

2015 No. 505

EDUCATION, ENGLAND

The Children and Families Act 2014 (Transitional and Saving Provisions) (Amendment) Order 2015

Made - - - - *3rd March 2015*

Coming into force - - *1st April 2015*

The Secretary of State, in exercise of the powers conferred by section 137(1) of the Children and Families Act 2014(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Children and Families Act 2014 (Transitional and Saving Provisions) (Amendment) Order 2015 and comes into force on 1st April 2015.

Amendment of the Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014

2. The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014(b) is amended as follows.

3. In Article 2 (interpretation), in the appropriate places insert—

““detained person’s health services commissioner” has the same meaning as in section 74(8) of the 2014 Act;

“the Detained Persons Regulations 2015” means the Special Educational Needs and Disability (Detained Persons) Regulations 2015(c);

“the home commissioning body” means the body which was responsible for commissioning health services for the detained person immediately before the detention;”.

4. After Article 14 (duty to secure EHC needs assessment for other children etc in period 2015-2018) insert—

“Duty to secure EHC needs assessment for a detained person on release from detention in period 2015-2018

14A.—(1) This Article applies to a child or young person to whom this Part applies, other than a child or young person to whom Articles 12 or 14 apply.

(a) 2014 c.6.
(b) S.I. 2014/2270.
(c) S.I.2015/62.

(2) The local authority that maintains the statement for a child or young person is not required to review the statement under section 328(5)(aa) of EA 1996.

(3) The local authority must secure that an EHC needs assessment for him or her is carried out and concluded as soon as possible following their release from detention.

(4) This Article is subject to Articles 16, 23 and 28.”.

5. In Article 21 (effect of decision to prepare EHC plan following EHC needs assessment), in paragraph (3) for “notification under Article 18 was given” substitute “the EHC needs assessment began”.

6. In Article 22 (effect of decision not to prepare EHC plan following EHC needs assessment) for “Article 18(3)(b), (c) or (d)” substitute “Article 18(2)(b), (c) or (d)”.

7. After Article 29 (duty to anticipate application of section 36 of the 2014) insert—

“Detained persons who have had a pre-commencement learning difficulty assessment

29A.—(1) This Article applies to a detained person for whom an assessment under section 139A of the Learning Skills Act 2000 was completed before the commencement date.

(2) For this purpose an assessment under that section is completed when the written report described in section 139B of the Learning Skills Act 2000 which results from the assessment is completed.

(3) Despite the coming into force of section 71 of the 2014 Act on 1st April 2015, that section does not have effect in relation to the detained person before 1st September 2016.

(4) Paragraph (3) does not apply if, before 1st September 2016—

- (a) the detained person requests the home authority to secure a detained person’s EHC needs assessment for him or her,
- (b) a person acting on behalf of a post-16 institution requests the home authority to secure such an assessment,
- (c) the person in charge of the relevant youth accommodation where the detained person is detained requests the home authority to secure such an assessment, or
- (d) the home authority decides to secure such an assessment.

(5) The home authority may decide to secure such an assessment only if it thinks that—

- (a) the detained person has or may have special educational needs, and
- (b) it may be necessary for special educational provision to be made for him or her in accordance with an EHC plan on release from detention.

(6) Where a home authority secures a detained person’s EHC needs assessment under this Article, the new law applies in relation to the assessment, as if it were an assessment under section 71 of the 2014 Act.

Duty to anticipate application of section 71 of the 2014 Act

29B. After 31st August 2015 a home authority must have regard to the fact that it may be under a duty on or after 1st September 2016 to secure a detained person’s EHC needs assessment for a detained person to whom Article 29A applies and who is expected to attend a post-16 institution on or after that date.”.

8. For Part 7 (children etc with an EHC plan who are detained) substitute—

“PART 7

Children etc with statement who are detained

Children etc with a statement who are detained

30.—(1) This Part applies to a child or young person if—

- (a) a statement is kept by a local authority in England for the child or young person, and
- (b) the child or young person is a detained person.

(2) Despite the amendments made by Schedule 3 to the 2014 Act to Chapter 5A of Part 1 of EA 1996, that Chapter continues to have effect in relation to the child or young person as if the special educational provision specified in the statement—

- (a) were contained in an EHC plan kept for the child or young person, and
- (b) had been specified in the EHC plan immediately before the detention.

Power to secure an earlier detained person’s EHC needs assessment

31.—(1) The local authority that keeps the statement for the detained person may secure that a detained person’s EHC needs assessment is carried out for him or her at any time after the coming into force of this Order and before the time at which Article 36 requires an assessment to be secured.

Persons to whom notice of detained person’s EHC needs assessment must be given

32.—(1) A home authority that secures a detained person’s EHC needs assessment under Article 31 must give notice of the assessment to the persons listed in paragraph (2) no later than the beginning of the period of two weeks ending with the day on which the assessment begins.

(2) The persons mentioned in paragraph (1) are—

- (a) the appropriate person,
- (b) where the detained person is a child, the child,
- (c) the person in charge of the relevant youth accommodation where the detained person is detained,
- (d) the home commissioning body,
- (e) the detained person’s health services commissioner,
- (f) the officers of the home authority who exercise the home authority’s social services functions for children or young people with special educational needs,
- (g) the youth offending team responsible for the detained person,
- (h) in relation to a detained person who is a child, if the child is a registered pupil^(a) at a school, the head teacher of that school (or the person holding the equivalent position),
- (i) in relation to a detained young person—
 - (i) if the young person is a registered pupil at a school, the head teacher of that school (or the person holding the equivalent position), or
 - (ii) if the young person is a student of a post-16 institution, the principal of that institution (or the person holding the equivalent position), and

(a) Pupil has the meaning given in section 3 of EA 1996.

- (j) any person identified in accordance with regulation 4(2)(g) of the Detained Persons Regulations 2015.

Procedure for detained person's EHC needs assessment

33.—(1) The 2014 Act and the Detained Persons Regulations 2015 apply to a detained person's EHC needs assessment under this Part as they apply to a detained person's EHC needs assessment under the 2014 Act, subject to the following provisions of this Article.

(2) Section 31 of the 2014 Act applies in relation to the detained person's EHC needs assessment as if the home authority's functions in relation to the assessment were functions under Part 3 of that Act.

(3) As part of the detained person's EHC needs assessment, the home authority must invite the appropriate person to attend a meeting with a relevant officer of the authority to discuss the educational, health care and social care needs of the detained person.

(4) In paragraph (3) "relevant officer" means an officer of the home authority who exercises the home authority's education functions in relation to children and young people with special educational needs.

(5) The home authority may invite any other person that it thinks appropriate to attend the meeting.

(6) Where the meeting is to take place in the relevant youth accommodation, the home authority may only invite others to attend the meeting with the consent of the person in charge of the relevant youth accommodation.

Effect of decision to prepare EHC plan following detained person's EHC needs assessment

34.—(1) This Article applies if, in light of a detained person's EHC needs assessment under this Part, the home authority decides it is necessary for special educational provision to be made for a detained person in accordance with an EHC plan on release from detention.

(2) The new law applies in relation to the detained person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraphs (3) and (4).

(3) Regulation 13 of the Detained Persons Regulations 2015 applies as if paragraph (2) required the finalised EHC plan to be sent 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 the 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 the period of 14 weeks beginning with the day on which the detained person's EHC needs assessment began.

(4) The local authority must cease to keep the statement for the detained person when the EHC plan is made.

(5) The new law has effect in relation to the detained person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the detained person, at that time.

Effect of decision not to prepare EHC plan following detained person's EHC needs assessment

35.—(1) This Article applies if, in light of a detained person's EHC needs assessment under this Part, the home authority decides it is not necessary for special educational provision to be made for a detained person in accordance with an EHC plan.

(2) The new law applies in relation to the detained person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraph (3).

(3) Regulation 10 of the Detained Persons Regulations 2015 applies as if—

- (a) paragraph (1) required the notification to be given in accordance with section 71(10) of the 2014 Act to be given as soon as is practicable and in any event within the period of 10 weeks beginning with the day on which the detained person's EHC needs assessment began, and
- (b) paragraph (2) required the home authority to notify—
 - (i) the home commissioning body,
 - (ii) the detained person's health services commissioner,
 - (iii) the youth offending team responsible for the detained person, and
 - (iv) the person (if any) notified in accordance with Article 32(f), (h), (i) and (j).

(4) The home authority must cease to keep the statement for the detained person at the relevant time (but must keep the statement until that time).

(5) The new law has effect in relation to the detained person (to the extent it has not done so already), and the old law ceases to have effect in relation to the detained person, at the relevant time.

(6) If no appeal is brought under section 73(2)(b) of the 2014 Act, against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is at the end of that period.

(7) If an appeal is brought under section 73(2)(b) of the 2014 Act against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is—

- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
- (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
- (c) where, on the final determination of the appeal, the home authority is ordered to make and keep an EHC plan, when the plan is made;
- (d) where, on the final determination of the appeal, the case is referred back to the home authority for it to consider whether it is necessary for it to determine the special educational provision for the child or young person, the time found by applying paragraph (6) and this paragraph to the home authority's decision following the consideration as if the decision were one under paragraph (1).

Detained persons for whom an EHC needs assessment cannot be secured before 1st April 2018

36.—(1) This Article applies to a detained person if this Part first applies to him or her by virtue of Parts 3, 4 or 5—

- (a) on or after 1st April 2018, or
- (b) at a time before that date at which it is not practicable to secure that a detained person's EHC needs assessment for him or her is carried out and concluded before that date.

(2) The old law ceases to apply in relation to the detained person—

- (a) from the time at which this Part first applies to him or her, or

(b) if later, from the beginning of 1st April 2018.

(3) The new law applies in relation to the detained person from that time.

(4) Paragraphs (2) and (3) do not prevent the statement which is being kept for a detained person from continuing to have effect; but from the time mentioned in paragraph (2) it has effect as if the special educational provision specified in it were specified in an EHC plan kept for him or her.

(5) The home authority that keeps the statement for a detained person must secure that a detained person's EHC needs assessment for him or her is carried out and concluded as soon as it is reasonably practicable after this Part begins to apply to him or her."

3rd March 2015

Edward Timpson
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Order)

The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (the Detained Persons Regulations 2015) provide the detail for the legal framework for detained persons with special educational needs. The legal framework is primarily set out within sections 70 to 75 of the Children and Families Act 2014 and will be commenced from 1st April 2015. This Order amends the Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014 (the Transitional Order) as a consequence of the Detained Persons Regulations 2015 and the commencement of sections 70 to 75.

Article 4 inserts new Article 14A into the Transitional Order which is a requirement for a local authority to carry out an EHC needs assessment in respect of a detained person with a statement following their release from detention. This replaces the requirement under section 328(5)(aa) of the Education Act 1996 for the local authority to carry out a review of the statement upon release.

Article 5 amends Article 21 of the Transitional Order to clarify that the local authority has up to 14 weeks from the day the EHC needs assessment began, to prepare an EHC plan, where the local authority consider that it is necessary for special educational provision to be made to the child or young person.

Article 6 makes a minor amendment to Article 22 of the Transitional Order.

Article 7 inserts new Articles 29A and 29B into Part 6 of the Transitional Order to ensure that detained persons with learning difficulty assessments are treated the same way as those in the community with learning difficulty assessments.

Article 8 substitutes Part 7 (Articles 30 to 36) of the Transitional Order, which now concerns detained persons for whom a local authority keeps a statement.

Article 30 requires that where a local authority keeps a statement for a detained person, the special educational provision is treated as though it were contained in an EHC plan.

Article 31 provides a power for a local authority to carry out a detained person's EHC needs assessment in respect of a detained person with a statement. Articles 32 to 35 set out the procedure which should be followed where this power is used.

Article 36 provides that where a detained person has a statement on or after 1st April 2018, or where the local authority is not able to complete a detained person's EHC needs assessment before that date, the special educational provision is treated as if it were contained within an EHC plan

and the local authority must complete a detained person's EHC needs assessment as soon as possible.

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£6.00

UK2015030356 03/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/505>

ISBN 978-0-11-113203-6



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