STATUTORY INSTRUMENTS

# 2015 No. 62

# EDUCATION, ENGLAND

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

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| *Made - - - -* | *26th January 2015* |
| *Laid before Parliament* | *28th January 2015* |
| *Coming into force - -* | *1st April 2015* |

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 31(4), 36(11), 37(4) [F1], 44(7), 56(1) [F2], 71(11), 73(4), 74(3), 80(1) and 135(3) of the Children and Families Act 2014 [F3]:

**F1** Section 72(2) applies the powers which are in section 37(4) with modifications.
**F2** Section 73(9) applies the powers which are in section 56(1) with modifications.
**F3** 2014 c.6.

## PART 1

Introduction

### Citation and commencement

**1.** These Regulations may be cited as the Special Educational Needs and Disability (Detained Persons) Regulations 2015 and come into force on 1st April 2015.

### Interpretation

**2.**—(1) In these Regulations [F4]—

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

**[**[F5]"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);**]**

"detained person's health services commissioner" has the same meaning as in section 74(8) of the Act;

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

**F4** The definitions in the Act are applied throughout these Regulations.
**F5** Words in reg. 2(1) inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **19** (with reg. 2(2))

### [F6Relaxation 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 15(1) and (4) (needs assessments which are not completed);

(b) regulation 16(2), (3) and (4) (transfer of a kept EHC plan);

(c) regulation 17(1) and (2) (restriction on disclosure of EHC plans);

(d) regulation 19 (requirement to consider mediation);

(e) regulation 20(1) and (2) (where the appropriate person does not wish to or fails to pursue mediation);

(f) regulation 21 (mediation);

(g) regulation 24(1) and (3) (mediation certificate under section 55(5) of the Act);

(h) regulation 27(3) (steps to be taken by a home authority);

(i) regulation 29(2) and (6) (compliance with the orders of the First-tier Tribunal); and

(j) regulation 30(3) and (6) (unopposed appeals).**]**

**F6** Reg. 2A inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **20** (with reg. 2(2))

# PART 2

## Detained persons with special educational needs

*Assessments*

### Consideration of request

**3.** A home authority must consult the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable after—

(a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or

(b) 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,

before determining whether it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.

**Determination whether or not special educational provision may be necessary**

**4.**—(1) Where a home authority determines that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention it must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained, in accordance with section 71(6) of the Act as soon as practicable, but in any event within 6 weeks of—

(a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or

(b) the date on 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.

(2) Where the home authority is considering securing a detained person's EHC needs assessment it must also notify—

(a) the home commissioning body,

(b) the detained person's health services commissioner,

(c) the officers of the home authority who exercise the home authority's social services functions for children or young people with special educational needs,

(d) the youth offending team responsible for the detained person,

(e) in relation to a detained person who is a child, if the child is a registered pupil [F7] at a school, the head teacher of that school (or the person holding the equivalent position),

(f) in relation to a detained person who is a 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 at a post-16 institution, the principal of that institution (or the person holding the equivalent position), and

(g) in relation to a detained person who has been deleted from the admission register in accordance with regulation 8(1)(i) of the Education (Pupil Registration)(England) Regulations 2006 [F8], the person from whom the authority is required to seek advice and information from under regulation 6(1)(b).

**[**[F9](3) The local authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because of a reason relating to the incidence or transmission of coronavirus.**]**

**F7** Pupil has the meaning in section 3 of EA 1996.
**F8** S.I 2006/1751 to which there are amendments not relevant to these Regulations.
**F9** Reg. 4(3) inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **21** (with reg. 2(2))

**Decision whether or not to conduct a detained person's EHC needs assessment**

**5.**—(1) The home authority must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable and in any event within 6 weeks of—

(a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or

(b) the date on 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,

of its decision whether or not it is necessary to secure a detained person's EHC needs assessment.

(2) The home authority must also notify the persons who were notified in accordance with regulation 4(2) of its decision.

(3) When notifying the appropriate person of its decision that it is not necessary to secure a detained person's EHC needs assessment, it must also notify them of—

(a) their right to appeal that decision,

(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 in connection with a detained person's EHC needs assessment.

(4) The home authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

(a) the home authority has requested advice from the head teacher or principal of a school or post-16 institution (or person holding the equivalent position) during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens,

(b) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during the time period referred to in paragraph (1), **[**F10or**]**

(c) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph (1) **[**F11, or

(d) of a reason relating to the incidence or transmission of coronavirus**]**.

**F10** Word in reg. 5(4)(b) omitted (temp.) (1.5.2020) by virtue of The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **22(a)** (with reg. 2(2))

**F11** Reg. 5(4)(d) and word inserted (temp.) (1.5.2020) by The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/471), regs. 1, **22(b)** (with reg. 2(2))

**Information and advice to be obtained for a detained person's EHC Needs Assessments**

**6.**—(1) Where the home authority secures a detained person's EHC needs assessment, it must seek the following advice and information, on the needs of the detained person on release from detention, what provision may be required to meet such needs and the outcomes that are intended to be achieved by the detained person receiving that provision on release from detention—

(a) advice and information from the appropriate person,

(b) educational advice and information—

(i) from the head teacher or principal of the school or post-16 or other institution that the detained person was attending immediately prior to their detention,

(ii) where this is not available, from a person who the home authority is satisfied has experience of teaching children or young people with special educational needs, or knowledge of the differing provision which may be called for in different cases to meet those needs, or

(iii) if the detained person was not attending a school or post-16 or other institution immediately prior to their detention and advice cannot be obtained under sub-

paragraph (ii), from a person who was responsible for educational provision for the detained person at any time prior to their detention, and

(iv) if any parent of the detained person is a serving member of Her Majesty's armed forces, also from the Secretary of State for Defence,

(c) medical advice and information from a health care professional identified by the home commissioning body,

(d) psychological advice and information from an educational psychologist,

(e) advice and information in relation to social care,

(f) advice and information from the person in charge of the relevant youth accommodation where the detained person is detained,

(g) advice and information from the youth offending team responsible for the detained person,

(h) advice and information from any other person the home authority thinks is appropriate,

(i) where the detained person would have been beyond year 9 (if not for their detention), advice and information in relation to provision to assist the detained person in preparation for adulthood and independent living, and

(j) advice and information from any person the appropriate person reasonably requests that the home authority seek advice from.

(2) Where it appears to the authority, in consequence of medical advice or otherwise, that the detained person in question is either or both—

(a) hearing impaired;

(b) visually impaired;

and any person from whom advice and information is sought as provided in paragraph (1)(b) is not qualified to teach children or young people who are so impaired, then the advice sought must be advice given after consultation with a person who is so qualified.

(3) When seeking advice in accordance with paragraphs (1)(b) to (j), the home authority—

(a) must provide the person from whom advice is being sought with copies of—

(i) any representations made by the appropriate person, and

(ii) any evidence submitted by or at the request of the appropriate person.

(b) may, with the consent of the person in charge of the relevant youth accommodation, provide the persons from whom advice is being sought with any representations made and any evidence submitted under section 71(2) of the Act, by the person in charge of the relevant youth accommodation where the detained person is detained.

(4) The home authority must not seek any of the advice referred to in paragraphs (1)(b) to (j) if such advice has previously been provided for any purpose and the person providing that advice, the home authority and the appropriate person are satisfied that it is sufficient for the purposes of the detained person's EHC needs assessment.

**Matters to be taken into account in securing a detained person's EHC needs assessment**

**7.** When securing an EHC needs assessment a home authority must—

(a) consult the detained person and, where the detained person is a child, the child's parent and take into account their views, wishes and feelings,

(b) consider any information provided to the home authority by or at the request of the detained person and, where the detained person is a child, the child's parent,

(c) consider the information and advice obtained in accordance with regulation 6(1),