**Education, Health and care needs assessments and plans: temporary legislative changes relating to Covid-19**

(www.gov.uk/government/publications/changes-to-the-law-on-education-health-and- care-needs-assessments-and-plans-due-to-coronavirus)

A range of factors related to the Coronavirus crisis has had an impact on services including education, health and local authorities in various ways and in recognition of these factors, the government has legislated so as to strike the right balance during the outbreak of coronavirus (COVID-19) between:

* the needs of children and young people with SEND to be protected and receive the right support in a timely way
* managing the demands on local authorities and health bodies to respond to the outbreak’

Within the Code of Practice (2015), the Children and Families Act (2014) and the SEND Regulations (2015), the timescale for completion of the EHC needs assessment and EHCP development, from the point when an assessment is requested until the final Plan is issued, must take no more than 20 weeks.

However, within the *current* legislation, there is an allowance for exceptional circumstances, which allow for certain specific exemptions from the timeframe. These are:

* Appointments with people from whom the Local Authority (LA) has requested information are missed by the child/young person
* The child/young person is absent from the area for a period of at least 4 weeks
* Exceptional personal circumstances affect the child/young person/parent
* The educational setting is closed for at least 4 weeks

New guidance from the Government now adds another modification and exception to the Regulations for the period of **1st May to 25th September 2020 (inclusive).**

The exception applies

*“where in a particular case, it is not reasonably practicable or is impractical to meet that time limit for a reason relating to the incidence or transmission of coronavirus, the specific time limit (such as to issue a plan to someone eligible for one within 20 weeks of the initial request) in the regulations being amended will not apply. Instead, the local authority or other body to whom that time limit applies will have to complete the process as soon as reasonably practicable or in line with any other timing requirement in any of the regulations being amended’.*

The timescales that are impacted by this legislation includes:

* The handling of requests for EHC needs assessments and re-assessments
* Decisions whether to issue Plans
* The preparation, issue, review and amendment of Plans
* Annual Reviews of EHCPs
* Processes relating to mediation
* Processes where there is a change of LA or Health Commissioning body
* Process for a LA reviewing for the first time the making and use of direct payments from a Personal Budget that is part of an EHCP
* Action a LA must take when the First Tier Tribunal makes an order
* Action a LA and Health Commissioning body must take when the First Tier Tribunal makes non-binding recommendations in respect of certain types of Health and Social Care matters within an EHCP

Therefore, these exceptions apply to:

* LAs (SEND and Social Care services)
* Health commissioning bodies
* Those who provide advice and information for EHC needs assessments – educational psychologists, health professionals and education settings
* Parents/young people when requesting a mediation certificate
* Mediation advisers

However, it is important to stress that the LA continues to consider requests for EHC needs assessments/re-assessments and will seek the appropriate advice to inform the Plan/Advisory Plan. The provision set out in a Plan will not be limited because of the current pandemic and reviews will still take place.

The LA must inform the parent/young person of exceptions that apply and explain the reasons for the delay. The LA will endeavour to complete the process as quickly as possible.

In interpreting these exemptions, the following reasons are considered relevant (although this is not an exhaustive list) :

* Inability to comprehensively complete a full assessment without having a face-to-face with the child/young person. This would then impact on the description of needs and placement in the most appropriate setting
* Lack of staff/team capacity to complete their duties which may be due to a variety of reasons
* Inability to complete/record processes because of persistent technical difficulties with systems on account of them being over-loaded during this time
* Staff unable to complete duties in a timely manner because of child-care or caring for dependents

There is **NO CHANGE** to:

* The duty on education settings to admit
* The timescale for education settings to respond to consultations (up to15 days)
* Complaints and right of appeal of parents/young persons
* Right of appeal to the First Tier Tribunal

Please see the attached notes which identifies the process to be used to apply a Covid-19 exception for late advice.

1. Whichever service/setting that is **not** going to meet the deadline should:

* Inform the **parent** explaining the reason for the delay
* The service/setting then informs the SEN Service
* The SEN Service communicates in writing to the parent to confirm the notification from the service/setting and explains the impact on the process

1. The service/setting is responsible for rescheduling the appointment/completing the piece of work while keeping the SEN Service and parent fully informed.
2. The setting/service completes the advice/report as soon as is practicable. This process will be reviewed on a monthly basis in collaboration with the parents with the understanding that each service will have their own procedures/protocols.
3. Once the advice is returned to the SEN Service the process continues