

Coronavirus Act 2020 Modification of section 42 of the Children and Families Act 2014 (England) 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 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 only for vulnerable children and young people and children of critical workers in order to reduce the spread of coronavirus. Children and young people not in those groups are to remain out of their setting.
 - b) Section 42 of the Children and Families Act 2014 ('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 provide the 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) Local authorities have reduced staff resources working on Special Educational Needs and Disability (SEND) administration due to the coronavirus outbreak. In addition, local authorities have directed some of their available staff to respond to the pressures generated by the outbreak itself (for example, emergency planning). This is limiting the resource available to secure provision in accordance with EHC plans.

¹ 2020 c.7.

² 2014 c.6.

- (ii) Educational institutions in England remain open for vulnerable children and young people and although those with EHC plans are classed as 'vulnerable' for this purpose, many will now be at home. This is often making it impossible for local authorities and health commissioning bodies to continue to deliver the special educational 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 following of social distancing guidelines.
 - (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.
- c) 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. 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 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.
- d) 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 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 outbreak, such as by delivering therapies remotely, or using video.

Specified period

3. The specified period in this notice starts at the beginning of 1st May 2020 and finishes at the end of 31st May 2020.

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

A handwritten signature in blue ink, appearing to be 'C. D. Jones', written on a light blue background.

Date of signature: 28 April 2020