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STATUTORY INSTRUMENTS

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**2014 No. 2270**

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

**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(i) if the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;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.