
STATUTORY INSTRUMENTS

2015 No. 62

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

PART 2

Detained persons with special educational needs

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⁽¹⁾ on release from detention (section H1);

⁽¹⁾ 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

- (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
 - (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)(2) 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.

(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.

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

(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 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(3) 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;

(3) 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) and paragraph 16 of Part 1 of Schedule 2 of SI 2010/1158.

- (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(4) (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(5).
 - (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(6);
 - (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(7); and
 - (i) to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills(8), exercising the right to inspect and take copies of an EHC plan in accordance with section 10(1)(e) of the Education Act 2005(9) 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.

(4) 1974 c.7.

(5) 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](#).

(6) [1986 c.33](#) as amended by section 93 and paragraph 91(1), Part II of Schedule 8 the [Further and Higher Education Act 1992 \(c.13\)](#).

(7) [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 \(c.21\)](#).

(8) 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 \(c.40\)](#).

(9) [2005 c.18](#).