



Department  
for Education

# **Reviews of Education, Health and Care plans: proposed timescales**

**Government consultation**

**Launch date 15 June 2022**

**Respond by 12 August 2022**

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## Introduction

We are currently consulting separately on the changes we want to make to the special educational needs and disabilities (SEND) and alternative provision (AP) system in England. The SEND and AP Green Paper, [SEND Review: Right support, Right place, Right time](#)<sup>1</sup> includes confirmation of our intention to change the timescale for the issuing of draft Education, Health and Care (EHC) plans following annual reviews. We said that a further consultation would follow. This consultation document delivers on this commitment.

Through this consultation we are seeking views on whether to extend the statutory timescale by up to four weeks where, following a review, there is a proposal to amend an EHC plan. We are also seeking views on complementary proposals to strengthen other aspects of the system for reviewing EHC plans.

## Who this is for

- children and young people with EHC plans and their families
- organisations representing children and young people with SEND and their families
- local authority ('LA') SEND officers
- any early years setting, school, college or other setting attended by children or young people with an EHC plan
- educational psychologists, health professionals, social care professionals and others involved in the review of EHC plans

## Issue date

The consultation was issued on 15 June 2022.

## Enquiries

If your enquiry is related to the policy content of the consultation you can contact the DfE's SEND & AP Directorate on [sen.implementation@education.gov.uk](mailto:sen.implementation@education.gov.uk).

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by

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<sup>1</sup> SEND Review: Right support, Right place, Right time (DfE, March 2022)

email: [consultations.coordinator@education.gov.uk](mailto:consultations.coordinator@education.gov.uk) or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

## Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

## The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) later this year.

## About this consultation

This consultation document makes three key proposals for changing aspects of the law relating to the review of EHC plans:

- Proposal 1: An LA would have to prepare and issue its draft proposals over how to amend the plan as soon as practicable following a review meeting and in any event within *eight* weeks of that meeting. (A March 2022 High Court judgment has clarified that the current duty on LAs is to do this within *four* weeks of the review meeting.)
- Proposal 2: The above would establish a two-stage procedure for what an LA must do following a review meeting, if it decides to propose amendments to a plan. We propose that the duties on the LA at the two stages would be:
  - to confirm its intention to amend, which it would need to do within four weeks of the review meeting; and
  - to issue its draft proposals for amending a plan, in the period of up to eight weeks from the review meeting.
- Proposal 3: The advice and information to be fed into a review meeting should be circulated at least *three* weeks in advance of the meeting, rather than the current *two*. This would mean that such advice and information needed to be gathered at least a week earlier in the process.

We would like to hear your views on our proposals.

## Respond online

To help us analyse the responses please use the online system wherever possible. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

## Other ways to respond

If for exceptional reasons you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a Word document version of the form and email it or post it.

### By email

[EHCPAnnualR.consultation@education.gov.uk](mailto:EHCPAnnualR.consultation@education.gov.uk)

### By post

EHCP Reviews consultation  
SEND & AP Directorate  
Department for Education  
Floor 8, Sanctuary Buildings  
20 Great Smith Street  
London SW1P 3BT

### Deadline

The consultation closes at 11.45 pm on 12 August 2022.

## Overview

This consultation is mainly seeking views on there being up to four weeks more for the preparation and issuing of any proposals by the LA for amending an EHC plan following a review meeting. A [High Court judgment](#)<sup>2</sup> in March 2022 has clarified that the Special Educational Needs and Disability Regulations 2014 ('the SEND Regulations 2014') require LAs to issue any proposals for amending an existing plan within four weeks of a review meeting<sup>3</sup>. Before the judgment, a widespread understanding of the law had been that LAs had to send draft proposed amendments to the plan<sup>4</sup> 'without undue delay' following notification of the proposal to amend a plan after a review meeting. In March 2022 we published [SEND Review: Right support, Right place, Right time](#). This Green Paper contains proposals for a stronger national system for children and young people with SEND. The consultation closes on 22 July 2022. We set out a range of proposals for strengthening the EHC plan system, including a commitment to consult separately on changing the timescale for the issuing of draft plans following annual reviews. This consultation fulfils that commitment to consult separately.

It is crucial that the provision set out in EHC plans meets the needs of the child or young person ('CYP'), including where those needs change over time. We therefore consider that the legislation needs to ensure that children and young people whose EHC plan is subject to amendment receive high quality proposed amendments within an achievable timescale, so that their needs are met well or they have the opportunity in a timely manner to progress disagreements through the appropriate redress processes.

As of January 2022, there were over 473,000 plans. All these plans would have been subject to annual review during 2021, apart from those issued in that year (just over 62,000). Some of these plans will have been reviewed as part of a 'phase transfer' review<sup>5</sup>. In addition, some plans would need to have been amended outside of the annual or 'phase transfer' review processes.

Most LAs are already experiencing growing pressures on their EHC plan processes as the number of EHC plans has risen significantly over recent years.

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<sup>2</sup> L, M and P v Devon County Council [2022] EWHC 493 (Admin)

<sup>3</sup> This is part of LAs' duty to 'send the child's parent or the young person a copy of the EHC plan together with a notice specifying the proposed amendments, together with copies of any evidence which supports those amendments' (regulation 22(2)(a) of the SEND Regulations 2014).

<sup>4</sup> In practice this duty is often discharged by issuing a marked-up version of the existing plan.

<sup>5</sup> LAs must conduct a review and issue an amended plan (where necessary) where a CYP is within twelve months of a transfer between phases of education or within five months of a proposed transfer between post-16 institutions. In this document we refer to the duty to conduct a review in such circumstances, which is set out in regulation 18 of the SEND Regulations 2014, as a 'phase transfer'.



In the light of the High Court judgment, we are now seeking to gather views and evidence about whether the clarified statutory deadlines enable the production of quality amended EHC plans; or whether there is now too high a risk of poor quality plans and poor decisions about changes to provision and/or placement. Given the nature of the processes required in preparing draft proposals, we intend, through this consultation, to test whether introducing an additional period of up to four weeks would be reasonable. This would involve changing the duty on LAs from:

- having to issue any proposals for amending an EHC plan within *four* weeks of a review meeting; to
- having to do this as soon as practicable but in any event within *eight* weeks of the review meeting. This is set out as Proposal 1 below, with additional detail at Proposal 2.

We also propose that if we do amend legislation in this way, we would make related changes to the law on reviews, further to help secure these reviews being conducted in a timely way, drawing on a full understanding of the CYP's needs. This includes requiring LAs to start the process of preparing for review meetings a week earlier than they must currently. This is set out as Proposal 3 below. We believe that these changes would benefit children, young people and their families.

We also plan to issue non-statutory guidance on any amendments we make in the light of this consultation. This would be in advance of consulting on changes to the [SEND Code of Practice: 0 to 25 years](#)<sup>6</sup> to reflect those amendments as part of a wider update in the light of the SEND and AP Green Paper.

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<sup>6</sup> SEND Code of Practice: 0 to 25 years (DfE and DoH, January 2015)

# Proposal 1: Change the timescales for issuing proposals to amend an Education, Health and Care plan after a review meeting

## Background

### A widespread understanding of the timing duties relating to review of an Education, Health and Care plan, prior to the High Court judgment

A key feature of the EHC needs assessment and plan system is the requirement on LAs to complete various processes within clear and exacting statutory timescales. Where, for example, a request is made for a new plan, there is a start to finish timeline set out in regulations, complemented by timescales for stages along the way.

In contrast, when amending a plan following a review<sup>7</sup>, there have been differing interpretations of whether there was a firm timescale. Before the clarification in the High Court judgment, a widespread interpretation of what the law required over conducting annual reviews was as follows:

- LAs have<sup>8</sup> to complete an annual review of every plan within a year of:
  - the last review being concluded; or
  - the issue of the plan for the first time.
- An annual review is made up of the process that begins with the gathering of advice and information to feed into a review meeting and ends with:
  - a notification - over whether the LA has decided to maintain or cease a plan - to be issued to parents or the young person within four weeks of the review meeting; or

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<sup>7</sup> As well as their duties over annual reviews, LAs must:

- conduct a review and issue any amended plan where a child or young person is within twelve months of a transfer between phases of education or within five months of a proposed transfer between post-16 institutions (a 'phase transfer'). (Regulation 18 of the SEND Regulations 2014);
- conduct a review if a child or young person with a plan under the age of 18 is not receiving education or training. (Regulation 29(2) of the SEND Regulations 2014); and
- conduct a review of a plan within a set timescale set out in regulation 15(5) of the SEND Regulations 2014 where the CYP with that plan has moved from another LA's area.

An LA also has the discretion to carry out reviews in other circumstances or to amend a plan without conducting a review.

<sup>8</sup> Section 44(1) of the Children and Families Act 2014

- a notification to these persons that the LA intends to amend the plan.
- From the point of the notice of the meeting being issued (at least two weeks in advance), all of the processes associated with a review have statutory timescales. These include a duty on the LA to review a plan at least every year, which was taken to mean the review had to be *completed* no more than a year from the *completion* of the review the year before (or the initial issue of the plan).

Under this interpretation of the law there was no specific statutory timescale for the preparation of proposals for amending the plan if the LA had given notice that it intended to do this. Although public law principles meant that an LA must provide its proposals over how to amend the plan within a reasonable timeframe and therefore without any undue delay, there was no specific timescale for this process explicitly stated in the regulations.

The understanding of the law that there was no statutory deadline for issuing any proposals to amend a plan following a review was in contrast with other procedures relating to the amendment of plans:

- the handling of requests for re-assessment<sup>9</sup> of plans, where, if the LA agrees to re-assess, there is a statutory timescale for completing the process (a maximum of fourteen weeks from the notification of its decision to re-assess);
- cases where the LA decides following a review not to amend a plan or decides to cease to maintain a plan, when the right of appeal to the Tribunal will then be triggered by the issue of the notification to the parent or young person which is at the latest four weeks after the review meeting. Whereas if the authority proposed to amend the plan, the right of appeal was only triggered once the final plan was issued; and
- ‘phase transfer’ reviews, where the duty is on the LA to review and amend a plan (where necessary) by the relevant date set out in the SEND Regulations 2014.

If an LA was taking longer to finalise proposed amendments to a plan than the parents or young person thought was reasonable, they could challenge this in the same way that they could any breach of a statutory timescale relating to EHC plans:

- complaint to the LA under its complaint procedures; and/or
- complaint to the Local Government and Social Care Ombudsman; and/or
- complaint to the Secretary of State that the LA had acted unreasonably or had failed to carry out one of its duties under Part 3 of the Children and Families Act 2014 (‘the 2014 Act’) (sections 496/7 of the Education Act 1996); and/or

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<sup>9</sup> The statutory processes for amending a plan following a re-assessment are outside the scope of this consultation.

- judicial review.

There is no right of appeal to the Tribunal in relation to breaches of any statutory timescales.

The full statutory process for conducting a review of a plan is set out in Annex A. In that Annex we have highlighted in bold the stage<sup>10</sup> where an LA is preparing and then issues proposals for amending a plan following a review meeting. This is the process that is the principal subject of this consultation. We have also included at Annex B extracts from the SEND Regulations 2014 that relate to the subject matter of this consultation.

## **The process for gathering and evaluating advice and information about the needs of the child or young person**

In order to develop its proposals over how to amend a plan following a review meeting the LA will be evaluating all the relevant material obtained through the review process, including:

- the views of the CYP and/or their parents;
- advice and information that has to be gathered and circulated at least two weeks before the review meeting from a list of named professionals, with these persons also being invited to that meeting to contribute in person. The LA also has discretion to seek such advice and information from others if it considers this appropriate;
- where the CYP is attending a type of school described in the SEND Regulations 2014 (called in this document, a 'relevant school')<sup>11</sup>: the written recommendations from the school about whether and how to amend the plan, and any contrary views expressed at the review meeting. The school needs to send its report containing this material to the LA within two weeks of the review meeting;
- any further advice and information from the same or other partner bodies that exceptionally is gathered *after* the review meeting. We would expect the setting usually to be identifying any changing needs and working with the LA to gather relevant professional advice during the year. However, there will exceptionally be times when the advice and information that can be gathered in advance of a review meeting will not be sufficient for the LA to decide how it proposes to amend a plan. It is part of the purpose of the meeting to identify or explore any

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<sup>10</sup> Stage 8 and stage 8\*

<sup>11</sup> One of the following: '(a) maintained schools; (b) maintained nursery schools; (c) Academy schools; (d) alternative provision Academies; (e) pupil referral units; (f) non-maintained special schools; (g) independent educational institutions approved under section 41 of the Act'. (Regulation 20(12) of the SEND Regulations 2014)

changed needs, to allow the LA then to gather the additional advice and information it needs to decide what provision is necessary. Under the SEND Regulations 2014 the report from the school may not be received by the LA for two weeks. Where it is two weeks from the meeting that the LA receives the report, the LA then has two weeks to gather any extra advice and information and draw up and issue proposals for amending the plan; and

- potentially having early contact with settings that might need to be formally consulted at the next stage if a change of setting is being contemplated by the LA and/or is a preference stated by the parents or young person. For example, where the LA is considering amending an EHC plan following a review, the parents or young person will be given the opportunity to request that a particular school or institution be named in the plan. If their request is not reflected in the final plan, they have a right to appeal this decision. (Unlike with Statements in the previous SEN regime, there is no separate legal process for consideration of the request of the parents or young person for a change of setting.)

There is a range of expectations on the LA's partners in relation to providing the advice and information necessary for a review and the subsequent decision about the future of the plan. These are underpinned by the general duties for the LA and its partners to co-operate with each other over their respective functions under Part 3 of the 2014 Act. The LA is dependent on these processes being completed by its partners in a timely fashion, otherwise this may slow down its issuing of the proposed amendments to the plan.

The decision-making process for the LA over how to amend a plan may not be straightforward. Where, for example, there is a lack of consensus about the updates required, there can be difficult judgements for the LA to make before the actual proposed amendments to the plan can be completed and the draft issued to the parents or young person. It may also be that the date of an annual review has unexpectedly to be brought forward, for example to review the plan of a CYP at imminent risk of exclusion from school. This need for urgency might affect how comprehensive is the advice and information available to the LA. The LA's decision-making needs to be a considered process, in which all relevant factors are weighed up and all the necessary advice and information is gathered and evaluated. This will include the LA's duty under section 19 of the 2014 Act to have regard to the views, wishes and feelings of the child and his or her parents, or the young person.

## **The implications of the High Court judgment**

Until the recent High Court judgment, as outlined above, a widespread understanding had been that LAs:

- had a duty in public law not unduly to delay the issue of proposed amendments to a plan following review; but

- were not subject to a statutory maximum timescale<sup>12</sup>.

The judgment has held that this widespread understanding of the law was flawed; and that what the legislation actually requires is that the LA - if it proposes to amend the plan after a review meeting – must, within **four** weeks of a review meeting, issue:

- the EHC plan;
- a notice specifying the proposed amendments; and
- copies of the evidence which supports those amendments.

There is no separate stage for preparing a draft of the specific amendments that the LA is proposing: the work on deciding what amendments to the plan to propose must be done during that four week period.

We consider that this new understanding of the law may have the following impact:

- for families, the implications are likely to be mixed (which is one of the main drivers for our consulting on a change):
  - on the one hand the overall deadline for the issue of any final amended plans is twelve weeks. The issue of the final plan is the point at which any amended provision necessary for meeting the CYP's needs must be secured or arranged; and also when the rights of appeal for the parents or young person are triggered over the special educational needs and/or provision specified in the plan and/or the setting named, but
  - on the other hand, this may not allow sufficient time for all the necessary advice and information to be collected and for preparation of any proposals for amending the plan that are of the necessary quality;
- for LAs, we have concerns that having to draw up proposals for any amendments of plans more quickly will reduce their ability to meet statutory deadlines and to issue proposals for amending plans that are of the necessary quality; and
- where (exceptionally) health or social care professionals, educational psychologists or others need to provide advice and information *after* a review meeting, they may need to act more quickly than before. This poses challenges in terms of professionals' capacity to contribute to reviews in a timely way.

We do not expect there to be any change to what is required of those who provide advice and information *before* review meetings to underpin the LA's decision-making:

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<sup>12</sup> This interpretation also applied to other types of review, such as 'phase transfer' reviews although there is an explicit end date for the issue of any amended plan after a review which the LA has to meet. There is also a backstop date for completing a review where a CYP with a plan has moved into the LA's area.

any setting that the CYP attends, relevant health and social care professionals etc. Their timely input will remain key to the LA meeting its duties over the review process.

## Proposal and rationale

We consider that the legislation needs to ensure that children and young people whose EHC plan is subject to amendment receive high quality proposed amendments within an achievable timescale, so that their needs are met well or they have the opportunity in a timely manner to progress disagreements through the appropriate redress processes.

We are aware from a number of sources (including parents and parent groups, SEND organisations, education settings, reported judgments and reports of the Local Government and Social Care Ombudsman) that, in a significant minority of cases, preparing a draft of the amendments to the plan proposed seemingly does take LAs an unusually long time. We are aware of cases that have taken several months from review meeting to issue of a final plan, and in very rare and extreme cases that process taking over a year.

We conclude therefore that we need to set a reasonable time for LAs to draw up any proposals to amend a plan. The LA may be able to prepare proposals to amend the plan quite rapidly if, for example:

- it has all the advice and information it needs when it receives the report from the school that a child attends;
- all are agreed that the setting named in the plan remains appropriate; and
- there are few substantive changes to the plan being proposed.

Whereas the LA may reasonably need longer if, for example:

- it emerges at the review meeting that the child's special educational, health or social care needs have changed significantly and that further advice and information is needed;
- the LA decides that significant changes are likely to be needed to the plan and that it is appropriate to do this through a review rather than do a full re-assessment;
- a change to a new setting is being considered; and
- there isn't consensus about how best to meet a child's needs or which setting they should attend.

We are consulting therefore on the following:

## **Proposal 1**

**An LA would have to prepare and issue its draft proposals over how to amend the EHC plan as soon as practicable following a review meeting and in any event within eight weeks of that meeting.**

We would welcome views on whether an eight week maximum is a reasonable timescale for the LA to prepare its proposals for an amended plan and for its partner bodies to provide any additional advice and information that is exceptionally needed following the review meeting. If you feel that the deadline should remain as it is (four weeks from a review meeting) or that a different deadline would be appropriate, it would be helpful to know why you feel this and what deadline you would recommend.

Proposal 1 would ensure that parents and young people could, if need be, appeal the content of the amended plan within sixteen weeks of the review meeting. This sixteen week process would be made up of three stages:

- a) up to four weeks for the notification of the decision following the review meeting;
- b) the issue of draft proposals to amend the plan as soon as practicable but in any event within eight weeks of the review meeting. This would also formally be the final stage of the review (so in the context of an annual review this must be completed within a year of the previous review concluding or of the plan first being issued); then
- c) the issue of a final plan as soon as practicable but in any event<sup>13</sup> within eight weeks from the issue of the draft proposals.

This contrasts with the current position which allows four weeks from the review meeting for stages (a) and (b) above, and a further eight weeks for stage (c). The final plan must therefore be issued within twelve weeks.

## **Consultation question 1**

**To what extent do you agree or disagree that, where an LA proposes to amend an EHC plan after a review meeting, it should issue proposed draft amendments to**

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<sup>13</sup> If this is a 'phase transfer' review there are also specific dates for amending the final plan following a review set out in regulation 18 of the SEND Regulations 2014, such as 15 February or 31 March of the relevant year depending on the circumstances.



the plan as soon as practicable after that meeting and in any event within eight weeks?

***Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree***

- If you don't agree with an eight week deadline, please say what deadline you think the LA should be subject to and why.

## **Proposal 2: Actions needed if there are to be two stages following a review meeting where there is a proposal to amend a plan**

### **Background**

In Proposal 1 above, we set out an intention for there to be an extra stage in the process for considering amending a plan following a review meeting: that the requirements to issue a notice to confirm the intention to amend and the issue of the detailed proposals for those amendments should be two processes with separate timescales. In this section we set out the detail of what we propose the LA would have to do at the end of each stage.

### **Proposal and rationale**

We would propose that the requirements of the LA at each stage would be as follows:

#### **Proposal 2**

**The LA must, within four weeks of a review meeting, give a notice to the parents or young person of its proposal to amend the plan. The notice must include confirmation of the process and timescale for the procedure that must follow. An LA would not be under a duty to explain at that stage the nature of the amendments proposed (it may in any case be premature for it to do so, pending the receipt of further advice and information), the notification would be about confirming it proposed to amend and the process for doing so.**

**The LA must, within eight weeks of a review meeting, issue a notice of the specifics of its proposals for the amendments. This might be in the form, for example, of a draft amended plan. The LA would need to make clear what those proposals amendments are. The LA would also need to send copies of any evidence which supports those proposals (as it must do currently within four weeks).**

The LA would have the discretion to provide any further information about its intentions at any point, but would not be under an explicit statutory duty to do so.

### **Consequential amendment to the regulation relating to Education, Health and Care plans being amended without a review**

LAs have discretion to amend a plan at any time, including without a review meeting. This discretion is *in addition to* the requirements in various circumstances to conduct a review with a review meeting, notably to conduct annual and 'phase transfer' reviews.

Regulation 28 of the SEND Regulations 2014 makes provision for amending a plan without a review (or re-assessment):

‘If, at any time, a local authority proposes to amend an EHC plan, it shall proceed as if the proposed amendment were an amendment proposed after a review.’

We take this to mean that where an LA decides to amend a plan outside the formal review process<sup>14</sup>, it must follow the statutory process from the stage of issuing the notice of intention to amend a plan, as set out in the following example:

- Soon after completing an annual review, the LA receives new information on a CYP’s needs.
- The LA decides to propose amendments to a plan to reflect this development; and to do so without conducting a further review meeting.
- The LA proceeds with consultation with the parents or young person about the proposed amendments to the plan, just as it would following a decision that is taken after an annual review meeting.
- The remainder of the statutory process for finalising a plan as soon as practicable, but in any event with eight weeks, would then need to be followed.

If we were to amend the legislation to reflect the two stage process outlined above in Proposal 1, we would make a consequential amendment to regulation 28 to clarify how the LA should proceed if it decides to amend without a review. Otherwise we feel it would be unclear under regulation 28 whether the LA had to proceed as if it had issued:

- a) the notice to amend, meaning that the next step would be to prepare and issue draft proposals for amendment; or
- b) the draft proposals for amendment, meaning that the next step would be to consult with the parents or young person on the proposed amendments to the plan.

We intend that once the LA had issued to the parents or young person its proposed amendments, the next step should be to finalise the plan as soon as practicable but in any event within eight weeks (option (b) above). We would need to amend regulation 28 so that there was no ambiguity over what the LA needed to issue and when.

There would (as now under regulation 28) be no explicit statutory duty on an LA over the process or timescale leading up to the communication of its decision to propose amendments without a review.

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<sup>14</sup> By ‘formal review process’ we mean reviews required under section 44(1) of the 2014 Act or under the SEND Regulations 2014.

## Consultation question 2

Where an LA proposes to amend an EHC plan following a review meeting, to what extent do you agree or disagree that it should in any two stage procedure be required:

(a) in the first stage, to issue a notice confirming the decision to propose amendments to the plan and the process and timescale for the procedure that must follow; and

(b) in the second stage, to issue a notice of its proposals for the amendments and copies of any evidence which supports those amendments?

***Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree***

- If you selected Disagree or Strongly Disagree, please tell us why.

## **Proposal 3: Extend the lead time before a review meeting, so that the necessary advice and information must be collected earlier**

### **Background**

The first statutory stage<sup>15</sup> of a review is for the LA (or a relevant school attended by the pupil) to contact the parents or young person and a range of professionals to seek advice and information. Such advice and information needs to be provided in time for it to be circulated to the parents or young person and all those professionals who must be invited to a review meeting at least two weeks before that meeting. (The person organising the meeting must also give at least two weeks' notice of the date.)

### **Proposal and rationale**

We believe it might be in the interests of the CYP and families if those preparations for a review meeting had to begin earlier. This would mean that the LA, parents or young person and the other bodies involved in the review had longer to absorb the advice and information that comes back. The extra time would allow efforts to be made before the meeting to secure any key inputs that are missing. It would also allow more time for all parties to take any actions needed before the meeting once they had seen the advice and information which had been collated. This would put the LA in a stronger position to act swiftly after the review meeting in issuing its decision about a plan.

As part of this, the notice of the meeting would also need to be issued at least three weeks beforehand, rather than two as at present.

We would therefore welcome views on:

### **Proposal 3**

**That the deadline for the issue of the notice of the meeting and the sending out of the advice and information gathered should be changed to at least *three weeks* before the meeting, rather than two.**

### **Consultation question 3**

**Currently the advice and information gathered before a review meeting should be circulated at least *two weeks* in advance of that meeting. To what extent do you**

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<sup>15</sup> The statutory basis for this process is set out in 'stage 2' in Annex B.

agree or disagree with our proposals that information should instead be circulated at least *three* weeks in advance of the review meeting?

***Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree***

- If you disagree with the proposal for at least three weeks rather than two, please explain how far in advance of the meeting you feel this advice and information should be circulated.

## Guidance on the new duty

If we do decide to make changes to secondary legislation following this consultation, we would propose:

- to issue non-statutory guidance to accompany the legislation; and then
- to address the changes that would be needed to the [SEND Code of Practice: 0 to 25 years](#) in the context of the wider review and update of the Code that we proposed in [SEND Review: Right support, Right place, Right time](#).

# Equality and children's rights implications

## Equality

Under the Equality Act 2010, the public sector equality duty requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The 'protected characteristics' for the purpose of this duty are:

- Age (although a statutory exemption applies for school policy)
- Disability
- Gender Reassignment
- Marriage and Civil Partnership (although this is only relevant in relation to eliminating unlawful discrimination, harassment and victimisation)
- Pregnancy and Maternity
- Race (including ethnicity)
- Religion or belief
- Sex
- Sexual orientation

The cohort of those with existing EHC plans contains a disproportionate number of children and young people with certain 'protected characteristics':

- Age: In schools in January 2021, for example, the percentage of pupils with an EHC plan increases with age reaching a peak of 4.6% at 11, before then decreasing to 4.2% at 15<sup>16</sup>.

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<sup>16</sup> Special educational needs in England, Academic year 2020/21 – Explore education statistics – GOV.UK (<https://explore-education-statistics.service.gov.uk/find-statistics/special-educational-needs-in-england>)



- The age breakdown of those with an EHC plan in any setting in January 2022 is as follows<sup>17</sup>:
  - 18,100 aged under 5
  - 322,200 aged 5 to 15
  - 98,600 aged 16 to 19
  - 34,300 aged 20 to 25
- Disability: In schools for example, research published in 2008<sup>18</sup> highlighted the overlap between SEN and disability: finding that 40% of pupils with SEN in primary schools, 46% of pupils with SEN<sup>19</sup> in secondary schools and 76% of pupils in special schools met the Disability Discrimination Act 2005 criteria of being disabled on the basis of parental judgements.
- Race: Those from certain ethnic groups who are disproportionately represented in the cohort. In schools, for example, pupils recorded as Travellers of Irish heritage and Black Caribbean ethnic groups had the highest percentage of pupils with an EHC plan in January 2021 (5.6% and 5.1%). Pupils recorded as Indian ethnicity had the lowest percentage of pupils with an EHC plan at 2.3%<sup>20</sup>. The proportion of all pupils with an EHC plan was 3.7%.
- Sex: In schools, for example, in January 2021 5.2% of boys had an EHC plan compared to 2.0% of girls<sup>21</sup>.

## Children's rights

In formulating the proposals in the consultation we have given consideration to the [United Nations Convention on the Rights of the Child](#)<sup>22</sup>, particularly:

- Article 2 - All rights guaranteed by the Convention should be available to all children without discrimination.
- Article 3 - The best interests of the child must be a top priority in all decisions and actions that affect children.

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<sup>17</sup> Education, health and care plans, Reporting Year 2022 – Explore education statistics – GOV.UK ([explore-education-statistics.service.gov.uk](https://explore-education-statistics.service.gov.uk))

<sup>18</sup> Disability Data Collection for Children's Services ([bath.ac.uk](https://bath.ac.uk))

<sup>19</sup> These figures cover both pupils with EHC plans and those on SEN Support.

<sup>20</sup> Special educational needs in England, Academic Year 2020/21 – Explore education statistics – GOV.UK ([explore-education-statistics.service.gov.uk](https://explore-education-statistics.service.gov.uk))

<sup>21</sup> Special educational needs in England, Academic Year 2020/21 – Explore education statistics – GOV.UK ([explore-education-statistics.service.gov.uk](https://explore-education-statistics.service.gov.uk))

<sup>22</sup> United Nations Convention on the Rights of the Child (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>)

- Article 6 – Recognition and protection of the right to life, survival and development of the child.
- Article 12 - Children capable of expressing an opinion should be facilitated to do so.
- Article 18 - Governments must support parents by creating support services for children and giving parents the help they need to raise their children.
- Article 23 - A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.
- Article 28 - Every child has the right to an education.

## Assessment of impact on equality and on children’s rights

We believe that on balance the impact on equality and on children’s rights will be positive, for the reasons set out below:

- We judge that our proposals will reduce the risk to the quality of plans. Most LAs are already experiencing growing pressures on their EHC plan processes as the number of EHC plans has risen significantly over recent years. We have concerns that having more quickly to firm up proposals for any amending of plans following a review will impact on LAs’ ability to act lawfully and to issue proposals for amending plans that are of the necessary quality.
- There is limited evidence on how achievable the current statutory timescales for reviewing EHC plans are. A four week deadline could put the quality of plans at risk and could lead to poor decisions about the provision and/or the placement that a CYP needs.
- Where (exceptionally) health and social care professionals, educational psychologists and others need to provide advice and information *after* a review meeting, they may need to act more quickly than before, again potentially creating a risk to the quality of plans.
- The proposals do not change the fact that EHC plans are available to all CYP with relevant needs and that such plans will support their access to education.
- We have not identified any risks to suggest that our proposals will prevent children from accessing the rights guaranteed by the United Nations Convention on the Rights of the Child.

We will keep this assessment under review and as part of this are seeking views via this consultation on whether our proposals on balance have a positive impact on equality and children’s rights.

## Consultation question 4

To what extent do you agree or disagree that the proposals in this consultation would have a positive impact on those with particular 'protected characteristics' such as a disability and on children's rights?

*Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree*

- Please explain your response.

## List of consultation questions

In this section we list all of the questions above and include a final question for any final points you would wish to make to us.

### Consultation question 1

To what extent do you agree or disagree that, where an LA proposes to amend an EHC plan after a review meeting, it should issue proposed draft amendments to the plan as soon as practicable after that meeting and in any event within eight weeks?

*Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree*

- If you don't agree with an eight week deadline, please say what deadline you think the LA should be subject to and why.

### Consultation question 2

Where an LA proposes to amend an EHC plan following a review meeting, to what extent do you agree or disagree that it should in any two stage procedure be required:

(a) in the first stage, to issue a notice confirming the decision to propose amendments to the plan and the process and timescale for the procedure that must follow; and

(b) in the second stage, to issue a notice of its proposals for the amendments and copies of any evidence which supports those amendments?

*Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree*

- If you selected Disagree or Strongly Disagree, please tell us why.

### Consultation question 3

Currently the advice and information gathered before a review meeting should be circulated at least *two* weeks in advance of that meeting. To what extent do you agree or disagree with our proposals that information should instead be circulated at least *three* weeks in advance of the review meeting?

*Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree*

- If you disagree with the proposal for at least three weeks rather than two, please explain how far in advance of the meeting you feel this advice and information should be circulated.

## Consultation question 4

To what extent do you agree or disagree that the proposals in this consultation would have a positive impact on those with particular 'protected characteristics' such as a disability and on children's rights?

*Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree*

- Please explain your response.

## Consultation question 5

Is there anything else you would like to say about the proposals in this consultation?

# Annex A: Stages in conducting a review of an Education, Health and Care plan

## Stage 1: setting the date for a review meeting

An LA must set the date for a review meeting; or require the head teacher or principal of a relevant school attended by the CYP to do so.

### Relevant legislative duty, including any relating to timing

Under regulation 20(1) of the SEND Regulations 2014 the LA needs to set or require a relevant school (defined in regulation 20(12)) to set the date for a review meeting so that within the statutory timescales either<sup>23</sup>:

- it can complete all stages of the review process; or
- in the case of a 'phase transfer', it can both review the existing plan and issue any amended plan it decides is needed. Further details of the requirements over when 'phase transfers' become due are below.

[Regulation 20(3) of the SEND Regulations 2014 sets out the duty for notice to be given of the meeting where the CYP is attending a school or other institution. This duty falls either to the LA or, if the CYP is at a relevant school and the LA requires it, that school. Regulation 21(3) imposes a similar duty if the CYP is not at a school or other institution, with the LA being responsible for giving the notice.]

The plan must be reviewed within a period of twelve months starting on the date the plan was last reviewed or (in the case of a plan where there has not previously been an annual review) when the plan was first issued. [Section 44(1) of the 2014 Act]

If there is a 'phase transfer' the following duties also apply:

- The plan must both be reviewed and (where necessary) amended by a set date (15 February or 31 March) if the CYP is at a key transition point later that calendar year – primary school to secondary school, school to college etc.

[Regulation 18(1) of the SEND Regulations 2014]

Or

- The plan must both be reviewed and amended, where necessary, five months

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<sup>23</sup> For the timing requirements over a review when a child or young person with an EHC plan moves from a different LA area, see regulation 15(5) of the SEND Regulations 2014.

before any transfer proposed from one post-16 institution to another.

[Regulation 18(2) of the SEND Regulations 2014]

## **Stage 2: obtaining advice and information before a review meeting**

LA or a relevant school must obtain advice and information from the parents or young person and from a prescribed list of other persons, to feed into the process of review.

### **Relevant legislative duty, including any relating to timing**

In time for this to be circulated to all those who must be invited to the review meeting (these persons being the same as the group whose advice and information is to be sought) at least two weeks before that meeting.

[Where a CYP is attending a school or other institution, regulation 20(4) requires the person arranging the review meeting to obtain advice and information from those referred to in regulation 20(2) (the parents or young person, setting attended and relevant SEN, health and social care officers/professionals) and circulate it to those persons at least two weeks in advance of the review meeting. An equivalent duty is set out in regulation 21(4) for CYP who don't attend a school or other institution. Those whose advice and information must be sought and to whom the consolidated material must be circulated is found in regulation 21(2).]

## **Stage 3: issuing invitations to a review meeting and giving notice of the date**

The LA or relevant school must issue invitations to all relevant persons and give notice of the meeting date.

### **Relevant legislative duty, including any relating to timing**

The LA or the relevant school must give at least two weeks' notice of the meeting.

[Regulation 20(3) of the SEND Regulations 2014 if the CYP attends a school or other institution, regulation 21(3) if they do not.

A relevant school – that is a school that the LA can require to arrange and hold the meeting – is defined in regulation 20(12).

The list of those who must be invited and who must receive the notice of the meeting is at regulation 20(2) and regulation 21(2) (depending on whether or not the CYP attends a school or other institution).]

## **Stage 4: circulating the advice and information gathered before a meeting**

The person arranging the review meeting must circulate the advice and information about the CYP obtained from the persons listed in the Regulations to that same group.

### **Relevant legislative duty, including any relating to timing**

At least two weeks in advance of the review meeting.

[Regulation 20(4) of the SEND Regulations 2014 if the CYP is attending a school or other institution, regulation 21(4) if they are not.]

## **Stage 5: the review meeting**

Review meeting

### **Relevant legislative duty, including any relating to timing**

As noted in stage 3 above, the LA or a relevant school must invite the parents or young person, relevant health professionals, social care professionals, a representative of any setting the CYP attends (if they are not a school arranging the meeting anyway), and a SEND officer from the LA (if they are not the ones arranging the meeting anyway). If the CYP is not attending a school or other institution, under regulation 21(2)(e) the LA must also invite any other person whose attendance it considers appropriate.

There is no statutory quorum or requirements over attendance. The LA or a school that the CYP attends (if it is one of the types set out in regulation 20(12) of the SEND Regulations 2014 and the LA has required it to do so) will be responsible for the holding of the meeting.

## **Stage 6: preparing a written report after a review meeting**

If the CYP is at a school of the type described in the Regulations, the LA must ask the head teacher or principal of the school to prepare a written report on the CYP, setting out that person's recommendations on any amendments to be made to the plan, and referring to any difference between those recommendations and recommendations of others attending the meeting.

Otherwise, the LA must prepare a written report covering the same matters.

In either case the written report must include the advice and information about the CYP obtained as part of stage 4 above.



The report must be circulated to all those who must be invited to the review meeting.

### **Relevant legislative duty, including any relating to timing**

This report must be prepared and circulated within two weeks of the review meeting.

[Where the CYP attends a school or other institution, regulations 20(7), 20(8) and 20(9) set out the relevant duty to prepare the report and its specific requirements including who it must be circulated to and by when. The types of school that the LA must ask to prepare and circulate this report are defined in regulation 20(12).

Regulations 21(7) and 21(8) provide the equivalent duties for a CYP who does not attend a school or other institution.]

### **Stage 7: commissioning of any further advice and information needed**

The LA should consider whether any further advice and/or information is needed in the light of the review meeting and where appropriate the report from a relevant school as described in stage 6 above.

### **Relevant legislative duty, including any relating to timing**

There is no statutory duty on LAs to commission or seek further advice and/or information at this stage. They are, however, subject to public law principles of good administration and there may be circumstances where this would require them to make further inquiries and/or seek further advice and information properly to inform any proposed amendments to the plan. In practice we would expect such gathering of additional advice and information after a review meeting to be rarely necessary.

### **Stage 8: formulation of proposals as to whether to continue to maintain a plan, amend it or discontinue it, and notification of that decision**

The LA must decide in the light of the review meeting and all the relevant advice and information received whether it proposes to:

- continue to maintain the EHC plan in its current form;
- amend the plan; or
- cease to maintain the plan,

and notify its decision to the parents or young person and any setting currently attended by the CYP. If the proposal is to continue to maintain or to cease the plan the LA must inform the parents or young person about their appeal rights.

### **Relevant legislative duty, including any relating to timing**

Within four weeks of the review meeting<sup>24</sup>.

The duty here relating to a proposal to amend a plan is the principal subject of this consultation paper. Prior to the clarification of the law in the High Court judgment, a widespread interpretation of the law had been that the LA could discharge this duty by giving a notice within four weeks of its intention to amend the plan but that it did not, at that stage, need to provide a draft of the relevant amendments it was proposing. So there was an additional stage for preparing a draft of the new plan that the LA was proposing. The judgment has made clear that this is not the case – see stage 8\* below.

[Regulation 20(10) of the SEND Regulations 2014 and regulation 20(11) if the CYP is attending a school or other institution, regulation 21(9) and regulation 21(10) if not; plus regulation 22(2); plus section 44(1) of the 2014 Act]

### **Stage 8\*: issue of any proposals to amend the plan and the supporting evidence**

In the event of the LA proposing to amend a plan, it must (under regulation 22(2)(a) of the SEND Regulations 2014) issue a copy of the EHC plan together with a notice specifying the proposed amendments and copies of any evidence which supports those amendments.

### **Relevant legislative duty, including any relating to timing**

Under a previous widespread interpretation of the law, the LA was understood to need to issue a draft plan in the form that the LA proposes to amend it without undue delay (because of its public law duty to act reasonably).

The High Court judgment has clarified that all of the material referenced in regulation 22(2)(a) must, in fact, be issued within four weeks of the review meeting – there is no separate stage for preparing the draft proposed amendments to the plan.

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<sup>24</sup> In the case of a 'phase transfer' review or where a CYP with a plan has moved into the LA's area, the LA will also be under a duty to complete the review by a specific date.

[Regulation 22(2)(a) of the SEND Regulations 2014]

## **Stage 9: consultation with parents or the young person over any amendments proposed to a plan**

Where an LA is proposing to amend a plan, it must give the parents or young person an opportunity to make any representations about the content of the draft proposals to amend the plan and must provide various information such as about their right to request that a particular school or other institution be named in the plan.

### **Relevant legislative duty, including any relating to timing**

At least fifteen days, with the public law principle that the LA should be proceeding without undue delay in getting to this point. The LA will also need to bear in mind its statutory duties over when the end of this process will take place: if it decides in the end to issue a new plan, for example, it must do so as soon as practicable but in any event within eight weeks (see stage 11 below) and it needs to have followed all the necessary statutory processes (e.g. stage 10 where appropriate).

[Regulation 22(2)(c) of the SEND Regulations 2014]

## **Stage 10: consultation with a different school or other institution that the LA is considering naming on a plan**

Where the parents or young person have expressed a preference for a school or other institution, the LA must consult the governing body, principal or proprietor of that setting and consider their comments very carefully before deciding whether to name it in the CYP's plan, sending the school or other institution a copy of the draft plan (with no setting or type of setting named on it). If another LA maintains the school, they too must be consulted.

Similar consultation requirements apply if the LA is considering settings that are not the preference of the parents or young person.

### **Relevant legislative duty, including any relating to timing**

When a parent or young person asks for a particular school or other institution to be named in an EHC plan or the LA is considering other settings in such circumstances, the LA must consult relevant schools or other institutions before reaching its decision on which setting to name. The SEND Regulations 2014 do not set a time limit for the school or other institution to provide comments, but the diagram on page 154 of the [SEND Code of Practice: 0 to 25 years](#) says that the setting should reply within 15 days.

In relation to settings named by a young person or parents as one of their preferences, i.e. one of the three scenarios under which such consultation must take place, paragraph 9.83 of the [SEND Code of Practice: 0 to 25 years](#) also gives the guidance that ‘the nursery, school or college and, where relevant, the other local authority, should respond within 15 days’.

## **Stage 11: final decision over whether and if so how to amend a plan**

The LA decides whether and if so how to amend the plan, in the light of the further information received and any representations from the parents or young person. It then needs to issue an amended final plan or if not it must notify the parents or the young person of its decision and its reasons for this.

### **Relevant legislative duty, including any relating to timing**

As soon as practicable and in any event within eight weeks of the issue of the material described in stage 8 above to the parents or young person.

The issue of the final plan or the notification of the decision not after all to amend gives parents or the young person certain rights of appeal to the Tribunal.

[Regulations 22(3), (4) and (5) of the SEND Regulations 2014]

## **Annex B: Extracts from the Special Educational Needs and Disability Regulations 2014 that relate to reviews of Education, Health and Care plans**

### **Regulation 15. Transfer of EHC plans**

(1) This regulation applies where a child or young person in respect of whom an EHC plan is maintained moves from the area of the local authority which maintains the EHC plan (“the old authority”) into the area of another local authority (“the new authority”).

...

(4) The new authority must, within 6 weeks of the date of the transfer, inform the child's parent or the young person of the following—

- (a) that the EHC plan has been transferred;
- (b) whether it proposes to make an EHC needs assessment; and
- (c) when it proposes to review the EHC plan in accordance with paragraph (5).

(5) The new authority must review the EHC plan in accordance with section 44 of the Act<sup>25</sup> before the expiry of the later of—

- (a) the period of 12 months beginning with the date of making of the EHC plan, or as the case may be, with the previous review, or
- (b) the period of 3 months beginning with the date of the transfer.

### **Regulation 18. Circumstances in which a local authority must review an EHC plan**

(1) Except where paragraph (3) applies, where a child or young person is within 12 months of a transfer between phases of education, the local authority must review and amend, where necessary, the child or young person's EHC plan before—

- (a) 31 March in the calendar year of the child or young person's transfer from secondary school to a post-16 institution; and
- (b) 15 February in the calendar year of the child's transfer in any other case,

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<sup>25</sup> References in the SEND Regulations 2014 to ‘the Act’ are to the Children and Families Act 2014.

and where necessary amend the EHC plan so that it names the school, post-16 or other institution, or type of school or institution, which the child or young person will attend following that transfer.

(2) Where it is proposed that a young person transfers from one post-16 institution to another post-16 institution at any other time, the local authority must review and amend, where necessary, the young person's EHC plan at least five months before that transfer takes place so that it names the post-16 institution that the young person will attend following the transfer.

.....

## **Regulation 19. Conduct of reviews**

When undertaking a review of an EHC plan, a local authority must—

- (a) consult the child and the child's parent or the young person, and take account of their views, wishes and feelings;
- (b) consider the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether these outcomes remain appropriate for the child or young person;
- (c) consult the school or other institution attended by the child or young person.

## **Regulation 20. Review where the child or young person attends a school or other institution**

(ZA) This regulation applies where a local authority carry out a review of an EHC plan and the child or young person concerned attends a school or other institution.

(1) As part of a review of a child or young person's EHC plan, the local authority must ensure that a meeting to review that EHC plan is held and in the case of a child or young person attending a school referred to in paragraph (12), can require the head teacher or principal of the school to arrange and hold that meeting.

(2) The following persons must be invited to attend the review meeting—

- (a) the child's parent or the young person;
- (b) the provider of the relevant early years education or the head teacher or principal of the school, post-16 or other institution attended by the child or young person;

(c) an officer of the authority who exercises the local authority's education functions in relation to children and young people with special educational needs;

(d) a health care professional identified by the responsible commissioning body to provide advice about health care provision in relation to the child or young person;

(e) an officer of the authority who exercises the local authority's social services functions in relation to children and young people with special educational needs.

(3) At least two weeks' notice of the date of the meeting must be given.

(4) The person arranging the review meeting must obtain advice and information about the child or young person from the persons referred to in paragraph (2) and must circulate it to those persons at least two weeks in advance of the review meeting.

(5) The child or young person's progress towards achieving the outcomes specified in the EHC plan must be considered at the meeting.

(6) When the child or young person is in or beyond year 9, the review meeting must consider what provision is required to assist the child or young person in preparation for adulthood and independent living.

(7) Where the child or young person attends a school referred to in paragraph (12), the local authority must ask the head teacher or principal of the school to prepare a written report on the child or young person, setting out that person's recommendations on any amendments to be made to the EHC plan, and referring to any difference between those recommendations and recommendations of others attending the meeting.

(8) Where the child or young person does not attend a school referred to in paragraph (12), the local authority must prepare a written report on the child or young person, setting out its recommendations on any amendments to be made to the EHC plan, and referring to any difference between those recommendations and recommendations of others attending the meeting.

(9) The written report must include advice and information about the child or young person obtained in accordance with paragraph (4) and must be prepared within two weeks of the review meeting, and sent to everyone referred to in paragraph (2).

(10) The local authority must then decide whether it proposes to—

(a) continue to maintain the EHC plan in its current form;

(b) amend it; or

(c) cease to maintain it,

and must notify the child's parent or the young person and the person referred to in paragraph (2)(b) within four weeks of the review meeting.

(11) If the local authority proposes to continue or to cease to maintain the child or young person's EHC plan, it must also notify the child's parent or the young person of—

- (a) their right to appeal in accordance with section 51(2)(e) or (f) of the Act;
- (b) the time limits for doing so;
- (c) the information concerning mediation, set out in regulation 32;
- (d) the availability of—
  - (i) disagreement resolution services; and
  - (ii) information and advice about matters relating to the special educational needs of children and young people; and
- (e) the First-tier Tribunal's power to make recommendations under the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017.

(12) Schools referred to in this paragraph are—

- (a) maintained schools;
- (b) maintained nursery schools;
- (c) Academy schools;
- (d) alternative provision Academies;
- (e) pupil referral units;
- (f) non-maintained special schools;
- (g) independent educational institutions approved under section 41 of the Act.

## **Regulation 21. Review of EHC plan where the child or young person does not attend a school or other institution**

(1) This regulation applies where a local authority carry out a review of an EHC plan and the child or young person concerned does not attend a school or other institution.

(2) The local authority must invite the following persons to a meeting as part of the review of an EHC plan—



- (a) the child's parent or the young person;
- (b) an officer of the authority who exercises the local authority's education functions in relation to children and young people with special educational needs;
- (c) a health care professional identified by the responsible commissioning body to provide advice about health care provision to the child or young person;
- (d) an officer of the authority who exercises the local authority's social services functions in relation to children and young people with special educational needs;
- (e) any other person whose attendance the local authority considers appropriate.

(3) At least two weeks' notice of the date of the meeting must be given.

(4) The local authority must obtain advice and information about the child or young person from the persons referred to in paragraph (2) and must circulate it to those persons at least two weeks in advance of the review meeting

(5) The meeting must consider the child or young person's progress towards achieving the outcomes specified in the EHC plan.

(6) When the child or young person is in or beyond year 9, the review meeting must consider what provision is required to assist the child or young person in preparation for adulthood and independent living.

(7) The local authority must prepare a report on the child or young person within two weeks of the review meeting setting out its recommendations on any amendments required to be made to the EHC plan, and should refer to any difference between those recommendations and recommendations of others attending the meeting.

(8) The written report must include advice and information about the child or young person obtained in accordance with paragraph (4) and must be prepared within two weeks of the review meeting, and sent to everyone referred to in paragraph (2).

(9) The local authority must decide whether it proposes to—

- (a) continue to maintain the EHC plan in its current form;
- (b) amend it; or
- (c) cease to maintain it,

and must notify the child's parent or the young person within four weeks of the review meeting.

(10) If the local authority proposes to continue or to cease to maintain the child or young person's EHC plan, it must also notify the child's parent or the young person of—

- (a) their right to appeal in accordance with section 51(2)(e) or (f) of the Act;
- (b) the time limits for doing so;
- (c) the information concerning mediation, set out in regulation 32;
- (d) the availability of—
  - (i) disagreement resolution services; and
  - (ii) advice and information about matters relating to the special educational needs of children and young people; and
- (e) the First-tier Tribunal's power to make recommendations under the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017.

## **Regulation 22. Amending an EHC plan following a review**

(1) Where the local authority is considering amending an EHC plan following a review it must comply with the requirements of regulations 11, and 12, and with sections 33 of the Act, and with sections 39 and 40 of the Act (as appropriate).

(2) Where the local authority is considering amending an EHC plan following a review it must—

- (a) send the child's parent or the young person a copy of the EHC plan together with a notice specifying the proposed amendments, together with copies of any evidence which supports those amendments;
- (b) provide the child's parent or the young person with notice of their right request the authority to secure that a particular school is or other institution is named in the plan under section 38(2)(b)(ii)
- (c) give them at least 15 days, beginning with the day on which the draft plan was served, in which to—
  - (i) make representations about the content of the draft plan;
  - (ii) request that a particular school or other institution be named in the plan;

(iii) request a meeting with an officer of the local authority, if they wish to make representations orally.

(d) advise them where they can find information about the schools and colleges that are available for the child or young person to attend.

(3) Where the local authority decides to amend the EHC plan following representations from the child's parent or the young person, it must send the finalised EHC plan to—

(a) the child's parent or to the young person;

(b) the governing body, proprietor or principal of any school or other institution named in the EHC plan; and

(c) to the responsible commissioning body

as soon as practicable, and in any event within 8 weeks of the local authority sending a copy of the EHC plan in accordance with paragraph (2)(a).

(4) Where the local authority decides not to amend the EHC plan, it must notify the child's parent or the young person of its decision and its reasons for this as soon as practicable and in any event within 8 weeks of the local authority sending a copy of the EHC plan in accordance with paragraph (2)(a).

(5) When sending a the finalised EHC plan to the child's parent or the young person in accordance with paragraph (3), or notifying them in accordance with paragraph (4) the local authority must also notify them of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(c) or 51(2)(e) of the Act (as appropriate);

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32;

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people; and

(e) the First-tier Tribunal's power to make recommendations under the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017.

## **Regulation 28. Amending an EHC plan without a review or reassessment**

If, at any time, a local authority proposes to amend an EHC plan, it shall proceed as if the proposed amendment were an amendment proposed after a review.

## **Regulation 29. Circumstances in which a local authority may not cease to maintain an EHC plan where the person is under the age of 18**

(1) ...

(2) Where a child or young person under the age of 18 is not receiving education or training, the local authority must review the EHC plan in accordance with regulations 18 and 19 and amend it in accordance with regulation 22 where appropriate, to ensure that the young person continues to receive education or training.



Department  
for Education

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