

2020 No. 471

EDUCATION, ENGLAND

**The Special Educational Needs and Disability (Coronavirus)
(Amendment) Regulations 2020**

<i>Made</i> - - - -	<i>28th April 2020</i>
<i>Laid before Parliament</i>	<i>30th April 2020</i>
<i>Coming into force</i> - -	<i>1st May 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 30(8), 31(4), 36(11), 37(4), 44(7)(b) and (c), 47, 49(3), 51(4), 56(1), 71(11), 73(4), 74(3) and 135(2) and (3) of the Children and Families Act 2014(a) and sections 29(3) and 569(4) of the Education Act 1996(b).

Citation and commencement

1. These Regulations may be cited as the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 and come into force on 1st May 2020.

Review and expiry

2.—(1) The Secretary of State must review the effectiveness of these Regulations during the period for which they have effect.

(2) These Regulations cease to have effect on 25th September 2020.

Amendment of the Special Educational Needs and Disability Regulations 2014

3. The Special Educational Needs and Disability Regulations 2014(c) are amended as follows.

4. In regulation 2(1) (interpretation), at the appropriate place insert—

““coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
”.

5. After regulation 2 (interpretation) insert—

“Relaxation of time periods due to coronavirus exception

2A.—(1) Where the coronavirus exception applies, any requirement in any of the regulations specified in paragraph (3) for action to be taken within a specified period of

(a) 2014 c.6. Section 30(8) was amended by Schedule 2, Part 1, paragraph 4 to the Children and Social Work Act 2017 (c.16).
(b) 1996 c.56. Section 29(3) was amended by Schedule 30, paragraph 67 and Schedule 31 to the School Standards and Framework Act 1998 (c.31) and S.I. 2010/1158 and section 569(4) was amended by section 8(1) and (5) of the Education (Wales) Measure 2009.
(c) S.I. 2014/1530, relevant amending instruments are S.I. 2014/2096, S.I. 2015/359 and S.I. 2017/1306.

time or by a certain day is to be read instead as a requirement for such action to be taken as soon as reasonably practicable.

(2) The coronavirus exception applies where it is not reasonably practicable for a person to meet a requirement referred to in paragraph (1) for a reason relating to the incidence or transmission of coronavirus.

(3) The following regulations are specified for the purposes of paragraphs (1) and (2)—

- (a) regulation 15(2) (transfer of EHC plans) (in relation to the second reference to 15 working days), (4), (5), (7) (in relation to the second reference to 15 working days) and (8);
- (b) regulation 16(2) and (3) (change of responsible commissioning body);
- (c) regulation 20(9) and (10) (review where the child or young person attends a school or other institution);
- (d) regulation 21(7), (8) and (9) (review of EHC plan where the child or young person does not attend a school or other institution);
- (e) regulation 25(1) (notification of decision whether it is necessary to re-assess educational, health care and social care provision);
- (f) regulation 27(4) (amending or replacing an EHC plan following a re-assessment);
- (g) regulation 33 (requirement to consider mediation);
- (h) regulation 34(1) and (2) (where a parent or young person does not wish to or fails to pursue mediation);
- (i) regulation 35(2), (3) and (4) (mediation – health care issues);
- (j) regulation 36(2) (mediation - no health care issues);
- (k) regulation 39(1) and (3) (mediation certificate under section 55(5));
- (l) regulation 42(3) and (4) (steps to be taken by a local authority);
- (m) regulation 44(2)(d), (e), (f) and (h) (compliance with the orders of the First-tier Tribunal);
- (n) regulation 45(4), (5) and (6A) (unopposed appeals);
- (o) regulation 47 (disclosure of EHC plans in relation to higher education); and
- (p) regulation 56(3) (publication of comments on the local offer).”.

6. In regulation 4 (determination whether or not special educational provision may be necessary), after paragraph (2) insert—

“(3) The local authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus.”.

7. In regulation 5(4) (decision whether or not to conduct an EHC needs assessment)—

- (a) at the end of sub-paragraph (c) omit “or”; and
- (b) at the end of sub-paragraph (d) insert—
 - “; or
 - (e) of a reason relating to the incidence or transmission of coronavirus”.

8. In regulation 8(2) (duty to co-operate in EHC needs assessments)—

- (a) at the end of sub-paragraph (b) omit “or”; and
- (b) at the end of sub-paragraph (c) insert—
 - “; or
 - (d) of a reason relating to the incidence or transmission of coronavirus”.

9. In regulation 10(4) (decision not to secure an EHC plan)—

- (a) at the end of sub-paragraph (c) omit “or”; and
- (b) at the end of sub-paragraph (d) insert—
 - “; or
 - (e) of a reason relating to the incidence or transmission of coronavirus”.

10. In regulation 13(3) (timescales for EHC plans), for “(d)” substitute “(e)”.

11. After regulation 18 (circumstances in which a local authority must review an EHC plan) insert—

“Circumstances in which it is not necessary to review an EHC plan

18A.—(1) It is not necessary for a local authority to review an EHC plan in accordance with section 44(1) of the Act if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus.

(2) Where paragraph (1) applies, a local authority must instead conduct such reviews as soon as reasonably practicable.”.

12. In regulation 22 (amending an EHC plan following a review), after paragraph (5) insert—

“(6) The local authority need not comply with the time limit referred to in paragraphs (3) and (4) if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus.”.

13. In regulation 27(3) (amending or replacing an EHC plan following a re-assessment)—

- (a) at the end of sub-paragraph (c) omit “or”; and
- (b) at the end of sub-paragraph (d) insert—
 - “; or
 - (e) of a reason relating to the incidence or transmission of coronavirus”.

14. In regulation 45 (unopposed appeals), after paragraph (7) insert—

“(8) The local authority need not comply with the time limits specified in paragraph (3A) if it is impractical to do so because the circumstances referred to in regulation 10(4)(e) apply.”.

Amendment of the Special Educational Needs (Personal Budgets) Regulations 2014

15. The Special Educational Needs (Personal Budgets) Regulations 2014(a) are amended as follows.

16. In regulation 2 (interpretation), at the appropriate place insert—

““coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”.

17. After regulation 2 (interpretation) insert—

“Relaxation of time period due to coronavirus exception

2A.—(1) Where the coronavirus exception applies, the requirement for the local authority to review the making and use of direct payments within the first three months of them being made in regulation 11(2)(a) (monitoring and review of direct payments) is to be read instead as a requirement for such action to be taken as soon as reasonably practicable.

(a) S.I. 2014/1652, to which there are amendments not relevant to these Regulations.

(2) The coronavirus exception applies where it is not reasonably practicable for the local authority to meet the requirement specified in regulation 11(2)(a) for a reason relating to the incidence or transmission of coronavirus.”.

Amendment of the Special Educational Needs and Disability (Detained Persons) Regulations 2015

18. The Special Educational Needs and Disability (Detained Persons) Regulations 2015(a) are amended as follows.

19. In regulation 2(1) (interpretation), at the appropriate place insert—

““coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”.

20. After regulation 2 (interpretation) insert—

“Relaxation of time periods due to coronavirus exception

2A.—(1) Where the coronavirus exception applies, any requirement in any of the regulations specified in paragraph (3) for action to be taken within a specified period of time or by a certain day is to be read instead as a requirement for such action to be taken as soon as reasonably practicable.

(2) The coronavirus exception applies where it is not reasonably practicable for a person to meet a requirement referred to in paragraph (1) for a reason relating to the incidence or transmission of coronavirus.

(3) The following regulations are specified for the purposes of paragraphs (1) and (2)—

- (a) regulation 15(1) and (4) (needs assessments which are not completed);
- (b) regulation 16(2), (3) and (4) (transfer of a kept EHC plan);
- (c) regulation 17(1) and (2) (restriction on disclosure of EHC plans);
- (d) regulation 19 (requirement to consider mediation);
- (e) regulation 20(1) and (2) (where the appropriate person does not wish to or fails to pursue mediation);
- (f) regulation 21 (mediation);
- (g) regulation 24(1) and (3) (mediation certificate under section 55(5) of the Act);
- (h) regulation 27(3) (steps to be taken by a home authority);
- (i) regulation 29(2) and (6) (compliance with the orders of the First-tier Tribunal); and
- (j) regulation 30(3) and (6) (unopposed appeals).”.

21. In regulation 4 (determination whether or not special educational provision may be necessary), after paragraph (2) insert—

“(3) The local authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus.”.

22. In regulation 5(4) (decision whether or not to conduct a detained person’s EHC needs assessment)—

(a) at the end of sub-paragraph (b) omit “or”; and

(b) at the end of sub-paragraph (c) insert—

“, or

(d) of a reason relating to the incidence or transmission of coronavirus”.

(a) S.I. 2015/62.

23. In regulation 8(2) (duty to co-operate in a detained person’s EHC needs assessment), at the end of sub-paragraph (d) insert—

“; or

(e) of a reason relating to the incidence or transmission of coronavirus”.

24. In regulation 10(4) (decision not to secure an EHC plan)—

(a) at the end of sub-paragraph (b) omit “or”; and

(b) at the end of sub-paragraph (c) insert—

“; or

(d) of a reason relating to the incidence or transmission of coronavirus”.

25. In regulation 13(3) (timescales for EHC plans), for “(c)” substitute “(d)”.

26. In regulation 29 (compliance with the orders of the First-tier Tribunal)—

(a) after paragraph (6) insert—

“(6A) The home authority need not comply with the time limits specified in paragraph (3) if it is impractical to do so because the circumstances referred to in regulation 10(4)(d) apply.”.

(b) in paragraph (7)(c) after “10(4)(a)” insert “or (d)”.

27. In regulation 30(7)(c) (unopposed appeals), after “10(4)(a)” insert “or (d)”.

Amendment of the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017

28. The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017(a) are amended as follows.

29. In regulation 2 (interpretation), at the appropriate place insert—

““coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”.

30. After regulation 2 (interpretation) insert—

“Relaxation of time periods due to coronavirus exception

2A.—(1) Where the coronavirus exception applies, any requirement in any of the regulations specified in paragraph (3) for action to be taken within a specified period of time or by a certain day is to be read instead as a requirement for such action to be taken as soon as reasonably practicable.

(2) The coronavirus exception applies where it is not reasonably practicable for a person to meet a requirement referred to in paragraph (1) for a reason relating to the incidence or transmission of coronavirus.

(3) The following regulations are specified for the purposes of paragraphs (1) and (2)—

(a) regulation 6(3) and (6) (responding to health care recommendations); and

(b) regulation 7(1) and (4) (responding to social care recommendations).”.

28th April 2020

Vicky Ford
Parliamentary Under Secretary of State
Department for Education

(a) S.I. 2017/1306.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to secondary legislation relating to special educational needs and disability in order to provide exceptions to time limits set out in that legislation where they cannot be met because of a reason relating to the incidence or transmission of coronavirus.

Regulation 2 contains review and expiry provisions. The Secretary of State is required to review the effectiveness of the Regulations during the period in which they have effect. The Regulations cease to have effect on 25th September 2020.

Regulations 3 to 14 amend the Special Educational Needs and Disability Regulations 2014 ('the SEND Regulations 2014').

Regulation 5 inserts a glossing provision into the SEND Regulations 2014 which relaxes certain requirements in those Regulations for actions to be taken within specified time limits where it is not reasonably practicable for a person to meet those requirements for a reason relating to the incidence or transmission of coronavirus. Instead, any such requirement is to be read as a requirement for such action to be taken as soon as reasonably practicable.

Regulations 6 to 14 make textual amendments to the SEND Regulations 2014 to relax time limits.

Regulations 15 to 17 amend the Special Educational Needs (Personal Budgets) Regulations 2014 ('the Personal Budgets Regulations 2014').

Regulation 17 inserts a similar glossing provision into the Personal Budgets Regulations 2014 as regulation 5 does in respect of the SEND Regulations 2014.

Regulations 18 to 27 amend the Special Educational Needs and Disability (Detained Persons) Regulations 2015 ('the Detained Persons Regulations 2015').

Regulation 20 inserts a glossing provision into the Detained Persons Regulations 2015 similar to the ones in regulations 5 and 17 in relation to the SEND Regulations 2014 and the Personal Budgets Regulations 2014 respectively.

Regulations 21 to 27 make textual amendments to the Detained Persons Regulations 2015 to relax time limits.

Regulations 28 to 30 amend the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 ('the First-tier Tribunal Regulations 2017').

Regulation 30 inserts a glossing provision into the First-tier Tribunal Regulations 2017 similar to those in regulations 5, 17 and 20.

An impact assessment has not been produced for this instrument as this is a temporary, emergency measure and no significant impact on business, charities or voluntary bodies is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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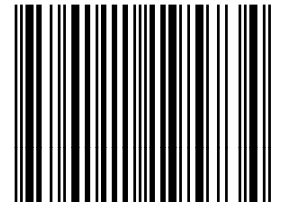
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