



2021-0018322VFPO

Vicky Ford MP

Parliamentary Under-Secretary of State for Children and Families

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Rt Hon Caroline Nokes MP
Chair, Women and Equalities Committee
By email: caroline.nokes.mp@parliament.uk

Cc: Justin Tomlinson MP
Minister for Disabled People, Health and Work
By email: minister.disabledpeople@dwp.gov.uk

8 April 2021

Dear Caroline,

Thank you for your letter of 15 March, about the Secretary of State's power to issue notices modifying local authorities' (LAs') duties under section 42 of the Children and Families Act 2014 in relation to education, health and care (EHC) plans.

May I begin by wishing you and all the committee members well in these challenging times.

As you rightly say, the coronavirus (COVID-19) outbreak has been extremely challenging for many families of children and young people with special educational needs and disabilities (SEND). Supporting them is a priority for this government and their wellbeing remains central to our response to the outbreak. That is why, for example, throughout the outbreak we have encouraged schools and colleges to continue to offer face-to-face education to vulnerable children and young people, including those with complex SEND. Similarly, it is why supporting those with SEND is at the heart of our strategy to support children and young people to recover the learning that they have lost.

You ask about the need for the power under the Coronavirus Act 2020 allowing the Secretary of State to make temporary modifications (by notice) to the duties on LAs and health commissioning bodies to secure/arrange the provision in EHC plans. As you know, the Secretary of State issued notices under this power for the months of May to July last year. The use of the power allowed LAs, health bodies and education settings some additional flexibility to prioritise their resources during the COVID-19 outbreak. We welcome your finding previously that such flexibility was needed early in the outbreak. The Secretary of State has, however, not issued a notice since last July: meaning that the usual duty to secure or arrange provision for those with EHC plans is in force. The Secretary of State continues to

keep the need to issue further such notices under review, but has made it clear that he will not do so unless the evidence changes.

You have suggested that these temporary changes to the law contributed significantly to the loss of support for disabled children and young people. This is not our understanding of the evidence (such as surveys from SEND organisations) that we have seen. The loss of support was mainly the result of the outbreak and the health protection measures responding to it, not changes to the law for the period May to July.

The position has, of course, changed substantially over the last year, notably with pupils and students now back in face-to-face education. LAs, health bodies and education settings have adapted to new ways of working and staffing levels are more certain. As things stand, there is much less need for the additional flexibilities.

You suggest that we should now remove entirely the power to issue such notices in the future. We do not consider this appropriate at this stage. Use of the power was and remains an important contingency to use swiftly in the event of LAs, health bodies and education settings again needing to reprioritise in response to the changing demands of the outbreak. As part of the one-year review of the 2020 Act, and in line with the announcement of the Roadmap, as you know the government has conducted a thorough review of the non-devolved provisions to check that they are necessary and proportionate. We have considered whether there is a robust justification for keeping each power. Where we have concluded that powers are no longer necessary to respond to the outbreak, we are providing for these to expire or be suspended. However, we consider that we still need the option to modify section 42 of the 2014 Act if the circumstances warrant it.

The safeguards built into the 2020 Act include that such notices can only be made where this is 'appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus', so this is not a power that can be used lightly.

I hope that this reply is useful in explaining why we still need the power should the evidence change and the making of a further notice become, as required by the Act, appropriate and proportionate. However, may I stress once again that we remain fully committed to supporting disabled children, young people and their families to help them recover from the impact of the COVID-19 outbreak; and that all decisions are being made with their educational, physical and mental wellbeing at the forefront of our minds.

I am copying this letter, as you did yours, to the Minister for Disabled People, Health and Work.

If you would find it helpful to discuss these matters further, I would be very happy to do so. Should you wish to arrange this, I would be grateful if your office could contact my diary manager at: Ford-DIARY.PS@education.gov.uk to confirm the details.

Yours sincerely,

A handwritten signature in black ink that reads "Vicky Ford". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Vicky Ford MP
Parliamentary Under-Secretary of State for Children and Families