

Children and Families Bill

AMENDMENTS
TO BE MOVED
ON REPORT

[*Supplementary to the Second Marshalled List*]

Clause 42

LORD NASH

Page 34, line 14, leave out “to the extent that” and insert “if”

Clause 45

LORD PEARSON OF RANNOCH

Page 35, line 32, at end insert –

“() A local authority shall not make a determination under subsection (1)(a) that an EHC plan is no longer necessary unless it is satisfied that appropriate alternative provision will be made in accordance with section 37 of the Care Act 2014, or otherwise.”

After Clause 65

LORD NASH

Insert the following new Clause –

“Application of Part to detained persons

- (1) Subject to this section and sections (*Assessment of post-detention education, health and care needs of detained persons*) to (*Supply of goods and services: detained persons*), nothing in or made under this Part applies to, or in relation to, a child or young person detained in pursuance of –
 - (a) an order made by a court, or
 - (b) an order of recall made by the Secretary of State.
- (2) Subsection (1) does not apply to –
 - (a) section 28;
 - (b) section 31;

After Clause 65 – continued

- (c) section 69;
 - (d) section 73;
 - (e) any amendment made by this Part of a provision which applies to, or in relation to, a child or young person detained in pursuance of –
 - (i) an order made by a court, or
 - (ii) an order of recall made by the Secretary of State.
- (3) Regulations may apply any provision of this Part, with or without modifications, to or in relation to a child or young person detained in pursuance of –
- (a) an order made by a court, or
 - (b) an order of recall made by the Secretary of State.
- (4) The Secretary of State must consult the Welsh Ministers before making regulations under subsection (3) which will apply any provision of this Part to, or in relation to, a child or young person who is detained in Wales.
- (5) For the purposes of this Part –
- “appropriate person”, in relation to a detained person, means –
- (a) where the detained person is a child, the detained person’s parent, or
 - (b) where the detained person is a young person, the detained person;
- “detained person” means a child or young person who is –
- (a) 18 or under,
 - (b) subject to a detention order (within the meaning of section 562(1A)(a) of EA 1996), and
 - (c) detained in relevant youth accommodation,
- and in provisions applying on a person’s release, includes a person who, immediately before release, was a detained person;
- “detained person’s EHC needs assessment” means an assessment of what the education, health care and social care needs of a detained person will be on his or her release from detention;
- “relevant youth accommodation” has the same meaning as in section 562(1A)(b) of EA 1996, save that it does not include relevant youth accommodation which is not in England.
- (6) For the purposes of this Part –
- (a) “beginning of the detention” has the same meaning as in Chapter 5A of Part 10 of EA 1996 (persons detained in youth accommodation), and
 - (b) “the home authority” has the same meaning as in that Chapter, subject to regulations under subsection (7) (and regulations under section 562J(4) of EA 1996 made by the Secretary of State may also make provision in relation to the definition of “the home authority” for the purposes of this Part).
- (7) For the purposes of this Part, regulations may provide for paragraph (a) of the definition of “the home authority” in section 562J(1) of EA 1996 (the home authority of a looked after child) to apply with modifications in relation to such provisions of this Part as may be specified in the regulations.”

After Clause 65 – continued

Insert the following new Clause –

“Assessment of post-detention education, health and care needs of detained persons

- (1) This section applies in relation to a detained person for whom –
 - (a) the home authority is a local authority in England, and
 - (b) no EHC plan is being kept by a local authority.
- (2) A request to the home authority to secure a detained person’s EHC needs assessment for the detained person may be made by –
 - (a) the appropriate person, or
 - (b) the person in charge of the relevant youth accommodation where the detained person is detained.
- (3) Where this subsection applies, the home authority must determine whether it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.
- (4) Subsection (3) applies where –
 - (a) a request is made under subsection (2),
 - (b) the detained person has been brought to the home authority’s attention by any person as someone who has or may have special educational needs, or
 - (c) the detained person has otherwise come to the home authority’s attention as someone who has or may have special educational needs.
- (5) In making a determination under subsection (3), the home authority must consult –
 - (a) the appropriate person, and
 - (b) the person in charge of the relevant youth accommodation where the detained person is detained.
- (6) Where the home authority determines that it will not be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention, it must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained –
 - (a) of the reasons for that determination, and
 - (b) that accordingly it has decided not to secure a detained person’s EHC needs assessment for the detained person.
- (7) Subsection (8) applies where –
 - (a) the detained person has not been assessed under this section or section 36 during the previous six months, and
 - (b) the home authority determines that it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.

After Clause 65 – continued

- (8) The home authority must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained –
- (a) that it is considering securing a detained person’s EHC needs assessment for the detained person, and
 - (b) that the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained each have the right to –
 - (i) express views to the authority (orally or in writing), and
 - (ii) submit evidence to the authority.
- (9) The home authority must secure a detained person’s EHC needs assessment if, after having regard to any views expressed and evidence submitted under subsection (8), the authority is of the opinion that –
- (a) the detained person has or may have special educational needs, and
 - (b) it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.
- (10) After a detained person’s EHC needs assessment has been carried out, the local authority must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained of –
- (a) the outcome of the assessment,
 - (b) whether it proposes to secure that an EHC plan is prepared for the detained person, and
 - (c) the reasons for that decision.
- (11) Regulations may make provision about detained persons’ EHC needs assessments, in particular –
- (a) about requests under subsection (2);
 - (b) imposing time limits in relation to consultation under subsection (5);
 - (c) about giving notice;
 - (d) about expressing views and submitting evidence under subsection (8);
 - (e) about how detained persons’ EHC needs assessments are to be conducted;
 - (f) about advice to be obtained in connection with a detained person’s EHC needs assessment;
 - (g) about combining a detained person’s EHC needs assessment with other assessments;
 - (h) about the use for the purposes of a detained person’s EHC needs assessment of information obtained as a result of other assessments;
 - (i) about the use of information obtained as a result of a detained person’s EHC needs assessment, including the use of that information for the purposes of other assessments;
 - (j) about the provision of information, advice and support in connection with a detained person’s EHC needs assessment.”

After Clause 65 – continued

Insert the following new Clause –

“Securing EHC plans for certain detained persons

- (1) Where, in the light of a detained person’s EHC needs assessment it is necessary for special education provision to be made for the detained person in accordance with an EHC plan on release from detention, the home authority must secure that an EHC plan is prepared for him or her.
- (2) Sections 37(2) to (6) and 38 to 40 apply in relation to an EHC plan secured under subsection (1) as they apply to an EHC plan secured under section 37(1), with the following modifications –
 - (a) references to “the child or young person” are to be read as references to the detained person,
 - (b) references to the local authority are to be read as references to the home authority, and
 - (c) references to the child’s parent or the young person are to be read as references to the appropriate person.
- (3) Section 33(2) to (7) apply where a home authority is securing the preparation of an EHC plan under this section as they apply where a local authority is securing a plan under section 37, with the following modifications –
 - (a) references to “the child or young person” are to be read as references to the detained person,
 - (b) references to the local authority are to be read as references to the home authority,
 - (c) references to the child’s parent or the young person are to be read as references to the appropriate person, and
 - (d) the reference in subsection (2) to section 39(5) and 40(2) is to be read as a reference to those provisions as applied by subsection (2) of this section.”

Insert the following new Clause –

“EHC plans for certain detained persons: appeals and mediation

- (1) An appropriate person in relation to a detained person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 52 (as applied by this section).
- (2) The matters are –
 - (a) a decision of the home authority not to secure a detained person’s EHC needs assessment for the detained person;
 - (b) a decision of the home authority, following a detained person’s EHC needs assessment, that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention;
 - (c) where an EHC plan is secured for the detained person –
 - (i) the school or other institution named in the plan, or the type of school or other institution named in the plan;
 - (ii) if no school or other institution is named in the plan, that fact.

After Clause 65 – continued

- (3) The appropriate person may appeal to the First-tier Tribunal under subsection (2)(c) only when an EHC plan is first finalised for the detained person in accordance with section (*Securing EHC plans for certain detained persons*).
- (4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC plans secured under section (*Securing EHC plans for certain detained persons*), in particular about –
 - (a) making and determining appeals;
 - (b) the powers of the First-tier Tribunal on determining an appeal;
 - (c) unopposed appeals.
- (5) A person commits an offence if without reasonable excuse that person fails to comply with any requirement –
 - (a) in respect of the discovery or inspection of documents, or
 - (b) to attend to give evidence and produce documents,
 where that requirement is imposed by Tribunal Procedure Rules in relation to an appeal under this section.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Section 52(2) to (9) apply where an appropriate person intends to appeal to the First-tier Tribunal under this section as they apply where a child’s parent or young person intends to appeal under section 51, with the following modifications –
 - (a) references to the child’s parent or young person are to be read as references to the appropriate person, and
 - (b) references to the local authority are to be read as references to the home authority.
- (8) Regulations under subsection (7) of section 52 may make provision for the purposes of subsection (7) of this section, and accordingly in subsection (7)(f) of section 52 –
 - (a) the reference to a child’s parent is to be read as a reference to the parent of a detained person who is a child, and
 - (b) the reference to the child is to be read as a reference to a detained person who is a child.”

Insert the following new Clause –

“Duty to keep EHC plans for detained persons

- (1) This section applies in relation to a detained person –
 - (a) for whom a local authority in England was maintaining an EHC plan immediately before the beginning of his or her detention, or
 - (b) for whom the home authority has secured the preparation of an EHC plan under section (*Securing EHC plans for certain detained persons*).
- (2) The home authority must keep the EHC plan while the person is detained in relevant youth accommodation.
- (3) Regulations may make provision about the keeping of EHC plans under subsection (2), and the disclosure of such plans.

After Clause 65 – continued

- (4) The home authority must use its best endeavours to arrange appropriate special educational provision for the detained person while he or she is detained in relevant youth accommodation.
- (5) If the EHC plan specifies health care provision, the detained person’s health services commissioner must use its best endeavours to arrange appropriate health care provision for the detained person while he or she is detained in relevant youth accommodation.
- (6) For the purposes of subsection (4), appropriate special educational provision is –
 - (a) the special educational provision specified in the EHC plan,
 - (b) educational provision corresponding as closely as possible to the special educational provision specified in the plan, or
 - (c) if it appears to the home authority that the special educational provision specified in the plan is no longer appropriate for the person, such special educational provision as reasonably appears to the home authority to be appropriate.
- (7) For the purposes of subsection (5), appropriate health care provision is –
 - (a) the health care provision specified in the EHC plan,
 - (b) health care provision corresponding as closely as possible to the health care provision specified in the plan, or
 - (c) if it appears to the detained person’s health services commissioner that the health care provision specified in the plan is no longer appropriate for the person, such health care provision as reasonably appears to the detained person’s health services commissioner to be appropriate.
- (8) In this section, “detained person’s health services commissioner”, in relation to a detained person, means the body that is under a duty under the National Health Service Act 2006 to arrange for the provision of services or facilities in respect of the detained person during his or her detention.”

Insert the following new Clause –

“Supply of goods and services: detained persons

- (1) A local authority in England may supply goods and services to any authority or other person making special educational provision for a detained person, but only for the purpose set out in subsection (2).
- (2) The purpose is that of assisting the local authority in the performance of a duty under section (*Duty to keep EHC plans for detained persons*).
- (3) The goods and services may be supplied on the terms and conditions that the authority thinks fit, including terms as to payment.”

Clause 70

LORD NASH

Leave out Clause 70

Schedule 3

LORD NASH

Page 157, line 34, leave out sub-paragraphs (2) to (4) and insert –

“() In subsection (1), after “local authority” insert “in Wales”.

() In the title, after “with” insert “statement of”.

55A In section 562D (appropriate special educational provision: arrangements between local authorities), in subsection (2) after “local authority” insert “in Wales”.

Page 157, line 40, leave out sub-paragraphs (2) to (8) and insert –

“() In subsection (1) after “local authority” insert “in Wales”.

() In subsection (2) after “home authority” insert “, where they are a local authority in Wales,”.

() In subsection (4) after “local authority” insert “in Wales”.

() In subsection (5) after “local authority” insert “in Wales”.

() In subsection (7) –

(a) in paragraph (a) after “home authority” insert “, where they are a local authority in Wales”, and

(b) in paragraph (b) after “authority” insert “in Wales”.

() In subsection (8) –

(a) after “home authority”, where it first occurs insert “, where they are a local authority in Wales”, and

(b) in paragraph (a) after “local authority” insert “in Wales”.

Page 158, line 18, leave out sub-paragraphs (2) and (3) and insert –

“() In subsection (1) –

(a) after “person” insert “ –

(a) ”, and

(b) after “apply” insert “, and

(b) for whom the home authority are a local authority in Wales.”

() In subsection (4), for “Subsections (5) and (6) apply” substitute “Subsection (6) applies”.

() Omit subsection (5).

() In subsection (6), omit paragraph (b) and the “and” preceding it.”

Clause 73

LORD NASH

Page 51, line 4, at end insert –

““appropriate person” has the meaning given by section (*Application of Part to detained persons*)(5);

Clause 73 – continued

“beginning of the detention” has the meaning given by section (Application of Part to detained persons)(6);

“detained person” has the meaning given by section (Application of Part to detained persons)(5);

“detained person’s EHC needs assessment” has the meaning given by section (Application of Part to detained persons)(5);”

Page 51, line 9, at end insert –

““the home authority” has the meaning given by section (Application of Part to detained persons)(6) (subject to subsection (7) of that section);”

Page 51, line 28, at end insert –

““relevant youth accommodation” has the meaning given by section (Application of Part to detained persons)(5);”

Clause 114

LORD NASH

Page 121, line 35, at end insert –

“() regulations under section (Application of Part to detained persons)(3),”

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