
STATUTORY INSTRUMENTS

2014 No. 2270

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

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.