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**THE DISABILITY**  
REPRESENTATION UNIT

**COVID-19 & the law. The latest changes to Special Educational Needs and Disability (SEND) & what the statistics say**

Hosted by The Disability Representation Unit

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**Important:** The information we share in these slides is accurate and up to date to our knowledge but COVID-19 is a fast-changing situation and the relevant legislation or guidance is subject to change. This presentation is intended for informative purposes only.

# Key legislation / guidance

- Coronavirus Act 2020
- The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020
- Guidance - Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to coronavirus (COVID-19)
- Modification notice: EHC plans legislation changes



# What is the Coronavirus Act 2020?

New law in the UK - approved on 25 March 2020 (via Royal Assent).

## **Purpose of this new law?**

Intended to give the Govt powers to enable public bodies (for example Local Authorities) to respond to the **Covid-19 pandemic.**



# What is the Coronavirus Act 2020?

## What do these powers look like?

1. **The power to slow the spread of the virus**  
E.g. Powers regarding public gatherings and premises/school closures.
2. **he power to reduce the resourcing and administrative burden on public**  
E.g. Easing pressure on NHS and local authority resources by downgrading legal duties.
3. **The power to limit the impact of potential staffing shortages on the delivery of public services**  
E.g. Allowing the registration of retired health and social care professionals to join front line services.
4. For the purposes of this webinar, the powers we are most concerned with is:  
The emergency powers given to the Secretary of State for Education.



# Implications for special education for children and young people under the Coronavirus Act 2020

## Key sections under the Coronavirus Act 2020:

- Schedule 17, para 5 (6): 'Any duty imposed on a person by section 42 [Children and Families Act 2014 (CFA)] is to be treated as discharged if the person has used reasonable endeavours to discharge the duty'.
- Schedule 17, para 5 (5) (g) permits the Secretary of State the power to disapply s43 CFA which is the duty for a school/college named on the EHCP to admit.
- Schedule 17, para 5 (5) (h) permits the Secretary of State the power to disapply s44 (1) CFA (reviews and reassessments).



# Implications for special education for children and young people

In order for the key sections (see previous slide) to come into effect under the Coronavirus Act 2020, the Secretary of State for Education must issue a notice before applying any of the above and that any notice must not exceed one month (and there could be repeated notices).



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# What has changed?

At the time of our first webinar, no notice had been issued by the SoS.

**However, since then there have been two key changes:**

1) The Secretary of State for Education has now triggered The Coronavirus Act 2020 Modification of section 42 of the Children and Families Act 2014 (England) Notice 2020.

**What does this mean:** This changes the absolute duty for Local Authorities (LA) to make provision set out in an EHCP to LA's using 'reasonable endeavours' to secure or arrange provision. The changes came in force on 1 May 2020 and will be in place until 31 May 2020. A further notice can be issued after 31st May.





# What does 'reasonable endeavours' mean?

The guidance document issued says that this means that local authorities and health bodies **must** consider for each child and young person with an EHC plan what they can reasonably provide in the circumstances during the notice period.

For some individuals, this will mean that the provision specified in their plan can continue to be delivered; but for others (because of the impact of coronavirus (COVID-19) on LA's or health commissioning bodies) the provision may need temporarily to be different to that which is set out in their EHC plan.



# What has changed?

Why has the SoS decided to issue this notice?

The notice states that these changes are necessary because of reduced/redeployed staffing. Also, for those children not attending school, LAs cannot continue to deliver what they would have done at school. Even for those attending school, social distancing has made it difficult to continue delivery of provision.

The notice also states that the notice enables LAs and CCGs **to arrange reasonable alternatives to the usual provision and gives examples of the delivery of therapies remotely and/or using video.**

Other examples of alternative are listed in the guidance document.



# The second key change:

**2)** The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 came in force on 1 May 2020. The Regulations will be in place until 25 September 2020.

**What does this mean?** The changes relax time periods set out in the SEND Regulations 2014 where the 'coronavirus exception' applies i.e. where it is not reasonably practicable to meet time requirements for coronavirus related reasons. Time periods are changed to 'as soon as reasonably practicable'.

Government guidance on the full temporary changes to time periods can be found [here](#)



# What has NOT changed

- The 15 days which parents must be given in order to make representations on a draft EHCP is not changed (Regulation 13 of the SEND Regulations).
- The LA must still consider requests for EHC needs assessments or a re-assessment, so parents should continue to make such requests as before, where they have concerns.
- A final EHCP must still include all the required advice and information.
- Rights of appeal to the SEND Tribunal remain unchanged.



# What you should know

- These changes are temporary and the law has been modified.
- The amendments do not give LA's the licence not to comply with legal deadlines for any reason they choose. Their reason for non-compliance must relate to Covid-19.
- Parents should be vigilant. Where it is suspected that the new temporary changes is not being used properly by the LA, parents may wish to seek legal advice or contact the Disability Representation Unit - [www.thedru.co.uk](http://www.thedru.co.uk)
- A fundamental principle of the Special Educational Needs and Disability system is that children and their parents must be fully involved in decisions about their support. There should be continuation of meaningful discussion with your LA around your child or young persons needs and provision.



# The latest official stats and data for 2020 related to children and young people with a statement of special educational needs or EHC plan in England.

The latest statistics was published on 7 May 2020 by the UK Gov't.

- The stats show that as of January 2020, there are £390,109 children and young people with an EHC plan in England. (This is an increase of 36,100 (10%))
- The total number of children and young people with statements of special educational needs (SEN) or EHC plans has increased each year since 2010.
- In 2019, there were £53,899 new EHC plans made and only 60.4% were issued within the 20 week deadline

You can find the official data here: <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans?fbclid=IwAR0zyhAwG7yT5KYz1u3f9zH-8zppdOXltpQnWkgnUnEall8TcjJwlmjYawY>



# Where to find further information

GOV.UK is the official site for the latest information on the COVID-19 outbreak. The advice is updated regularly by the UK Government.

Opt in to The Disability Representation Units FREE text alert alert service  
Text **COVID to 88802**

Visit **[thedru.co.uk](https://thedru.co.uk)** and **[book a consultation](#)**



**where to find us?**



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