
STATUTORY INSTRUMENTS

2015 No. 62

**The Special Educational Needs and Disability
(Detained Persons) Regulations 2015**

PART 2

Detained persons with special educational needs

Assessments

Consideration of request

3. A home authority must consult the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable after—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act,

before determining whether it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.

Determination whether or not special educational provision may be necessary

4.—(1) Where a home authority determines that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention it must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained, in accordance with section 71(6) of the Act as soon as practicable, but in any event within 6 weeks of—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

(2) Where the home authority is considering securing a detained person's EHC needs assessment it must also notify—

- (a) the home commissioning body,
- (b) the detained person's health services commissioner,
- (c) the officers of the home authority who exercise the home authority's social services functions for children or young people with special educational needs,
- (d) the youth offending team responsible for the detained person,

- (e) in relation to a detained person who is a child, if the child is a registered pupil⁽¹⁾ at a school, the head teacher of that school (or the person holding the equivalent position),
- (f) in relation to a detained person who is a young person—
 - (i) if the young person is a registered pupil at a school, the head teacher of that school (or the person holding the equivalent position), or
 - (ii) if the young person is a student at a post-16 institution, the principal of that institution (or the person holding the equivalent position), and
- (g) in relation to a detained person who has been deleted from the admission register in accordance with regulation 8(1)(i) of the Education (Pupil Registration)(England) Regulations 2006⁽²⁾, the person from whom the authority is required to seek advice and information from under regulation 6(1)(b).

Decision whether or not to conduct a detained person's EHC needs assessment

5.—(1) The home authority must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable and in any event within 6 weeks of—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act,

of its decision whether or not it is necessary to secure a detained person's EHC needs assessment.

(2) The home authority must also notify the persons who were notified in accordance with regulation 4(2) of its decision.

(3) When notifying the appropriate person of its decision that it is not necessary to secure a detained person's EHC needs assessment, it must also notify them of—

- (a) their right to appeal that decision,
- (b) the time limits for doing so,
- (c) the information concerning mediation, set out in regulation 18, and
- (d) the availability of information and advice in connection with a detained person's EHC needs assessment.

(4) The home authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

- (a) the home authority has requested advice from the head teacher or principal of a school or post-16 institution (or person holding the equivalent position) during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens,
- (b) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during the time period referred to in paragraph (1), or
- (c) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph (1).

(1) Pupil has the meaning in section 3 of EA 1996.

(2) [S.I 2006/1751](#) to which there are amendments not relevant to these Regulations.

Information and advice to be obtained for a detained person's EHC Needs Assessments

6.—(1) Where the home authority secures a detained person's EHC needs assessment, it must seek the following advice and information, on the needs of the detained person on release from detention, what provision may be required to meet such needs and the outcomes that are intended to be achieved by the detained person receiving that provision on release from detention—

- (a) advice and information from the appropriate person,
- (b) educational advice and information—
 - (i) from the head teacher or principal of the school or post-16 or other institution that the detained person was attending immediately prior to their detention,
 - (ii) where this is not available, from a person who the home authority is satisfied has experience of teaching children or young people with special educational needs, or knowledge of the differing provision which may be called for in different cases to meet those needs, or
 - (iii) if the detained person was not attending a school or post-16 or other institution immediately prior to their detention and advice cannot be obtained under subparagraph (ii), from a person who was responsible for educational provision for the detained person at any time prior to their detention, and
 - (iv) if any parent of the detained person is a serving member of Her Majesty's armed forces, also from the Secretary of State for Defence,
- (c) medical advice and information from a health care professional identified by the home commissioning body,
- (d) psychological advice and information from an educational psychologist,
- (e) advice and information in relation to social care,
- (f) advice and information from the person in charge of the relevant youth accommodation where the detained person is detained,
- (g) advice and information from the youth offending team responsible for the detained person,
- (h) advice and information from any other person the home authority thinks is appropriate,
- (i) where the detained person would have been beyond year 9 (if not for their detention), advice and information in relation to provision to assist the detained person in preparation for adulthood and independent living, and
- (j) advice and information from any person the appropriate person reasonably requests that the home authority seek advice from.

(2) Where it appears to the authority, in consequence of medical advice or otherwise, that the detained person in question is either or both—

- (a) hearing impaired;
- (b) visually impaired;

and any person from whom advice and information is sought as provided in paragraph (1)(b) is not qualified to teach children or young people who are so impaired, then the advice sought must be advice given after consultation with a person who is so qualified.

(3) When seeking advice in accordance with paragraphs (1)(b) to (j), the home authority—

- (a) must provide the person from whom advice is being sought with copies of—
 - (i) any representations made by the appropriate person, and
 - (ii) any evidence submitted by or at the request of the appropriate person.
- (b) may, with the consent of the person in charge of the relevant youth accommodation, provide the persons from whom advice is being sought with any representations made

and any evidence submitted under section 71(2) of the Act, by the person in charge of the relevant youth accommodation where the detained person is detained.

(4) The home authority must not seek any of the advice referred to in paragraphs (1)(b) to (j) if such advice has previously been provided for any purpose and the person providing that advice, the home authority and the appropriate person are satisfied that it is sufficient for the purposes of the detained person's EHC needs assessment.

Matters to be taken into account in securing a detained person's EHC needs assessment

7. When securing an EHC needs assessment a home authority must—

- (a) consult the detained person and, where the detained person is a child, the child's parent and take into account their views, wishes and feelings,
- (b) consider any information provided to the home authority by or at the request of the detained person and, where the detained person is a child, the child's parent,
- (c) consider the information and advice obtained in accordance with regulation 6(1),
- (d) engage the detained person and, where the detained person is a child, the child's parent and ensure they are able to participate in decisions,
- (e) have regard to the need to support the detained person in order to facilitate their development, and help them to achieve their best educational and other outcomes, and
- (f) minimise disruption for the detained person and their family.

Duty to co-operate in a detained person's EHC needs assessment

8.—(1) Where a home authority requests the co-operation of a body in securing a detained person's EHC needs assessment in accordance with section 31 of the Act, that body must comply with such a request within 6 weeks of the date on which they receive it.

(2) A body need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

- (a) exceptional circumstances affect the detained person or, where the detained person is a child, the child's parent during that 6 week period;
- (b) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period;
- (c) where the detained person has an alternative person, the alternative person is absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period;
- (d) the detained person fails to keep an appointment for an examination or a test made by the body, during that 6 week period.

Provision of advice, information and support to the appropriate person

9. When securing a detained person's EHC needs assessment the home authority must consider whether the detained person or, where the detained person is a child, the child's parent requires any information, advice and support in order to enable them to take part effectively in the assessment, and if it considers that such information, advice or support is necessary, it must provide it.

Decision not to secure an EHC plan

10.—(1) Where, following a detained person's EHC needs assessment, a home authority decides that it is not necessary for special educational provision to be made for the detained person in

accordance with an EHC plan, the notification given in accordance with section 71(10) of the Act must be given as soon as practicable, and in any event within 16 weeks of the home authority receiving a request for a detained person's EHC needs assessment in accordance with section 71(2) of the Act, or the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

(2) The home authority must also notify —

- (a) the home commissioning body,
- (b) the detained person's health services commissioner,
- (c) the youth offending team responsible for the detained person, and
- (d) the person notified in accordance with regulation 4(2)(e),(f) or (g).

(3) When notifying the appropriate person in accordance with paragraph (1) the home authority must also notify them of—

- (a) their right to appeal that decision,
- (b) the time limits for doing so,
- (c) the information concerning mediation, set out in regulation 18, and
- (d) the availability of information and advice relating to the special educational needs of children and young people.

(4) The home authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

- (a) the authority has requested advice from the head teacher or principal of a school or post-16 institution (or person holding the equivalent position) during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens;
- (b) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during that time period; or
- (c) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during that time period.

EHC plans

Preparation of EHC plans for a detained person

11. When preparing a detained person's EHC plan a home authority must—

- (a) take into account the evidence received when securing the detained person's EHC needs assessment, and
- (b) consider how best to achieve the outcomes to be sought for the detained person on release from detention.

Form of EHC plan

12.—(1) When preparing an EHC plan a home authority must set out—

- (a) the views, interests and aspirations of the detained person and, where the detained person is a child, the child's parent (section A);
- (b) the detained person's special educational needs on release from detention (section B);

- (c) the detained person's health care needs on release from detention, which relate to their special educational needs (section C);
- (d) the detained person's social care needs on release from detention, which relate to their special educational needs or to a disability (section D);
- (e) the outcomes sought for the detained person on release from detention (section E);
- (f) the special educational provision required by the detained person on release from detention (section F);
- (g) any health care provision on release from detention reasonably required by the learning difficulties or disabilities which result in the detained person having special educational needs (section G);
- (h) any—
 - (i) social care provision which must be made for the detained person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970(3) on release from detention (section H1);
 - (ii) other social care provision on release from detention reasonably required by the learning difficulties or disabilities which result in the detained person having special educational needs (section H2);
- (i) the name of the school, post-16 institution or other institution to be attended by the detained person on release from detention and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the detained person on release from detention (section I); and
- (j) where any special educational provision is to be secured by a direct payment on release from detention, the special educational needs and outcomes to be met by the direct payment (section J),

and each section must be separately identified.

(2) The health care provision specified in the EHC plan in accordance with paragraph (1)(g) must be agreed by the home commissioning body.

(3) Where the detained person would have been in or beyond year 9 (if not for their detention), the EHC plan must include within the special educational provision, health care provision and social care provision specified, provision to assist the detained person in preparation for adulthood and independent living on release from detention.

(4) The advice and information obtained in accordance with regulation 6(1) must be set out in appendices to the EHC plan (section K).

Timescales for EHC plans

13.—(1) When a home authority sends a draft plan to the appropriate person it must—

- (a) give them at least 15 days, beginning with the day on which the draft plan was served, in which to—
 - (i) make representations about the content of the draft plan, and to request that a particular school or other institution be named in the plan, and
 - (ii) require the home authority to arrange a meeting between them and an officer of the home authority at which the draft plan can be discussed, and

(3) 1970 c.44; section 2(1) was amended by section 14(1) and Schedule 2, paragraph 12 of the Local Authority Social Services Act 1970 (c.42); and by section 272(1) and Schedule 30 of the Local Government Act 1972 (c.70); and section 66, and paragraph 12 of Schedule 9 and Schedule 10 of the National Health Service and Community Care Act 1990 (c.19). Section 2(1A) was inserted by section 148(3) of the Health and Social Care Act 2008 (c.14). Section 2(2) was repealed by section 272(1) and Schedule 30 of the Local Government Act 1972.

- (b) advise them where they can find information about the schools and colleges that are available for the detained person to attend on release from detention.
- (2) A home authority must send the finalised EHC plan to—
 - (a) the appropriate person,
 - (b) the person in charge of the relevant youth accommodation where the detained person is detained,
 - (c) the youth offending team responsible for the detained person,
 - (d) the governing body, proprietor or principal of any school, or other institution named in the EHC plan,
 - (e) the home commissioning body, and
 - (f) the detained person’s health services commissioner

as soon as practicable, and in any event within 20 weeks of the home authority receiving a request for an EHC needs assessment in accordance with section 71(2) of the Act, or on the date which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

(3) The home authority need not comply with the time limit referred to in paragraph (2) if it is impractical for any of the reasons set out in regulation 10(4)(a) to (c)

Sending the finalised EHC plan

14.—(1) The finalised EHC plan must be in the form of the draft plan sent in accordance with regulation 13(1), or in a form modified in the light of the representations made in accordance with that regulation.

(2) When sending a copy of the finalised EHC plan to the appropriate person in accordance with section 39(8)(a) or 40(5)(a)(4) of the Act, the home authority must notify them of—

- (a) their right to appeal matters within the EHC plan in accordance with section 73(2)(c) of the Act,
- (b) the time limits for doing so,
- (c) the information concerning mediation, set out in regulation 18, and
- (d) the availability of information and advice relating to the special educational needs of children and young people.

Needs assessments which are not completed

15.—(1) —Where as a consequence of a release from detention, a local authority is required to complete an EHC needs assessment in respect of a child or young person for whom a detained person’s EHC needs assessment was started but not completed; the local authority must ensure, that —

- (a) any EHC plan is finalised within 20 weeks;
- (b) any decision not to secure an EHC plan is finalised within 16 weeks;
- (c) a decision whether or not to secure an EHC needs assessment is made within 6 weeks;

from the date which the detained person has been brought or comes to the attention of the local authority in accordance with section 71(4)(b) or (c) of the Act.

(4) As applied by section 72(2) of the Act.

(2) Where paragraph (1) applies, a local authority may treat anything done in relation to a detained person's EHC needs assessment as discharging any comparable requirement in relation to an EHC needs assessment.

(3) Paragraph (1) does not apply where the local authority carrying out the EHC needs assessment post-detention is different from the home authority which started the detained person's EHC needs assessment.

(4) Where as a consequence of a detention order a home authority is required to complete a detained person's EHC needs assessment in respect of a detained person for whom an EHC needs assessment was started but not completed, the local authority must ensure that —

- (a) any EHC plan is finalised within the 20 weeks specified in regulation 13(2);
- (b) any decision not to secure an EHC plan is finalised within the 16 weeks specified in regulation 10(1);
- (c) a decision whether or not to secure an EHC needs assessment is made within the 6-weeks specified in regulation 5(1);

from the date which the local authority became responsible for the child or young person.

(5) Where paragraph (4) applies, a home authority may treat anything done in relation to an EHC needs assessment as discharging any comparable requirement in relation to a detained person's EHC needs assessment.

(6) In this regulation, “comparable requirement” has the meaning set out in the code of practice issued under section 77(1) of the Act.

Transfer of a kept EHC plan

16.—(1) This regulation applies where on the release date a detained person in respect of whom an EHC plan is kept, becomes (or is to be become) the responsibility of a local authority which is not the home authority (“the new authority”).

(2) The home authority must disclose the EHC plan to the new authority within 5 working days following the date of being informed of the release of the detained person to the new authority.

(3) The new authority must disclose the EHC plan to the responsible commissioning body within 5 working days following the date it either became responsible for the child or young person, or if later, the date it received a copy of the EHC plan under paragraph (2).

(4) Where it is not practicable for the responsible commissioning body to arrange the health care provision specified in the EHC plan, it must within 15 working days following the date it received a copy of the EHC plan, request that the new authority makes an EHC needs assessment or reviews the EHC plan, and where the new authority receives such a request, it must comply with that request.

(5) In this regulation, “responsible commissioning body” has the same meaning as in section 42(4) of the Act.

Restriction on disclosure of EHC plans

17.—(1) When a home authority becomes responsible for keeping an EHC plan for a detained person it must send a copy of the EHC plan to—

- (a) the person in charge of the relevant youth accommodation where the detained person is detained,
- (b) the youth offending team responsible for the detained person, and
- (c) the detained person's health services commissioner

within 5 working days following either the date which the home authority first kept the plan or became aware of the detention if this is later.

(2) If a home authority is informed under section 39A of the Crime and Disorder Act 1989(5) that a detained person has moved, or will move, to new relevant youth accommodation, it must send a copy of the EHC plan to the person in charge of that relevant youth accommodation, within 5 working days following the date on which it was informed.

(3) Subject to the provisions of the Act, and of these Regulations, an EHC plan in respect of a detained person must not be disclosed by the home authority without the detained person's consent except—

- (a) to persons to whom, in the opinion of the home authority concerned, it is necessary to disclose the whole or any part of the EHC plan in the interests of the detained person;
- (b) for the purposes of any appeal under the Act;
- (c) for the purposes of educational research which, in the opinion of the home authority, may advance the education or training of children or young persons with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, an EHC plan otherwise than in a form which does not identify any individual including, in particular, the detained person concerned and, where the detained person is a child, the child's parent;
- (d) on the order of any court or for the purposes of any criminal proceedings;
- (e) for the purposes of any investigation under Part 3 of the Local Government Act 1974(6) (investigation of maladministration);
- (f) to the Secretary of State when he requests such disclosure for the purposes of deciding whether to—
 - (i) give directions, make determinations, or exercise any contractual rights under an Academy's funding agreement (for any purpose), or
 - (ii) make an order under section 496, 497 or 497A of EA 1996(7).
- (g) for the purposes of an assessment of the needs of the detained person with respect to the provision of any statutory services for him or her being carried out by officers of an authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986(8);
- (h) for the purposes of a local authority in the performance of its duties under sections 22(3) (a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989(9); and

(5) 1989 c.37; as inserted by section 51 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and amended by Article 5(1) of paragraph 16 of Part 1 of Schedule 2 of SI 2010/1158.

(6) 1974 c.7.

(7) Section 496 was amended by article 5(1) of, and paragraph 7(2) of Schedule 2 to, SI 2010/1158; by section 99 of, and paragraph 2(4) of Schedule 5 to, the School Standards and Organisation (Wales) Act 2013 (anaw.1); by section 140(1) of, and paragraph 129 of Schedule 30 of SSFA 1998; by section 168(1) of the Education and Inspections Act 2006 (c.40); by section 45(2)(b) of the Education Act 2001 (c.21); and by section 59 of, and paragraph 7 of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22). Section 497 was amended by article 5(1) of, and paragraph 7(2) of Schedule 2 to, SI 2010/1158; by section 99 of, and paragraph 2(5) of Schedule 5 to, the School Standards and Organisation (Wales) Act 2013 (anaw.1); by section 140(1) of, and paragraph 130 of Schedule 30 of SSFA 1998; by section 168(2) of the Education and Inspection Act 2006 (c.40); by section 45(2)(c) of the Education Act 2011 (c.21); and by section 59 of, and paragraph 8 of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22). Section 497A was inserted into EA 1996 by section 8 of SSFA 1998 Act, and amended by section 60 of and Schedule 22 to the Education Act 2002 (c.32) and by section 59 of and Schedule 2 to the Apprenticeships, Skills, Children and Learning Act 2009.

(8) 1986 c.33 as amended by section 93 and paragraph 91(1), Part II of Schedule 8 the Further and Higher Education Act 1992 (c.13).

(9) 1989 c.41; section 85(4) was amended by section 17(1)(4) of the Children and Young Persons Act 2008 (c.23); section 86(3) was amended by section 17(6) and (9) of the Children and Young Persons Act 2008; and section 87(3) was amended by section 43(2)(b) of the Education Act 2011 (c.21).

- (i) to Her Majesty's Chief Inspector of Education, Children's Services and Skills⁽¹⁰⁾, exercising the right to inspect and take copies of an EHC plan in accordance with section 10(1)(e) of the Education Act 2005⁽¹¹⁾ and section 140(2)(a) of the Education and Inspections Act 2006.
- (4) A detained person who is a child may consent to the disclosure of an EHC plan for the purposes of this regulation if his or her age and understanding are sufficient to allow him or her to understand the nature of that consent.
- (5) If a detained person who is a child does not have sufficient age or understanding to allow him or her to consent to such disclosure, the child's parent may consent on the child's behalf.
- (6) The arrangements for keeping a detained person's EHC plan must be such that they ensure, so far as is reasonably practicable, that unauthorised persons do not have access to it.
- (7) In this regulation, any reference to an EHC plan includes a reference to any representations, evidence, advice or information obtained in relation to an EHC plan.

⁽¹⁰⁾ Her Majesty's Chief Inspector of Education, Children's Services and Skills is appointed under the Chief Inspector of Education, Children's Services and Skills Order 2011 (S.I. 2011/2720) which is made under section 113(1) of the Education and Inspections Act 2006 (c.40).

⁽¹¹⁾ 2005 c.18.