

Statutory provision for SEND

As of 1st May 2020 the government has issued a modification notice to the Children and Families Act and guidance on changes to the timescales for EHC Needs Assessments.

These changes, and what they mean for Sheffield, are explained below. We have included actions you need to take. The following areas are covered:

- Details of the change
- Working with parents
- The duty to secure provision in an EHC Plan
- Timeframes for EHC needs assessments and annual reviews
- Annual reviews

In producing new guidance, the government are trying to ensure a balance between meeting individual children's needs and the pressures faced by schools and services at this time.

As you will see we are already doing a lot of these things, and in the coming days we will be working with schools, the Parent Carer Forum and SENDIASS to ensure that we continue to work together to implement these changes and to best meet the needs of Sheffield children and young people.

The details are in the following documents:

- <https://www.gov.uk/government/publications/modification-notice-ehc-plans-legislation-changes> (modification notice)
- <http://www.legislation.gov.uk/ukxi/2020/471/contents/made> (legislation amendments)
- https://www.gov.uk/government/publications/changes-to-the-law-on-education-health-and-care-needs-assessments-and-plans-due-to-coronavirus?utm_source=174e33bb-1741-4cd9-bde8-1d1dc0957f07&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate (Guidance on changes)

The Government has also issued a letter to all young people and parents about these changes:



Joint DHSC & DFE
Ministerial Letter.pdf



Coronavirus
Sheffield SEND paren

Please circulate this letter to all parents of children with SEND. If you've not already done so please also ensure that parents are sent a copy of the Sheffield SEND parent guide sent out previously and attached again.

The modification notice and guidance should be shared with all SENCOs so that they're aware of the changes that are being put in place along with this update.

Areas of change:

This is a modification to the law around SEND. The law itself has not changed. It affects two specific areas:

- The duty to secure provision in an Education Health and Care Plan (EHC Plan)
- The timeframes for Education Health and Care Needs Assessments and Annual Reviews

The changes come into effect from today, Friday 1st May 2020. This guidance provides a summary of how this will work in Sheffield and the actions that need to be taken.

Working with parents:

It is more important than ever that good communication takes place with parents of children with SEND. We know that there is regular and ongoing dialogue with families in Sheffield; we have advised that all schools as a minimum should contact those who have an EHC Plan on a weekly basis and those accessing SEN support fortnightly. Schools should ensure that they discuss with families the provision they are putting in place and what is and is not practicable to deliver from a child's EHC Plan or Support Plan.

The guidance is clear that each child and their needs are unique. Individual discussions and decisions will need to take place in partnership with a family around how their child's needs are met, rather than any blanket policies or approaches.

The council is working with groups such as the Parent Carer Forum and SENDIASS to make sure that changes being put in place are co-produced with families.

The duty to secure provision in an Education Health and Care Plan (EHC Plan):

The modification order is time limited from 1st May 2020 to 31st May 2020 in the first instance, however the secretary of state has the ability to extend it on a month by month basis.

The local authority and health commissioners have a duty to secure provision detailed in an EHC plan. This duty is implemented through individual schools. The amendments move this duty from an ***absolute duty*** to a ***requirement to use reasonable endeavours*** to put provision in place.

Reasonable endeavours means that we must do something to meet a child's needs. You are already working hard to put in place provision for all children and specifically for those with SEN.

The department for Education have told us how important it is to keep a record of what provision in an EHC Plan is being put in place, what is not able to be put in place and how collectively we are mitigating against the impact of this. Next week we will work with parents and schools to provide a process and tools to record this in a way that will be consistent across the city. We will keep this as simple as possible for professionals and families and will link to the risk assessments already being done.

Schools should consider the information around **what, where, how, when** and **by whom** contained in the guidance as a framework for making reasonable endeavours to put provision in place.

The guidance shares some good practice examples of how provision can be put in place that schools can consider when arranging provision and discuss with advisory services such as the Educational Psychology Service. In Sheffield we know that colleagues across Education, Health and Care are already doing many of these things.

Across SEND health services the teams have assessed all children on their caseload and have worked with the partners to ensure that provision is matched to need for those with an EHC Plan. Where it is deemed essential, they are offering face to face appointments in person for those assessed as high risk. Phone calls and telephone consultations are taking place of face to face appointments wherever appropriate. Resources for families are also being made available virtually. Children for whom the risk assessment states that physical therapy must be available because otherwise there is risks to the detriment of development continue to be seen throughout the pandemic.

What you need to do right now in relation to provision:

- ***Please continue to work with parents, the local authority and health services to discuss the provision you can put in place from an EHC Plan and the impact of provision you are not able to put in place.***
- ***Next week we will share with you citywide processes and tools for recording provision in line with an EHC Plan.***

Timeframes for Education Health and Care Needs Assessments and Annual Reviews:

The change relates to the **timings** of assessments and reviews only. All the requirements to complete an assessment or review remain in place. The law has been modified from 1st May 2020 to 25th September 2020. The changes relate to any decision that was due after 1st May for a particular decision, so for example if the 6 weeks for the local authority to make a decision as to whether we will conduct an EHC Needs Assessment is after 1st May it would be included in this exemption.

The law has been changed for cases only when it is ***not reasonably practicable*** or ***impractical*** for the local authority and health commissioning body to complete the assessment or review due to the impact of Coronavirus.

Where it's practicable to do so, we will continue to meet the legal time frames around EHC needs assessments, however, in some cases this will not be possible. If there is a delay SENDSARS will discuss with parents. The guidance advises that the process must be completed as soon as is practicable.

We already are continuing to make decisions about assessments, provision and places in schools. The SENDSARS service continue to work with schools, services and families to put these in place in the usual ways, however, the impact of coronavirus, particularly in regards to different IT systems used by the service has made this more challenging. The service is working incredibly hard to address this.

All decisions around time frames will be managed on a case by case basis and we are not putting any blanket policies in place. We envisage that areas that may impact the ability to complete assessments and reviews in the normal timeframes could include when a school is unable to access information, where an assessment service is unable to complete an assessment as normal or where staffing levels are depleted.

For colleagues in health there has been a significant change in ways by which assessments are completed. For children who are known to services these services are notifying families that they have received a request to assess and doing virtual assessments where they are able to gather the wishes of children and their families. This information is then returned to SENDSARS. The DCO will quality assure this information and ensure that there is clarity on what needs to happen in terms of assessment when the Covid19 restrictions are relaxed, will document how the assessments have been made and will clarify that the recommendations may change once the situation allows for a more in depth assessment. This will be particularly relevant for children requiring OT and PT input.

Annual Reviews of EHC Plans:

Annual reviews should still take place. Where it is not possible to complete the review in the usual timeframe then it should be completed as soon as is reasonably practicable. The guidance includes details of where annual reviews should be prioritised.

Schools are encouraged to use video conferencing platforms such as zoom and teams to conduct the review. Please discuss with your parents, in advance, how you will manage the review meeting. It's particularly important to discuss with young people their input to the meeting as many will not want to be on video conferencing.

Please ensure that you contact everyone who should be involved in advance with clear details on how the meeting will work and what IT they may require. If you are using video

conferencing it's helpful to set clear expectations about how the meeting will work such as requesting participants raise their hand when they want to speak. It's vital to ensure that you make sure that young people and their families get the opportunity to input to the meeting so keep checking in with them. It's also sensible to be aware that you may need to take the discussion slower than usual or break it into smaller parts so that everyone can manage the meeting. Please be aware that some families will not have access to IT facilities so the meeting may need to be conducted over the phone or potentially in school if good social distancing can be observed and everyone is happy with this.

Documents should be sent following the review to SENDSARS in the usual way.

Other areas covered in the advice:

Where an EHC Plan is issued or amended to name a particular school there is still a duty for the school to admit the child (ie to put on their roll) and then take responsibility for their education provision, even if not physically open.

There is still an expectation that schools respond to consultations in the usual timeframes wherever possible. SENDSARS are working on a way to streamline this process.

The SEND tribunal also continues to meet and make decisions on cases.

What schools need to do right now about EHC Needs Assessments and Reviews:

- ***Continue to provide information when requested about EHC Needs Assessments and reviews, including around school consultations***
- ***Work with assessment services such as Educational Psychology and health partners to support their assessments in different ways***
- ***Continue to arrange annual reviews with families***
- ***Continue to keep in good contact with families***

The local authority, CCG, the Parent Carer Forum and schools will work together next week (w/b 4th May 2020) to make sure that there is a consistent process regarding Sheffield children about the modifications and further information will be shared. Due to the collaborative approach that Sheffield has taken over the past 6 weeks a significant amount of this guidance reflects work we are already undertaking and therefore we do not anticipate a significant change in current arrangements.

If you have any questions in regards to this or require clarification please contact your Educational Psychologist or Tim Armstrong, head of SEN for Sheffield City Council at tim.armstrong@sheffield.gov.uk