream school to special school, or
  - (h) from special school to mainstream school.
- (7) This Article is subject to Articles 16, 23 and 28.

#### **Power to secure earlier EHC needs assessment**

**15.—**(1) This Article applies to a child or young person to whom this Part applies other than a child to whom Article 12 applies.

(2) The local authority that maintains the statement for the child or young person may secure that an EHC needs assessment is carried out for him or her at any time after the coming into force of this Order and before the time at which Article 14 requires an assessment to be secured.

- (3) This Article is subject to Article 13 where the child is in year 6—
  - (a) in the next school year to begin after 31st July 2015, or
  - (b) in the next school year to begin after 31st July 2016.
- (4) This Article is also subject to Articles 16, 23 and 28.

### **Exceptions to Articles 12 to 15: exceptional personal circumstances and appeals**

16.—(1) Articles 12 to 15 do not apply in relation to a child or young person at any time when—

- (a) exceptional personal circumstances affect the child, the child's parent or the young person, and those circumstances mean that it is not appropriate to carry out an EHC needs assessment for the child or young person, in which case paragraph (2) applies; or
- (b) the parent of a child or young person had brought an appeal under section 326 of EA 1996 against any of the matters listed in subsection (1A) of that section, or under paragraph 8 of Schedule 27 to EA 1996, but the appeal had not been fully determined, in which case paragraph (3) applies.

(2) In the circumstances set out in paragraph (1)(a) the local authority that maintains the statement for the child or young person must secure that an EHC needs assessment for him or her is carried out and concluded as soon as is reasonably practicable after it becomes appropriate to carry out that assessment.

(3) In the circumstances set out in paragraph (1)(b) the local authority that maintains the statement for the child or young person must secure that an EHC needs assessment for him or her is carried out and concluded as soon as is reasonably practicable after the appeal has been fully determined.

### **Children etc for whom EHC needs assessment cannot be secured before 1st April 2018**

17.—(1) This Article applies to a child or young person if this Part first applies to him or her by virtue of Part 3 or 4—

- (a) on or after 1st April 2018, or
- (b) at a time before that date at which it is not practicable to secure that an EHC needs assessment for him or her is carried out and concluded before that date.

(2) The old law ceases to apply in relation to the child or young person—

- (a) from the time at which this Part first applies in relation to him or her, or
- (b) if later, from the beginning of 1st April 2018.

(3) The new law applies in relation to the child or young person from that time.

(4) Paragraphs (2) and (3) do not prevent the statement maintained for the child or young person from continuing to have effect; but from the time mentioned in paragraph (2) it has effect as if the special educational provision specified in it were specified in an EHC plan maintained for him or her.

(5) The local authority that maintains the statement for the child or young person must secure that an EHC needs assessment for him or her is carried out and concluded as soon as is reasonably practicable after this Part begins to apply to him or her.

### **Persons to whom notice of EHC needs assessment must be given**

18.—(1) A local authority that secures an EHC needs assessment under this Part must give notice of the assessment to the persons listed in paragraph (2) no later than the beginning of the period of two weeks ending with the day on which the assessment begins.

(2) The persons mentioned in paragraph (1) are—

- (a) the child's parent or the young person,
- (b) where the child receives education from a provider of relevant early years education, the person (if any) identified as having responsibility for special educational needs in relation to the provider,

- (c) where the child or young person is a registered pupil at a school, the head teacher of the school or, if there is no head teacher, the person holding the equivalent position at the school,
- (d) where the young person is a student at a post-16 institution, the principal of the institution or, if there is no principal, the person holding the equivalent position at the institution, and
- (e) where the child or young person does not fall within any of paragraphs (b) to (d), a person who the authority thinks it is appropriate to notify.

### **Effect of providing notice**

**19.** If a local authority gives notice under Article 18 to a child’s parent or a young person, the following provisions of EA 1996 cease to apply in relation to the child or young person on and after the date on which the notice is given—

- (a) section 326 (appeal against contents of statement);
- (b) section 328 (reviews of educational needs);
- (c) section 328A (appeal against determination of local authority in England not to amend statement following review);
- (d) section 329A (review or assessment of educational needs at request of responsible body).

### **Procedure for EHC assessment**

**20.**—(1) The 2014 Act and the SEND Regulations 2014 apply to an EHC needs assessment under this Part as they apply to an EHC needs assessment under the 2014 Act, subject to the following provisions of this Article.

(2) Section 31 of the 2014 Act applies in relation to the EHC needs assessment as if the local authority’s functions in relation to the assessment were functions under Part 3 of that Act.

(3) As part of the EHC needs assessment, the local authority must invite the parent of the child, or the young person, to attend a meeting with a relevant officer of the authority to discuss the educational, health care and social care needs of the child or young person.

(4) In paragraph (3) “relevant officer” means an officer of the authority who exercises the authority’s education functions in relation to children and young people with special educational needs.

(5) The local authority may invite any other person that it thinks appropriate to attend the meeting.

### **Effect of decision to prepare EHC plan following EHC needs assessment**

**21.**—(1) This Article applies if, in the light of an EHC needs assessment under this Part, the local authority decides it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan.

(2) The new law applies in relation to the child or young person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraphs (3) and (4).

(3) Regulation 13 of the SEND Regulations 2014 applies as if paragraph (2) required the finalised EHC plan to be sent to—

- (a) the child’s parent or the young person,
- (b) the governing body, proprietor or principal of any school or other institution, or the provider of relevant early years education, named in the EHC plan, and
- (c) the responsible commissioning body,

as soon as is practicable and in any event within the period of 14 weeks beginning with the day on which the notification under Article 18 was given.

(4) Section 44 of the 2014 Act applies as if the date on which the EHC assessment under this Part was concluded was the date on which the EHC plan was last reviewed under that section.

(5) The local authority must cease to maintain the statement for the child or young person when the EHC plan is made.

(6) The new law has effect in relation to the child or young person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the child or young person, at that time.

### **Effect of decision not to prepare EHC plan following EHC needs assessment**

**22.**—(1) This Article applies if, in the light of an EHC needs assessment under this Part, the local authority decides it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan.

(2) The new law applies in relation to the child or young person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraph (3).

(3) Regulation 10 of the SEND Regulations 2014 applies as if—

(a) paragraph (1) required the notification to be given in accordance with section 36(9) of the 2014 Act to be given as soon as is practicable and in any event within the period of 10 weeks beginning with the day on which the EHC needs assessment began, and

(b) paragraph (2) required the local authority to notify the responsible commissioning body and the person (if any) notified in accordance with Article 18(3)(b), (c) or (d).

(4) The local authority must cease to maintain the statement for the child or young person at the relevant time (but must maintain the statement until that time).

(5) The new law has effect in relation to the child or young person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the child or young person, at the relevant time.

(6) If no appeal is brought under section 51 of the 2014 Act against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is the end of that period.

(7) If an appeal is brought under section 51 of the 2014 Act against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is—

(a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;

(b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;

(c) where, on the final determination of the appeal, the local authority is ordered to make and maintain an EHC plan, when the EHC plan is made;

(d) where, on the final determination of the appeal, the case is referred back to the local authority for it to consider whether it is necessary for it to determine the special educational provision for the child or young person, the time found by applying paragraph (6) and this paragraph to the authority's decision following the consideration as if the decision were one under paragraph (1).

### **Power to treat re-assessment under EA 1996 as re-assessment under 2014 Act**

**23.**—(1) This Article applies if—

- (a) before the commencement date a request for a further assessment under section 323 of EA 1996 of a child or young person to whom this Part applies was made under section 328(2) or 329A(1) of that Act,
  - (b) the local authority to which the request was made did not decide whether to make such a further assessment before the commencement date,
  - (c) no such assessment has been made within the period of six months ending with the date on which the request was made, and
  - (d) the local authority thinks that it is necessary to make such a further assessment.
- (2) This Article also applies if a further assessment under section 323 of EA 1996 of a child or young person to whom this Part applies was begun but not completed before the commencement date.
- (3) This Article also applies if—
- (a) on or after the commencement date a request for a further assessment under section 323 of EA 1996 of a child or young person to whom this Part applies is made under section 328(2) or 329A(1) of that Act,
  - (b) no such assessment has been made within the period of six months ending with the date on which the request is made, and
  - (c) the local authority to which the request is made thinks that it is necessary to make such a further assessment.
- (4) This Article also applies if—
- (a) an appeal under section 328(4) or 329A(8) of EA 1996 (appeal against refusal to re-assess educational needs) in respect of a child or young person to whom this Part applies is decided on or after the commencement date, and
  - (b) on the appeal the local authority that maintains the statement for the child or young person is ordered to arrange for an assessment to be made in respect of him or her under section 323 of that Act.
- (5) The local authority may instead carry out a re-assessment under section 44 of the 2014 Act if—
- (a) the local authority notifies child's parent or the young person that it proposes to treat the assessment in that way, and
  - (b) where this Article applies by virtue of paragraph (1) or (2), the child's parent or the young person gives his or her consent to that course of action.
- (6) In that event—
- (a) the local authority must not carry out a re-assessment under section 323 of EA 1996,
  - (b) Part 3 of the 2014 Act and the SEND Regulations 2014 apply in relation to the re-assessment as if the statement for the child or young person were an EHC plan (but following the re-assessment the local authority may only decide whether or not to replace the statement with an EHC plan),
  - (c) Articles 12 to 15 do not apply in relation to the child or young person, and
  - (d) Article 24 or 25 applies (depending on whether the local authority decides to replace the statement with an EHC plan).

#### **Effect of decision to replace statement following re-assessment**

**24.—**(1) This Article applies if, in the light of a re-assessment by virtue of Article 23, a local authority decides to replace a statement for a child or young person with an EHC plan.

(2) Regulation 27 of the SEND Regulations 2014 applies as if paragraph (2) required the finalised EHC plan to be sent to—

- (a) the child’s parent or the young person,
- (b) the governing body, proprietor or principal of any school or other institution, or the provider of relevant early years education, named in the EHC plan, and
- (c) the responsible commissioning body,

as soon as is practicable and in any event within the period of 14 weeks beginning with the day on which the request for assessment was made or, in a case within Article 22(4), the assessment was ordered on appeal.

(3) The local authority must cease to maintain the statement for the child or young person when the EHC plan is made.

(4) The new law has effect in relation to the child or young person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the child or young person, at that time.

#### **Effect of decision not to replace statement following re-assessment**

**25.**—(1) This Article applies if, in the light of a re-assessment by virtue of Article 23, a local authority decides not to replace a statement for a child or young person with an EHC plan.

(2) The parent of the child, or the young person, may appeal under section 51(2)(b) against the decision as if it were a decision following an EHC needs assessment.

(3) The local authority must cease to maintain the statement in respect of the child or young person at the relevant time (but must maintain the statement until that time).

(4) The new law has effect in relation to the child or young person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the child or young person, at the relevant time.

(5) If no appeal is brought under section 51 of the 2014 Act against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is the end of that period.

(6) If such an appeal is brought within that period, the relevant time is—

- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
- (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
- (c) where, on the final determination of the appeal, the local authority is ordered to make and maintain an EHC plan, when the EHC plan is made;
- (d) where, on the final determination of the appeal, the case is referred back to the local authority for it to consider whether it is necessary for it to determine the special educational provision for the child or young person, the time found by applying paragraph (5) and this paragraph to the authority’s decision following the consideration as if the decision were one under paragraph (1).

#### **Local authority ceasing to maintain statement**

**26.**—(1) This Article applies if a local authority that was maintaining a statement for a child or young person to whom this Part applies determines to cease to maintain that statement (otherwise than as the result of the operation of the other provisions of this Part).

(2) The new law has effect in relation to the child or young person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the child or young person, at the relevant time.

(3) If no appeal under paragraph 11 of Schedule 27 to EA 1996 is brought against the local authority's determination within the period allowed for bringing such appeals, the relevant time is the end of that period.

(4) If such an appeal is brought against the determination within that period, the relevant time is—

- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
- (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
- (c) where, on the final determination of the appeal, the local authority is ordered to continue to maintain the statement, when the old law ceases to apply in relation to the child or young person by virtue of this Part;
- (d) where paragraph (6) applies, when the authority make the determination referred to in that paragraph.

(5) Paragraph (6) applies if on the final determination of the appeal, the local authority is ordered to continue to maintain the statement.

(6) The local authority may with the consent of the child's parent or the young person determine that the statement is to have effect as an EHC plan specifying the educational provision specified in the statement.

## PART 6

### Learning difficulty assessments

#### **Learning difficulty assessment in progress on commencement date**

**27.**—(1) This Article applies if an assessment under section 139A of the Learning and Skills Act 2000<sup>(5)</sup> in relation to a person was begun but not completed before the commencement date.

(2) For this purpose an assessment under that section is completed when the written report described in section 139B of the Learning and Skills Act 2000 which results from the assessment is completed.

(3) Despite the amendments and repeals made by Schedule 3 to the 2014 Act—

- (a) sections 139A to 139C of the Learning and Skills Act 2000 continue to have effect in relation to the person, and
- (b) any other provision of or made under an Act<sup>(6)</sup> that, immediately before the repeal of those sections, had effect in relation to a person to whom those sections applied continues to have effect in relation to that person in that form.

(4) But the following provisions of this Article apply in place of paragraph (3) if—

- (a) the local authority notifies the person that it proposes to treat the assessment as an EHC needs assessment, and
- (b) the person gives his or her consent to that course of action.

(5) The assessment is to be treated for all purposes as an EHC needs assessment.

(6) Anything done in relation to the assessment is to be treated as having been done under Part 3 of the 2014 Act and the SEND Regulations 2014.

(7) The local authority must comply with section 36(9) of the 2014 Act—

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<sup>(5)</sup> 2000 c.21

<sup>(6)</sup> This includes the secondary legislation included in the Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 S.I. 2014/2103, as in force immediately before that Order took effect.

- (a) where the assessment is carried out under section 139A(2) or (4), before the end of the period of 14 weeks beginning with the day on which consent is given under paragraph (4)(b);
- (b) where the assessment is carried out under section 139A(5), before the end of the period of 20 weeks beginning with the day on which consent is given under paragraph (4)(b).

(8) Where, following the assessment, the local authority decides that it is not necessary for special educational provision to be made for the person in accordance with an EHC plan, paragraph (7) has effect in place of regulation 10(1) of the SEND Regulations 2014 (but this Article does not otherwise affect the operation of that regulation).

(9) Articles 12 to 15 do not apply in relation to the person.

### **Young people who have had a pre-commencement learning difficulty assessment**

**28.**—(1) This Article applies to a young person for whom an assessment under section 139A of the Learning and Skills Act 2000 was completed before the commencement date.

(2) For this purpose an assessment under that section is completed when the written report described in section 139B of the Learning and Skills Act 2000 which results from the assessment is completed.

(3) Despite the coming into force of section 36 of the 2014 Act on 1st September 2014, that section does not have effect in relation to the young person before 1st September 2016.

(4) Paragraph (3) does not apply if, before 1st September 2016—

- (a) the young person requests the local authority who is responsible for him or her to secure an EHC needs assessment for him or her,
- (b) a person acting on behalf of a post-16 institution requests that authority to secure such an assessment, or
- (c) that authority decides to secure such an assessment.

(5) The local authority may decide to secure such an assessment only if it thinks that—

- (a) the young person has or may have special educational needs, and
- (b) it may be necessary for special educational provision to be made for him or her in accordance with an EHC plan.

(6) In forming an opinion for the purposes of paragraph (5) in relation to a person aged over 18, the authority must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete his or her training.

(7) Where a local authority secures an EHC needs assessment under this paragraph, the new law applies in relation to the assessment as if it were an assessment under section 36 of that Act.

### **Duty to anticipate application of section 36 of the 2014 Act**

**29.** After 31st August 2015 a local authority must have regard to the fact that it may be under a duty on or after 1st September 2016 to secure an EHC needs assessment for a young person to whom Article 28 applies and who attends a post-16 institution on or after that date.

## PART 7

### Children etc with an EHC plan who are detained

#### **Children etc with an EHC plan who are detained**

**30.**—(1) This Article applies to a child or young person if —

- (a) an EHC plan is maintained by a local authority for the child or young person, and
- (b) the child or young person is a detained person.

(2) Despite the amendments made by Schedule 3 to the 2014 Act to Chapter 5A of Part 10 of EA 1996, that Chapter continues to have effect in relation to the child or young person—

- (a) as if the EHC plan were a statement maintained by that authority immediately before the beginning of the detention, and
- (b) as if the special educational provision specified in the EHC plan—
  - (i) were contained in a statement kept for the child or young person, and
  - (ii) had been specified in the statement immediately before the detention.

26th August 2014

*Nick Boles*  
Minister of State  
Department for Education

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes transitional provisions in connection with the coming into force on 1st September 2014 (“commencement”) of provisions in Part 3 of the Children and Families Act 2014 (“the 2014 Act”), in accordance with [S.I. 2014/889](#) (as amended by [S.I. 2014/1134](#)).

Article 2 contains definitions, including the “new law” in the 2014 Act and the “old law” at Part 4 of the Education Act 1996.

Parts 2 to 4 deal with children and young people who did not have a SEN statement on commencement. Part 2 is about children or young people who have been refused an assessment or statement and provides for section 36(3) of the 2014 Act not to apply to them. Part 3 preserves the old law in relation to cases where an assessment is being considered or in progress on commencement. Part 4 applies to appeals against the refusal of an assessment or statement before commencement.

Part 5 deals with children or young people who have a statement on commencement and sets out when they should be transferred to the new regime.

Part 6 deals with learning difficulty assessments under section 139A of the Learning and Skills Act 2000.

Part 7 deals with children and young people with EHC plans who become detained, and provides that while in detention their plans are treated as statements. This is in light of the fact that sections 70(2) to 75 of the 2014 Act which make special provision for applying the 2014 Act to detained persons, are not yet commenced.