STATUTORY INSTRUMENTS

2017 No. 1306

EDUCATION, ENGLAND

The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017

Made - - - -	*18th December 2017*
Laid before Parliament	*20th December 2017*
Coming into force - -	*3rd April 2018*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 29(3) of the Education Act 1996 [F1] and sections 51(4) and (5) and 135(2) and (3) of the Children and Families Act 2014 [F2].

F1 1996 c.56.
F2 2014 c.6.

Citation and Commencement

1. These Regulations may be cited as the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 and come into force on 3rd April 2018.

Interpretation

2. In these Regulations—

"the Act" means the Children and Families Act 2014;

"the 2014 Regulations" means the Special Educational Needs and Disability Regulations 2014 [F3];

[[F4]"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);**]**

"the responsible commissioning body" means, in relation to any specified health care provision, the body (or each body) that is under a duty to arrange health care provision of that kind in respect of the child or young person, or would be under that duty if the health care needs or health care provision recommended by the First-tier Tribunal were specified in the child or young person's EHC plan.

F3 S.I. 2014/1530. The relevant amending instruments are S.I. 2014/2096 and S.I. 2015/359.

F4 Words in reg. 2 inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **29** (with reg. 2(2))

[F5Relaxation 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).**]**

F5 Reg. 2A inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **30** (with reg. 2(2))

Transitional provision

3. These Regulations only apply to an appeal, under section 51(1) of the Act,—

(a) against a decision of a local authority where that decision was made on or after 3rd April 2018;

(b) relating to an EHC plan where it was made or amended on or after 3rd April 2018.

Power to make recommendations in respect of health and social care needs

4.—(1) When determining an appeal on the matters set out in section 51(2)(b) of the Act, the First-tier Tribunal has the power to recommend that—

(a) health care needs, or health care needs of a particular kind, which relate to the child or young person's special educational needs are specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations;

(b) social care needs, or social care needs of a particular kind, which relate to the child or young person's special educational needs or to a disability are specified in the EHC plan in accordance with regulation 12(1)(d) of the 2014 Regulations.

(2) When determining an appeal on the matters set out in section 51(2)(c), (d), (e) or (f) of the Act, the First-tier Tribunal has the power to recommend that—

(a) the health care needs specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations are amended;

(b) the social care needs specified in the EHC plan in accordance with regulation 12(1)(d) of the 2014 Regulations are amended;

(c) health care needs, or health care needs of a particular kind, which relate to the child or young person's special educational needs are specified in the EHC plan in accordance with regulation 12(1)(c) of the 2014 Regulations where those needs have not been specified in the plan;

(d) social care needs, or social care needs of a particular kind, which relate to the child or young person's special educational needs or to a disability are specified in the EHC plan

in accordance with regulation 12(1)(d) of the 2014 Regulations where those needs have not been specified in the plan.

Power to make recommendations in respect of health and social care provision

5.—(1) When determining an appeal on the matters set out in section 51(2)(b) of the Act, the First-tier Tribunal has the power to recommend that—

(a) health care provision, or health care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations;

(b) social care provision, or social care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations.

(2) When determining an appeal on the matters set out in section 51(2)(c), (d), (e) or (f) of the Act, the First-tier Tribunal has the power to recommend that—

(a) the health care provision specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations is amended;

(b) the social care provision specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations is amended;

(c) health care provision, or health care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(g) of the 2014 Regulations where that provision has not been specified in the EHC plan;

(d) social care provision, or social care provision of a particular kind, is specified in the EHC plan in accordance with regulation 12(1)(h) of the 2014 Regulations where that provision has not been specified in the EHC plan.

Responding to health care recommendations

6.—(1) When the First-tier Tribunal makes a recommendation in respect of health care needs or health care provision, it must send a copy of the recommendation to the responsible commissioning body.

(2) When sending a copy of a recommendation, the First-tier Tribunal may also send a copy of the decision which disposes of the appeal brought under section 51(1) of the Act to the responsible commissioning body.

(3) The responsible commissioning body must respond within 5 weeks beginning with the date of the recommendation to—

(a) the child's parent or the young person, and

(b) the local authority that maintains the EHC plan.

(4) The time limit specified in paragraph (3) does not apply where the First-tier Tribunal directs that a different time limit is to apply for the responsible commissioning body's response.

(5) A response under paragraph (3) must—

(a) be in writing,

(b) state what steps, if any, the responsible commissioning body has decided to take following its consideration of the recommendation, and

(c) give reasons for any decision not to follow the recommendation, or any part of it.

(6) The local authority must send a copy of the response received from the responsible commissioning body under paragraph (3)(b) to the Secretary of State within 1 week beginning with the date it was received.