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STATUTORY INSTRUMENTS

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**2015 No. 505**

**The Children and Families Act 2014 (Transitional and Saving Provisions) (Amendment) Order 2015**

**Amendment of the Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014**

8. For Part 7 (children etc with an EHC plan who are detained) substitute—

“PART 7

Children etc with statement who are detained

**Children etc with a statement who are detained**

**30.**—(1) This Part applies to a child or young person if—

- (a) a statement is kept by a local authority in England for the child or young person, and
- (b) the child or young person is a detained person.

(2) Despite the amendments made by Schedule 3 to the 2014 Act to Chapter 5A of Part 1 of EA 1996, that Chapter continues to have effect in relation to the child or young person as if the special educational provision specified in the statement—

- (a) were contained in an EHC plan kept for the child or young person, and
- (b) had been specified in the EHC plan immediately before the detention.

**Power to secure an earlier detained person’s EHC needs assessment**

**31.**—(1) The local authority that keeps the statement for the detained person may secure that a detained person’s EHC needs assessment is carried out for him or her at any time after the coming into force of this Order and before the time at which Article 36 requires an assessment to be secured.

**Persons to whom notice of detained person’s EHC needs assessment must be given**

**32.**—(1) A home authority that secures a detained person’s EHC needs assessment under Article 31 must give notice of the assessment to the persons listed in paragraph (2) no later than the beginning of the period of two weeks ending with the day on which the assessment begins.

(2) The persons mentioned in paragraph (1) are—

- (a) the appropriate person,
- (b) where the detained person is a child, the child,

- (c) the person in charge of the relevant youth accommodation where the detained person is detained,
- (d) the home commissioning body,
- (e) the detained person’s health services commissioner,
- (f) the officers of the home authority who exercise the home authority’s social services functions for children or young people with special educational needs,
- (g) the youth offending team responsible for the detained person,
- (h) in relation to a detained person who is a child, if the child is a registered pupil<sup>(1)</sup> at a school, the head teacher of that school (or the person holding the equivalent position),
- (i) in relation to a detained 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 of a post-16 institution, the principal of that institution (or the person holding the equivalent position), and
- (j) any person identified in accordance with regulation 4(2)(g) of the Detained Persons Regulations 2015.

#### **Procedure for detained person’s EHC needs assessment**

**33.**—(1) The 2014 Act and the Detained Persons Regulations 2015 apply to a detained person’s EHC needs assessment under this Part as they apply to a detained person’s EHC needs assessment under the 2014 Act, subject to the following provisions of this Article.

(2) Section 31 of the 2014 Act applies in relation to the detained person’s EHC needs assessment as if the home authority’s functions in relation to the assessment were functions under Part 3 of that Act.

(3) As part of the detained person’s EHC needs assessment, the home authority must invite the appropriate person to attend a meeting with a relevant officer of the authority to discuss the educational, health care and social care needs of the detained person.

(4) In paragraph (3) “relevant officer” means an officer of the home authority who exercises the home authority’s education functions in relation to children and young people with special educational needs.

(5) The home authority may invite any other person that it thinks appropriate to attend the meeting.

(6) Where the meeting is to take place in the relevant youth accommodation, the home authority may only invite others to attend the meeting with the consent of the person in charge of the relevant youth accommodation.

#### **Effect of decision to prepare EHC plan following detained person’s EHC needs assessment**

**34.**—(1) This Article applies if, in light of a detained person’s EHC needs assessment under this Part, the home authority decides it is necessary for special educational provision to be made for a detained person in accordance with an EHC plan on release from detention.

(2) The new law applies in relation to the detained person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraphs (3) and (4).

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(1) Pupil has the meaning given in section 3 of EA 1996.

(3) Regulation 13 of the Detained Persons Regulations 2015 applies as if paragraph (2) required the finalised EHC plan to be sent to—

- (a) the appropriate person,
- (b) the person in charge of the relevant youth accommodation where the detained person is detained,
- (c) the youth offending team responsible for the detained person,
- (d) the governing body, proprietor or principal of the school or other institution named in the EHC plan,
- (e) the home commissioning body, and
- (f) the detained person’s health services commissioner,

as soon as practicable, and in any event within the period of 14 weeks beginning with the day on which the detained person’s EHC needs assessment began.

(4) The local authority must cease to keep the statement for the detained person when the EHC plan is made.

(5) The new law has effect in relation to the detained person (to the extent that it has not done so already), and the old law ceases to have effect in relation to the detained person, at that time.

#### **Effect of decision not to prepare EHC plan following detained person’s EHC needs assessment**

**35.**—(1) This Article applies if, in light of a detained person’s EHC needs assessment under this Part, the home authority decides it is not necessary for special educational provision to be made for a detained person in accordance with an EHC plan.

(2) The new law applies in relation to the detained person as if the assessment had been carried out under Part 3 of the 2014 Act, subject to paragraph (3).

(3) Regulation 10 of the Detained Persons Regulations 2015 applies as if—

- (a) paragraph (1) required the notification to be given in accordance with section 71(10) of the 2014 Act to be given as soon as is practicable and in any event within the period of 10 weeks beginning with the day on which the detained person’s EHC needs assessment began, and
- (b) paragraph (2) required the home authority to notify—
  - (i) the home commissioning body,
  - (ii) the detained person’s health services commissioner,
  - (iii) the youth offending team responsible for the detained person, and
  - (iv) the person (if any) notified in accordance with Article 32(f), (h), (i) and (j).

(4) The home authority must cease to keep the statement for the detained person at the relevant time (but must keep the statement until that time).

(5) The new law has effect in relation to the detained person (to the extent it has not done so already), and the old law ceases to have effect in relation to the detained person, at the relevant time.

(6) If no appeal is brought under section 73(2)(b) of the 2014 Act, against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is at the end of that period.

(7) If an appeal is brought under section 73(2)(b) of the 2014 Act against the decision referred to in paragraph (1) within the period allowed for bringing such an appeal, the relevant time is—

- (a) where the appeal is withdrawn or abandoned, when it is withdrawn or abandoned;
- (b) where, on the final determination of the appeal, it is dismissed, when it is dismissed;
- (c) where, on the final determination of the appeal, the home authority is ordered to make and keep an EHC plan, when the plan is made;
- (d) where, on the final determination of the appeal, the case is referred back to the home authority for it to consider whether it is necessary for it to determine the special educational provision for the child or young person, the time found by applying paragraph (6) and this paragraph to the home authority's decision following the consideration as if the decision were one under paragraph (1).

**Detained persons for whom an EHC needs assessment cannot be secured before 1st April 2018**

**36.**—(1) This Article applies to a detained person if this Part first applies to him or her by virtue of Parts 3, 4 or 5—

- (a) on or after 1st April 2018, or
  - (b) at a time before that date at which it is not practicable to secure that a detained person's EHC needs assessment for him or her is carried out and concluded before that date.
- (2) The old law ceases to apply in relation to the detained person—
- (a) from the time at which this Part first applies to him or her, or
  - (b) if later, from the beginning of 1st April 2018.
- (3) The new law applies in relation to the detained person from that time.

(4) Paragraphs (2) and (3) do not prevent the statement which is being kept for a detained person from continuing to have effect; but from the time mentioned in paragraph (2) it has effect as if the special educational provision specified in it were specified in an EHC plan kept for him or her.

(5) The home authority that keeps the statement for a detained person must secure that a detained person's EHC needs assessment for him or her is carried out and concluded as soon as it is reasonably practicable after this Part begins to apply to him or her.”