

Which children will qualify as vulnerable? New government advice published

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**edited to update the position regarding schools being asked to remain open*

New guidance has been published by the government today (22 March) setting out which children meet the definition of vulnerable. The big takeaways are that:

1. Contrary to indications in previous guidance, this guidance suggests that children and young people with EHC Plans will *not* be automatically eligible for a school or college place. Their eligibility will be subject to a risk assessment by their setting in conjunction with LAs and parents to determine whether their needs can be met at home.
2. *The government is asking all schools and early years settings to remain open for children of critical workers and vulnerable children wherever possible. This might not be clear on a reading of the vulnerable children guidance, but it is made clear **elsewhere**.
3. For children who are awaiting an EHC Plan or the outcome of a tribunal appeal in respect of one, and/or who are on the brink of receiving social care support, settings will have a discretion to carry out a risk assessment and provide support, but will not be required to do so.
4. The government is likely to introduce legislation to amend the timescales for EHC plan processes, presumably from needs assessments to issue of the plan.

This leaves a lot of discretion in the hands of the child or young person's setting, together with a considerable amount of risk-assessing to be done in a very short period of time.

That's without taking into account the work involved for settings in deciding whether or not parents of non-vulnerable children come within the definition of "**critical workers**". The guidance also introduces a level of additional anxiety for parents of children with EHC plans who are not themselves critical workers and who had felt reassured that their children would continue to have their needs met at school.

A few caveats. Things are changing quite rapidly as legislation and guidance are refined and as the wider picture in terms of public health becomes better understood. I haven't addressed every element of the guidance that's been published. There may be other provisions that didn't make the cut that may be highly relevant to an individual's situation. This guidance has only just been published, and is capable of being amended very easily.

Definition of vulnerable children

“Includes”, according to the guidance, those who have a social worker and those children and young people up to the age of 25 with EHC Plans.

Children with a social worker

This includes children who have a child protection plan, looked-after children and possibly children who have been assessed as being in need or otherwise meet the definition in section 17 Children Act 1989. This is a slight change from previous guidance which suggested that children in need would be classed as vulnerable.

Social workers will identify children who are eligible under this heading and ensure that their families are aware.

The most vulnerable children who have to isolate for 14 days with their families will be prioritised for support, including necessary visits subject to appropriate infection control measures

Foster carers who are 70 or over or have relevant underlying health conditions / live with someone in either or both of those positions, and who do not wish to send their foster children to school due to infection concerns, should discuss this with their social worker.

Schools will be given the “flexibility” to provide vulnerable children with underlying health conditions who rely on schools for meals with meals or food vouchers to use at home.

LAs will try to ensure that schools are kept open but this will not be possible in some cases. LAs and schools will make “the most appropriate arrangements” and talk to parents about them.

The LA will be expected to make appropriate travel provision for children with a social worker to reach school safely.

Vulnerable children with a social worker are *expected* to attend school; if a parent does not want to bring their child to school, the setting and social worker should explore this directly with the parent.

Children's homes will remain open and contingency/continuity plans are being discussed by residential settings and LAs in relation to dealing with potential staff shortages

Children who are on the brink of receiving social care support

So far as children on the brink of receiving social care are concerned, the guidance states that schools know which children are most vulnerable and "will have the flexibility" to offer a place to them. Eligibility for free school meals in and of itself "*should not be the determining factor in assessing vulnerability*" (free school meals guidance here).

Children with EHC Plans

Are to be risk-assessed by their setting in conjunction with the LA and parents to decide whether they need a school place or whether their needs can be met at home. The risk assessment will include balancing:

- The potential health risk to the individual from COVID-19, with advice from an appropriate health professional where required
- Risk to the individual if they do not receive the support in their EHC Plan at all/in the normal manner/in the usual setting
- Ability of the individual's parents or home to ensure their health and care needs can be met safely
- Potential impact to the individual's wellbeing of changes to routine or the way the provision is delivered.

Children with EHC plans are likely to fall into two categories:

- Those who would be at significant risk, i.e. could not be supported at home (e.g. profound and multiple learning difficulties; receiving significant levels of personal care support in the setting).
- Those whose needs can be met at home, i.e. not receiving personal care in their setting or whose limited needs for personal care can be met in their home.

The guidance suggests that needs could be met by therapists, clinicians and carers visiting the home setting to provide essential services. “*Many children and young people with EHC plans can safely remain at home*”, it says.

LAs will need to use their reasonable endeavours to ensure that provision is available across the local area. Parents who consent to changes to or reductions in provision during the outbreak will not be considered to have agreed to a permanent amendment of the EHC Plan.

Changing timescales relating to EHC plan processes is under consideration.

Children and young people awaiting an EHC plan or relevant Tribunal appeal outcome

These will not automatically qualify as vulnerable children, but the setting and LA will have a discretion to undertake a risk assessment and offer support if needed. For children awaiting the outcome of an appeal, the LA will continue to be under a duty to maintain an EHC Plan, including until any appeal has been heard or resolved.

Will children and young people have to attend a school that is not named in their EHC plan?

The Government is recommending that all residential special schools and colleges carry out risk assessments for the institution and individual pupils to identify how self-isolation measures should be enacted. Case by case closures may apply if the workforce can be deployed elsewhere more efficiently to ensure that children are safe and their needs are met. This is different to the wording in previous guidance, which was that residential and non-residential special schools and colleges were being encouraged to stay open if possible.

Special schools are being encouraged to look after children throughout the Easter holidays

The guidance acknowledges that children and young people in 52-week residential placements “may” not be able to be supported safely at home.

Children and young people with EHC plans in mainstream may have to attend a different institution in the short term.

Alternative provision settings

These will remain open where it is feasible to do so due to their high number of pupils with EHC plans and/or social worker involvement.

If an AP setting cannot remain open, LAs and settings will assess the safeguarding needs of those children on a case by case basis working with other agencies to make appropriate arrangements.

Funding

Funding for all schools and FE colleges will be maintained and not reduced because of lower attendance.

The DfE will put in place a new process allowing reimbursement of exceptional costs faced by schools as a result of COVID-19; details to be published shortly.

This article is not legal advice. Please seek legal advice tailored to your individual position rather than relying on general interpretations and predictions (mine or anyone else's) that are available online or in the public domain.

22 March 2020



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