

Coronavirus Act 2020 Modification of section 42 of the Children and Families Act 2014 (England) (No. 2) Notice 2020

The Secretary of State for Education, in exercise of the powers conferred by section 38(1) of, and paragraph 5 of Schedule 17 to, the Coronavirus Act 2020¹, issues the following notice.

Modification of section 42 Children and Families Act 2014

1. The Secretary of State for Education by this notice modifies section 42² (duty to secure special educational provision and health care provision in accordance with an education, health and care plan) of the Children and Families Act 2014 (the 2014 Act) in the manner described in the table in paragraph 5 of Schedule 17 to the Coronavirus Act 2020, so that any duty imposed on a person by that section is to be treated as discharged if the person has used reasonable endeavours to discharge the duty during the period specified in this notice.
2. The Secretary of State for Education considers that the issuing of this notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus for the following reasons:
 - (a) Since 20th March 2020 educational institutions, including schools and further education colleges, and registered childcare settings in England have remained open for vulnerable children and young people, and for children of critical workers in order to reduce the spread of coronavirus.
 - (b) On 28th April 2020, the Secretary of State for Education issued a notice modifying section 42 of the 2014 Act³, in the manner described in paragraph 1. The specified time period of that notice was 1st May to 31st May 2020.
 - (c) On 10th May 2020 the government announced that certain education and childcare settings in England are being asked to plan for the possibility of phased wider opening if the government's tests are met.
 - (d) Section 42 of the 2014 Act requires a local authority to secure the special educational provision specified in an education, health and care (EHC) plan and for health commissioning bodies to arrange any health care provision described in a plan. It is not possible for local authorities and responsible health commissioning bodies in England fully to meet their duties under section 42 of the 2014 Act in the current situation for the following reasons:
 - (i) Due to the coronavirus outbreak, local authorities are experiencing reduced special educational needs and disability (SEND) staff capacity (both administrative and specialist), which is affecting their ability to

¹ 2020 c.7.

² 2014 c.6.

³ The notice can be viewed at this link: The notice can be viewed at this link:

<https://www.gov.uk/government/publications/modification-notice-ehc-plans-legislation-changes>

secure provision and deliver the provision specified in EHC plans. In addition, local authorities have directed some of their available staff to respond to the pressures generated by the coronavirus outbreak itself (for example, emergency planning). This is limiting the resource available to secure provision in accordance with EHC plans.

- (ii) The current position is that children and young people with EHC plans are expected to attend education settings where it is determined, following risk assessment, that their needs can be as safely or more safely met in the educational environment. However, it may not be possible for all children and young people to attend their education settings on a full time basis for various reasons (for example, if they are clinically extremely vulnerable, or they attend a special school that is operating an attendance rota). This means that in many cases it will still not be possible for local authorities and health commissioning bodies to continue to deliver the special educational provision and health provision that would normally be delivered in an education setting.
 - (iii) Where children and young people are attending an education setting their normal educational programme will probably be disrupted for various reasons, including the implementation of protective measures. This means that in many cases it will not be possible to deliver the special educational provision specified in EHC plans that would normally be delivered through the setting's normal educational programme (for example, through a differentiated curriculum).
 - (iv) The response to the outbreak has required some health commissioning bodies to redeploy some staff or re-prioritise some services to meet the immediate needs of their communities. In addition, staff absences due to the coronavirus outbreak have reduced capacity to arrange and deliver the health provision specified in EHC plans.
- (e) Consideration has been given to whether there are any options available as an alternative to giving this notice, for example, whether all the provision specified in EHC plans could be delivered remotely to those children and young people who are at home and not in their usual educational setting. However, whilst remote delivery may be partially successful, it is not considered that this would represent an effective alternative for the following reasons:
- (i) The need to redeploy specialist staff to respond to the coronavirus outbreak means that there is unlikely to be sufficient specialist staff to deliver all provision remotely.
 - (ii) The limitations of remote working may make it impossible to deliver provision in this way for all families.

(iii) Even if a remote equivalent were to be provided for each aspect of provision specified in an EHC plan, this would not constitute securing the provision as specified.

(f) The modification is proportionate for the following reasons:

(i) The modification allows local authorities and health commissioning bodies in England to adapt to the changing situation in their specific area, based on the nature and demands of the coronavirus outbreak locally, workforce capacity and skills, and the needs of each individual with an EHC plan.

(ii) The modification enables local authorities and health commissioning bodies to arrange reasonable alternatives to the usual service during the coronavirus outbreak, such as by delivering therapies remotely, or using video.

Specified period

(g) The specified period in this notice starts at the beginning of 1st June 2020 and finishes at the end of 30th June 2020.

Signed by or on behalf of the Secretary of State for Education:

Date of signature:

28th May 2020

