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STATUTORY INSTRUMENTS

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**2017 No. 1306**

**EDUCATION, ENGLAND**

**The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017**

<i>Made</i>	- - - -	<i>18th December 2017</i>
<i>Laid before Parliament</i>		<i>20th December 2017</i>
<i>Coming into force</i>	- -	<i>3rd April 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 29(3) of the Education Act 1996<sup>(1)</sup> and sections 51(4) and (5) and 135(2) and (3) of the Children and Families Act 2014<sup>(2)</sup>.

**Citation and Commencement**

1. These Regulations may be cited as the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 and come into force on 3rd April 2018.

**Interpretation**

2. In these Regulations—

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

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

“the responsible commissioning body” means, in relation to any specified health care provision, the body (or each body) that is under a duty to arrange health care provision of that kind in respect of the child or young person, or would be under that duty if the health care needs or health care provision recommended by the First-tier Tribunal were specified in the child or young person’s EHC plan.

**Transitional provision**

3. These Regulations only apply to an appeal, under section 51(1) of the Act,—

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(1) 1996 c.56.

(2) 2014 c.6.

(3) S.I. 2014/1530. The relevant amending instruments are S.I. 2014/2096 and S.I. 2015/359.

- (a) against a decision of a local authority where that decision was made on or after 3rd April 2018;
- (b) relating to an EHC plan where it was made or amended on or after 3rd April 2018.

**Power to make recommendations in respect of health and social care needs**

4.—(1) When determining an appeal on the matters set out in section 51(2)(b) of the Act, the First-tier Tribunal has the power to recommend that—

- (a) health care needs, or health care needs of a particular kind, which relate to the child or young person’s special educational needs are specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations;
- (b) social care needs, or social care needs of a particular kind, which relate to the child or young person’s special educational needs or to a disability are specified in the EHC plan in accordance with regulation 12(1)(d) of the 2014 Regulations.

(2) When determining an appeal on the matters set out in section 51(2)(c), (d), (e) or (f) of the Act, the First-tier Tribunal has the power to recommend that—

- (a) the health care needs specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations are amended;
- (b) the social care needs specified in the EHC plan in accordance with regulation 12(1)(d) of the 2014 Regulations are amended;
- (c) health care needs, or health care needs of a particular kind, which relate to the child or young person’s special educational needs are specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations where those needs have not been specified in the plan;
- (d) social care needs, or social care needs of a particular kind, which relate to the child or young person’s special educational needs or to a disability are specified in the EHC plan in accordance with regulation 12(1)(d) of the 2014 Regulations where those needs have not been specified in the plan.

**Power to make recommendations in respect of health and social care provision**

5.—(1) When determining an appeal on the matters set out in section 51(2)(b) of the Act, the First-tier Tribunal has the power to recommend that—

- (a) health care provision, or health care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations;
- (b) social care provision, or social care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations.

(2) When determining an appeal on the matters set out in section 51(2)(c), (d), (e) or (f) of the Act, the First-tier Tribunal has the power to recommend that—

- (a) the health care provision specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations is amended;
- (b) the social care provision specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations is amended;
- (c) health care provision, or health care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations where that provision has not been specified in the EHC plan;

- (d) social care provision, or social care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations where that provision has not been specified in the EHC plan.

### **Responding to health care recommendations**

6.—(1) When the First-tier Tribunal makes a recommendation in respect of health care needs or health care provision, it must send a copy of the recommendation to the responsible commissioning body.

(2) When sending a copy of a recommendation, the First-tier Tribunal may also send a copy of the decision which disposes of the appeal brought under section 51(1) of the Act to the responsible commissioning body.

(3) The responsible commissioning body must respond within 5 weeks beginning with the date of the recommendation to—

- (a) the child’s parent or the young person, and
- (b) the local authority that maintains the EHC plan.

(4) The time limit specified in paragraph (3) does not apply where the First-tier Tribunal directs that a different time limit is to apply for the responsible commissioning body’s response.

(5) A response under paragraph (3) must—

- (a) be in writing,
- (b) state what steps, if any, the responsible commissioning body has decided to take following its consideration of the recommendation, and
- (c) give reasons for any decision not to follow the recommendation, or any part of it.

(6) The local authority must send a copy of the response received from the responsible commissioning body under paragraph (3)(b) to the Secretary of State within 1 week beginning with the date it was received.

### **Responding to social care recommendations**

7.—(1) When the First-tier Tribunal makes a recommendation in respect of social care needs or social care provision, the local authority must respond to the child’s parent or the young person within 5 weeks beginning with the date of the recommendation.

(2) The time limit specified in paragraph (1) does not apply where the First-tier Tribunal directs that a different time limit is to apply for the local authority’s response.

(3) A response under paragraph (1) must—

- (a) be in writing,
- (b) state what steps, if any, the local authority has decided to take following its consideration of the recommendation, and
- (c) give reasons for any decision not to follow the recommendation, or any part of it.

(4) The local authority must send a copy of its response under paragraph (1) to the Secretary of State within 1 week beginning with the date of its response to the child’s parent or the young person.

### **Modification of the Special Educational Needs and Disability Regulations 2014 (notification of the First-tier Tribunal’s power to make recommendations)**

8.—(1) The 2014 Regulations are amended as follows.

(2) In regulations 10(3), 14(2), 20(11), 21(10), 22(5), 25(2) and 31(3), after paragraph (d) insert the following paragraph—

“; and

- (e) the First-tier Tribunal’s power to make recommendations under the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017.”.

18th December 2017

*Robert Goodwill*  
Minister of State  
Department for Education

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## EXPLANATORY NOTE

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

These Regulations extend the powers of the First-tier Tribunal (Special Educational Needs and Disability) so that, when it is determining an appeal on the matters set out in sections 51(2)(b), (c), (d), (e), or (f) of the Children and Families Act 2014 (“the Act”), it may make non-binding recommendations in respect of certain types of health and social care matters within an Education, Health and Care (EHC) plan, against which no appeal may be brought under the Act.

Regulation 3 sets out transitional provisions and provides that these Regulations apply to an appeal against a local authority decision made on or after 3rd April 2018, or an appeal relating to an EHC plan made or amended on or after 3rd April 2018.

Regulation 4 sets out the recommendations that the First-tier Tribunal may make in respect of the health and social care needs specified in the child or young person’s EHC plan.

Regulation 5 sets out the recommendations that the First-tier Tribunal may make in respect of the health and social care provision that is specified in the child or young person’s EHC plan.

Regulation 6(1) provides that where the First-tier Tribunal makes a recommendation in respect of health care needs or provision, it must send the responsible commissioning body a copy of the recommendation.

Regulation 6(2) provides that when it is sending a copy of the recommendation, the First-tier Tribunal may also send the responsible commissioning body a copy of the decision which disposes of the appeal proceedings brought under section 51(1) of the Act.

Regulation 6(3) requires responsible commissioning bodies to respond to recommendations in respect of health care needs and health care provision.

Regulation 6(6) requires the local authority that maintains the EHC plan to send a copy of the responsible commissioning body’s response to the Secretary of State.

Regulation 7(1) requires local authorities to respond to recommendations in respect of social care needs and social care provision. Regulation 7(4) also requires the local authority to send a copy of its response to the Secretary of State.

Regulation 8 provides that when a local authority notifies a child’s parent or a young person of a decision in accordance with regulations 10(3), 14(2), 20(11), 21(10), 22(5), 25(2) or 31(3) of the Special Educational Needs and Disability Regulations 2014, the local authority must also notify the child’s parent or the young person of the First-tier Tribunal’s power to make recommendations under these Regulations.

A full impact assessment has not been produced for this instrument. No, or no significant, impact on the private or voluntary sectors is foreseen. The impact on local authorities and clinical commissioning groups will be assessed as part of the evaluation of a two-year trial of these regulations. For the duration of the trial, the Department for Education will provide funding to contribute to local authority and clinical commissioning group expenses in relation to their new duties.

An Explanatory Memorandum is available alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).