



## BRIEFING PAPER

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# Special Educational Needs: support in England

By Robert Long



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## One page briefing

The [Children and Families Act 2014](#) provided for an overhaul of the system for identifying children and young people in England with special educational needs (SEN), assessing their needs and making provision for them.

Some key points in the introduction of the reformed system are:

- The replacement of the dual system of SEN statements for children and Learning Difficulty Assessments for 16 to 25 year olds by a new single system of birth-to-25 assessments and Education, Health and Care (EHC) Plans.
- The reformed system was introduced in September 2014, with transitional arrangements for those who already have support in place. Transition to the reformed system is intended to be complete by April 2018.
- EHC Plans aim to provide support for children and young people through a unified plan taking into account education, health care, and social care needs
- By September 2014, local authorities were required to have published a 'local offer' to clearly set out the services available for children with SEN or disability, developed in partnership with children and young people with SEN or disability and their parents, and subject to ongoing consultation and improvement
- Young people and parents of children who have EHC plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding, to use in support of their needs
- The SEN Code of Practice states that because the legal test of when a child required an EHC plan is the same as for a statement under the *Education Act 1996*, nobody should lose support previously received as a result of these changes.

This briefing provides an overview of the new system, the transitional arrangements, and how the new system differs from that which preceded it. It also includes a brief history of the movement towards reform that took place in the years preceding the 2014 Act.

A consultation on the inspection by Ofsted and the Care Quality Commission of local arrangements to support children and young people with SEN, due to begin in May 2016, was carried out from October 2015 to January 2016. Ofsted and the CQC published a response in March 2016, which confirmed that inspections would begin formally in May.

Some initial research has begun to appear on the operation of the reformed system, and an overview of this is provided in the last section.

This briefing applies to England only.

# 1. The previous system for children and young people with SEN and the process of reform

The system in place for children and young people with Special Educational Needs (SEN) has undergone significant reform through the [Children and Families Act 2014](#). This first section of this note provides brief information on the previously existing system, and the lengthy process towards reform, as well as references for more detailed information on these matters.

It should be noted that this system remains in place for many children and young people already recognised as having SEN and receiving support. It will continue to do so until the transition to the reformed system is completed in April 2018.

## 1.1 A brief overview of the previous system

The previous system for children with SEN was provided for in Part 4 of the *Education Act 1996*, as amended, and with associated regulations.

The 2001 [statutory code of practice](#) set out a graduated approach to SEN that recognised a continuum of SEN which might require increasing action by a school. There were three levels of intervention for pupils with SEN.

**School Action** – where the teacher or the school Special Educational Needs Coordinator (SENCO) decides to provide something for the child additional to or different from the school's usual differentiated approach to help children learn. In January 2010, 11.4 per cent of the school population were identified at School Action level, approximately 916,000 pupils;

**School Action Plus** – where the school consults specialists and requests help from external services. In January 2010, 6.2 per cent of the school population were at School Action Plus level, approximately 496,000 pupils; and

**Statement** – where the child requires support beyond that which the school can provide and the local authority arranges appropriate provision. In January 2010, 2.7 per cent of the school population or 221,000 pupils had a statement of SEN.<sup>1</sup>

Provisions were in place for children younger than school age, but most statements were made for school-aged children. The governing bodies of maintained schools were required to use their best endeavours to secure appropriate SEN provision for any pupil with SEN, and had to appoint a member of the school staff to be a Special Educational Needs Coordinator (SENCO).<sup>2</sup>

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<sup>1</sup> Department for Education, [Support and aspiration: a new approach to special educational needs and disability](#), March 2011, paragraph 25

<sup>2</sup> *Education Act 1996*, section 317; *Education and Inspections Act 2006*, section 173

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Each local authority was responsible for identifying the children in their area who had SEN of a kind that may call for SEN provision.<sup>3</sup> Having identified a child with SEN, the local authority was required to notify the parent that considering whether to make a formal (statutory) assessment of the child's needs. After a statutory assessment the local authority would decide whether it was necessary to make a statement of SEN. A parent could also request a local authority to arrange a statutory assessment of a child for whom the authority was responsible and for whom no statement had already been made.

A statement of SEN described, in six parts, the child's needs and the special provision needed. Provision was also in place for statements to be reviewed.

The local authority was obliged to enable parents to express a preference for a school, and was required to name the preferred school on the statement unless it was unsuitable for the child's age, aptitude, ability or his/her SEN, or the placement would be incompatible with the efficient education of other children with whom the child would be educated or with the efficient use of resources.<sup>4</sup> The local authority was also responsible for arranging the provision in the statement.

### Academies and SEN

Academies operate in accordance with their individual funding agreement. Those academies that had been established since the *Academies Act 2010* were required to comply with section 17 of the Act, which imposed obligations on them equivalent to those contained in Part 4 of the *Education Act 1996*. The requirements on academies established before the 2010 Act depended upon the exact terms of an individual academy's funding agreement.

### Post-16 provision

Under the previous system, a statement of SEN stopped if a young person left school at 16. However, if the person remained at school, the local authority could maintain a statement until s/he reached 19 or until the end of the school year when s/he finished the course. If the young person left school for further education, his/her SEN was assessed under a different process, the Learning Difficulty Assessment (LDA). Section 139a of the *Learning and Skills Act 2000* placed local authorities under a duty to arrange a LDA for students in their last year of compulsory education who had a statement of SEN and who were expected to continue in post-16 education. Local authorities also had the power to undertake LDAs for young people who did not have a statement but who appeared to have learning difficulties and were receiving, or were likely to receive post-16 education. LDAs however did not have the statutory rights and protections associated with statements of SEN.

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<sup>3</sup> *Education Act 1996*, section 321

<sup>4</sup> *Education Act 1996*, Schedule 27

## 1.2 Momentum for change

### Concerns about the operation of the existing system

During the later period of the 1997-2010 Labour Government, concerns were raised about the operation of the SEN system. In July 2006, the then Commons Education and Skills Select Committee reported on special educational needs, and highlighted strong concerns about parents' confidence in the SEN system. The [report](#) raised issues about the statementing process and the issuing of statements; transfer of statements; placement decisions; the role of local authorities; school admissions and fair access for children with SEN; and parental choice in relation to academies.<sup>5</sup>

Part of the Labour Government's response to the issues raised by the Select Committee was to ask Brian Lamb, the chair of the Special Educational Consortium, to carry out an inquiry into how parental confidence in the SEN assessment process might be improved. A series of [reports](#) were published.<sup>6</sup>

In addition, a number of reports looked at specific aspects of SEN provision<sup>7</sup> and an Ofsted review of SEN, [Special educational needs and disability review – a statement is not enough](#), commissioned by the Labour Government, was published in September 2010.<sup>8</sup>

### Green Paper on a reformed system

In July 2010, speaking at an Every Disabled Child Matters event, Sarah Teather, the then Children's Minister, said that the new Government would publish a green paper on SEN.

A [Call for Views](#) on the planned Green Paper was published in September 2010, and set out that the Government was considering a range of options including how to

- give parents a choice of educational settings that can meet their child's needs

- transform funding for children with SEN and disabilities and their families, making the system more transparent and cost-effective while maintaining a high quality of service

- prevent the unnecessary closure of special schools, and involve parents in any decisions about the future of special schools

- support young people with SEN and disabilities post-16 to help them succeed after education

- improve diagnosis and assessment to identify children with additional needs earlier<sup>9</sup>

The Green Paper, [Support and aspiration: a new approach to special educational needs and disability](#) was published in March 2011, and

<sup>5</sup> Education and Skills Committee, [Special Educational Needs](#), HC 478-I, Third Report of Session 2005-06

<sup>6</sup> These are currently available on the [National Archives](#) website.

<sup>7</sup> See [Library Standard Note SN/SP/5781](#)

<sup>8</sup> See [Library Standard Note SN/SP/5781](#) for further background on the Ofsted review.

<sup>9</sup> Department for Education, [Children's Minister unveils plans for education of SEN pupils](#), 10 September 2010

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contained wide-ranging proposals to reform the system. The then Education Secretary, Michael Gove, announced the detailed proposals in a [Written Ministerial Statement](#) on 9 March 2011.<sup>10</sup>

The Green Paper said that the Government would “remove the bias towards inclusion” and improve the range and diversity of schools so as to:

give parents a real choice of school, either a mainstream or special school. We will remove the bias towards inclusion and propose to strengthen parental choice by improving the range and diversity of schools from which parents can choose, making sure they are aware of the options available to them and by changing statutory guidance for local authorities. Parents of children with statements of SEN will be able to express a preference for any state-funded school – including special schools, Academies and Free Schools – and have their preference met unless it would not meet the needs of the child, be incompatible with the efficient education of other children, or be an inefficient use of resources. We will also prevent the unnecessary closure of special schools by giving parents and community groups the power to take them over<sup>11</sup>

A consultation on the Green Paper was conducted between March and June 2011.

### 1.3 Developing Legislation

The transition from the Green Paper to legislation was lengthy. This section provides a brief overview of the various stages. More detailed information is provided in the following Library notes; these papers were written contemporaneously and so reflect the then-current position:

- *The green paper on special educational needs and disability, SN/SP/5917*, July 2012
- *Draft legislation on provision for children and young people with special educational needs, SN/SP/6420*, September 2012

In May 2012, the Government published its detailed response to the formal public consultation on the Green Paper: [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#).<sup>12</sup> This announced that a draft Bill for reform would be published in summer 2012, and would be subject to consultation and pre-legislative scrutiny before changes to the law were made. The response stated that the Government wanted to introduce reforms to come into effect in 2014.

Some work had already commenced on proposed changes. Twenty SEN pathfinders had been announced in October 2011.<sup>13</sup> These covered 31 local authorities and their PCT and emerging Clinical Commissioning Group partners. In a [Written Ministerial Statement](#) in May 2012,

<sup>10</sup> [HC Deb 9 March 2011 cc63-5WS](#)

<sup>11</sup> [Support and aspiration: a new approach to special educational needs and disability](#), Executive summary, paragraph 7

<sup>12</sup> [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#), DFE, 2012

<sup>13</sup> HC Deb 17 October 2011 c609

Michael Gove said that the draft Bill would be informed by early lessons from the SEN pathfinders.

In October 2012, the DFE published an [Interim Evaluation Report](#) of the pathfinder programme. Amongst other things, the report said that the current pace of progress was behind that expected and was unlikely to provide sufficient evidence to inform the evaluation within the original 18-month evaluation. The pathfinders were due to end in March 2013. In evidence to the Education Select Committee in November 2012, Edward Timpson, Under-Secretary of State at the Department for Education, said that the pathfinders would be extended for 18 months, through to September 2014.<sup>14</sup>

Draft provisions relating to SEN reform, along with explanatory notes, were published in September 2012 in [Draft legislation on Reform of provision for children and young people with Special Educational Needs](#).<sup>15</sup> The [Written Ministerial Statement](#) announcing publication of the draft provisions summarised the proposed changes. The draft legislation, which consisted of 51 clauses, provided a framework for the new system and for much of the detail to be contained in regulations.

The Education Select Committee carried out the pre-legislative scrutiny of the draft SEN provisions. Its [report](#) was published on 19 December 2012, and stated that the general thrust of the reforms was sound, but worried that the draft legislation lacked detail, without which a thorough evaluation of the likely success of the Government's proposals was not possible.<sup>16</sup> Alongside the Bill, the Government published the command paper, [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), which included the Government's detailed response to the Committee's report.<sup>17</sup>

## 1.4 The Children and Families Act 2014

The *Children and Families Bill* had its First Reading in the House of Commons on 4 February 2013.

Part 3 of the Bill, made provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The changes included:

- Definitions and duties to identify children and young people with SEN
- Local integration of education, health and care provision and joint commissioning
- Inclusion in mainstream education
- Personal budgets for young people with an EHC plan

<sup>14</sup> [Oral evidence taken before the Education Committee, 6 November 2012](#), Q198, HC Paper 631-II, Ev30

<sup>15</sup> Cm 8438

<sup>16</sup> [Pre-legislative Scrutiny: Special Educational Needs, House of Commons Education Committee, Sixth Report of Session 2012-13](#), HC Paper 631-I, Vol. 1: Report and formal minutes; HC Paper 631-II, Vol. II: oral and written evidence; and Vol. III: additional written evidence, which is available on the [Committee's website](#).

<sup>17</sup> [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), Cm 8540, published 5 February 2013, Annex C

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- Appeals, mediation and dispute resolution
- Special educational provision
- The requirement for a SEN Code of Practice

The following Library publications provide further information on the passage of the Bill:

- *Children and Families Bill*, [RP 13/11](#), February 2013 (see section 4)
- *Children and Families Bill Committee Stage Report*, [RP 13/32](#), May 2013 (see section 3)
- *Children and Families Bill: Lords' Amendments to Part 3 (Children and Young People in England with Special Educational Needs or Disabilities)*, [SN/SP/6815](#), February 2014

The [Children and Families Act 2014](#) received Royal Assent on 13 March 2014. The majority of sections on SEN came into force on 1 September 2014.

## 2. The reformed system (phased in September 2014 –April 2018)

### 2.1 Definition of SEN

The revised SEN [Code of Practice](#) provides the following definition of SEN:

xiii. A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

xiv. A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

xv. For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, mainstream post-16 institutions or by relevant early years providers. For a child under two years of age, special educational provision means educational provision of any kind.

xvi. A child under compulsory school age has special educational needs if he or she is likely to fall within the definition in paragraph xiv. above when they reach compulsory school age or would do so if special educational provision was not made for them (Section 20 Children and Families Act 2014).

xvii. Post-16 institutions often use the term learning difficulties and disabilities (LDD). The term SEN is used in this Code across the 0-25 age range but includes LDD.<sup>18</sup>

### 2.2 The reformed system: levels of support

The type of support that children and young people with SEN receive may vary widely, as the types of SEN that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

#### SEN Support

This will be support given to a child or young person in their pre-school, school or college. In schools, it replaces the previously existing 'School Action' and 'School Action Plus' systems.

The [gov.uk website](#) sets out that SEN support for children under 5 includes:

- a written progress check when your child is 2 years old

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<sup>18</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), January 2015, p15-16

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- a child health visitor carrying out a health check for your child if they're aged 2 to 3
- a written assessment in the summer term of your child's first year of primary school
- making reasonable adjustments for disabled children, e.g. providing aids like tactile signs

For children of compulsory school age, the following indicative [list](#) is provided of the type of help a child might receive:

- a special learning programme
- extra help from a teacher or assistant
- to work in a smaller group
- observation in class or at break
- help taking part in class activities
- extra encouragement in their learning, e.g. to ask questions or to try something they find difficult
- help communicating with other children
- support with physical or personal care difficulties, e.g. eating, getting around school safely or using the toilet

A young person of 16-25 in further education would need to contact their school or college before starting a course, to ensure their needs can be met.

### **Education, Health and Care Plans**

Education, Health and Care Plans are for children and young people aged up to 25 who need more support than is available through SEN support. They are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

The [gov.uk website](#) sets out that parents can ask their local authority to carry out an assessment if they think their child needs an EHC Plan.

A request can also be made by:

- anyone at the child's school
- a doctor
- a health visitor
- a nursery worker

A local authority has 6 weeks to decide whether or not to carry out an EHC assessment.

Further requirements on local authorities relating to EHC Plans are discussed in more detail in section 2.4 of this note.

## 2.3 The reformed system: changes from the previous system

The new 0-25 [Code of Practice](#) sets out the main changes from the previous code, published in 2001, reflecting the changes introduced by the *Children and Families Act 2014*:

- The Code of Practice covers the 0-25 age range and includes guidance relating to disabled children and young people as well as those with SEN
- There is a clearer focus on the participation of children and young people and parents in decision-making at individual and strategic levels
- There is a stronger focus on high aspirations and on improving outcomes for children and young people
- It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health and social care
- It includes guidance on publishing a 'local offer' of support for children and young people with SEN or disabilities
- There is new guidance for education and training settings on taking a graduated approach to identifying and supporting pupils and students with SEN (to replace School Action and School Action Plus) – this is called 'SEN Support'
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care Plan (EHC Plan) replace statements and Learning Difficulty Assessments (LDAs)
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood
- Information is provided on relevant duties under the *Equality Act 2010*
- Information is provided on relevant provisions of the *Mental Capacity Act 2005*<sup>19</sup>

## 2.4 The reformed system: implementation

Further guidance has been published on the [implementation](#) of the new SEN system, and in particular what local authorities were required to have in place from September 2014, and subsequently build upon.

### The local offer

By September 2014, local authorities were required to have published a 'local offer' to clearly set out the services available for children and young people with SEND. The offer must have been developed in partnership with children and young people with SEN or Disability and their parents, and education, health and care partners. It should cover the support available for those with and without EHC Plans and from birth to 25 years, including SEN Support.

The Code of Practice states:

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<sup>19</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p13-14

Local authorities must publish a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans. In setting out what they 'expect to be available', local authorities should include provision which they believe will actually be available.<sup>20</sup>

The Code makes clear that this initial offer is intended to be the start of an ongoing process, with local offers developed and revised over time through regular review and consultation.

### **Education, Health and Care Plans: requirements on authorities**

Education, Health and Care (EHC) Plans are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). The SEN Code of Practice states that because the legal test of when a child required an EHC Plan is the same as for a statement under the *Education Act 1996*, nobody should lose support received under a SEN statement as a result of these changes.<sup>21</sup>

While most children and young people with SEN will have their needs met by early years settings, schools, or colleges, some will need more substantial support. Where in the past a child in school, for example, might have been assessed for an SEN statement, they would now be assessed for an EHC plan which would seek to secure the best possible outcomes for them across education, health and social care.

- In conducting an EHC assessment, a local authority would be required to:
- establish and record the views, interests and aspirations of the parents and child or young person
- provide a full description of the child or young person's special educational needs and any health and social care needs
- establish outcomes across education, health and social care based on the child or young person's needs and aspirations
- specify the provision required and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes<sup>22</sup>

The Code of Practice sets out a further expectation that young people who are currently receiving support as a result of a LDA and remain in further education or training during the transition period, who request and need an EHC Plan, would be issued with one, since they have already been assessed as requiring SEN support.<sup>23</sup>

### **EHC plans for 19-25 year olds with SEN**

Under the reformed system, EHC Plans will cover eligible students up to the age of 25. However, [DfE guidance](#) makes it clear that this does not

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<sup>20</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p59

<sup>21</sup> *Ibid.*, p15

<sup>22</sup> *Ibid.*, p142

<sup>23</sup> *Ibid.*, p15

mean that students have an automatic entitlement to education up to the age of 25:

Young people with SEND are not automatically entitled to maintain their EHC (education, health and care) plans after they turn 19.

Reforms to the SEND system should mean that children and young people are better prepared for adulthood. Therefore we expect the majority of young people with EHC plans to complete further education with their peers by age 19. However we recognise that some young people with SEND need longer to complete and consolidate their education and training. The length of time will vary according to each young person.<sup>24</sup>

Nonetheless, 19 to 25 year olds with a learning difficulty or disability have the right to request an EHC needs assessment (unless one has been carried out in the last 6 months), and may appeal if a request is rejected.<sup>25</sup>

## Personal budgets

Young people and parents of children who have EHC Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC Plan where the parent or young person is involved in securing that provision. Local authorities must provide information on Personal Budgets as part of the local offer. Personal Budgets are optional for the child's parent or the young person but local authorities are under a duty to prepare a budget when requested.<sup>26</sup>

A local policy should be available that includes:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets
- the mechanisms of control for funding available to parents and young people including:
  - direct payments – where individuals receive the cash to contract, purchase and manage services themselves
  - an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
  - third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
  - a combination of the above

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<sup>24</sup> Department for Education, [SEND: 19- to 25-year-olds' entitlement to EHC plans](#), February 2017

<sup>25</sup> Ibid.,

<sup>26</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p178

- clear and simple statements of eligibility criteria and the decision-making processes that underpin them<sup>27</sup>

### Requirement for consultation with children, young people, and their parents

The [Code of Practice](#) provides information on the requirements on local authorities to consult with children and young people with SEN, as well as their parents, in carrying out all of its duties relating to SEN:

Local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with special educational needs (SEN), must have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents
- the importance of the child or young person, and the child's parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions
- the need to support the child or young person, and the child's parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood<sup>28</sup>

The Code states that these principles are designed to support:

- the participation of children, their parents and young people in decision-making
- the early identification of children and young people's needs and early intervention to support them
- greater choice and control for young people and parents over support
- collaboration between education, health and social care services to provide support
- high quality provision to meet the needs of children and young people with SEN
- a focus on inclusive practice and removing barriers to learning
- successful preparation for adulthood, including independent living and employment<sup>29</sup>

The Code of Practice sets out what these principles are intended to mean in practice, and how it is intended that they will be implemented.<sup>30</sup>

### Implementation: Further education

Separate [implementation guidance](#) has been published relating to the further education (FE) sector. As well as providing information on how FE institutions should work to fulfil their part of the reformed system,

<sup>27</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p48

<sup>28</sup> *Ibid.*, p19

<sup>29</sup> *Ibid.*, p19-20

<sup>30</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p20-29

the guidance highlights new statutory duties for the FE sector that are in place now that the *Children and Families Act 2014* is in operation:

From September 2014:

- General FE and sixth form colleges must use their best endeavours to secure the special educational provision that the young person needs. This duty applies to all young people with SEN, with and without an Education Health and Care (EHC) plans up to age 25. Its purpose is to ensure that mainstream providers give the right support to their students with SEN. It does not apply to special post-16 institutions or special schools, as their principal purpose is to provide for this group.
- General FE and sixth form colleges, and approved special post-16 institutions will have a duty to admit students if the institution is named in an EHC plan. The decision to name an institution is following consultation and subject to some conditions, more detail of which is set out in the assessment and planning section below.
- General FE and sixth form colleges, and approved special post-16 institutions will be under a duty to co-operate with the local authority to identify and meet the needs of young people with SEN. This is a reciprocal duty, meaning that the local authority must also cooperate with colleges to ensure young people's needs are met.
- General FE and sixth form colleges, and approved special post-16 institutions must 'have regard to' the new SEND Code of Practice.<sup>31</sup>

## SEN Improvement Test

An already-existing provision that has continued under the new system is the SEN Improvement Test, which is one of the factors the statutory guidance states that decision-makers must take into consideration when determining a proposal to close a school.

Annex B of the guidance for decision makers on [School Organisation: Maintained Schools](#) sets out specific requirements for the impact on SEN provision to be taken into account when a school reorganisation is proposed, and that:

When considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of parental or independent representations which question the proposer's assessment.<sup>32</sup>

Departmental Guidance published on proposed [changes to an academy](#) set out that significant changes relating to SEN provision would require

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<sup>31</sup> Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), March 2015, p6

<sup>32</sup> Department for Education, [School Organisation: Maintained Schools: Annex B: Guidance for Decision Makers](#), January 2014, p12

approval by the Secretary of State based on a formal business case which “must demonstrate that the proposed change will not have a detrimental impact on local SEN provision.”<sup>33</sup>

## 2.5 Transitional arrangements for children and young people in the existing system

Transitional arrangements are in place to support the changeover from the previous system to the reformed system. During the transition period, local authorities must continue to comply with the relevant legislation for children with SEN statements and young people with LDAs.

The DfE publication [SEND: managing changes to legislation from September 2014](#) provides detail, including timeframes for particular groups to be transferred. The following overview introduces the Government’s intentions:

All children and young people with SEN should be able to benefit from the new SEN and disability system as soon as possible. Transferring children and young people to EHC plans in a way that maximises the benefits that plans offer is a significant undertaking for local authorities. We want this transition to happen at a pace that is achievable; and which at least maintains the quality of assessment and support to children and young people making the transition and those still on the previous system. Local authorities should aim to make the new arrangements available to all children and young people as quickly as they can. By 1 April 2018, all statements of SEN must have been reviewed with a view to being replaced with EHC plans. In advance of that date, local authorities must ensure that children and young people who currently receive support as a result of a statement of SEN are transferred to the new system in accordance with the Transfer Review process (see section 5 of this document).<sup>34</sup>

All young people in further education previously on a Learning Development Plan (LDA), should have been transferred to the new system by 1 September 2016.

## 2.6 Young people in custody

The provisions in the *Children and Families Act 2014* relating to those in youth custody (and described in Chapter 10 of the [Code of Practice](#)<sup>35</sup>) did not come into force until April 2015, when [The Special Educational Needs and Disability \(Detained Persons\) Regulations 2015](#) came into effect, following consultation on how best to implement the reforms in relation to children and young people in custody.

The Code of Practice summarises the relevant statutory requirements:

<sup>33</sup> Department for Education, [Making significant changes to an existing academy](#), January 2014, p7 and 14

<sup>34</sup> Department for Education, [SEND: managing changes to legislation from September 2014](#), August 2015, p14

<sup>35</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p222-243

- Local authorities must not cease an EHC plan when a child or young person enters custody. They must keep it while the detained person is detained and they must maintain and review it when the detained person is released (see paragraphs 10.121 to 10.122 and paragraph 10.136)
- If a detained person has an EHC plan before being detained (or one is completed while the detained person is in the relevant youth accommodation) the local authority must arrange appropriate special educational provision for the detained person while he or she is detained (see paragraphs 10.123 to 10.127)
- If the EHC plan for a detained person specifies health care provision, the health services commissioner for the relevant youth accommodation must arrange appropriate health care provision for the detained person (see paragraph 10.128 to 10.131). (The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations confer responsibility on the NHS Commissioning Board (NHS England) for commissioning health services in prisons and custodial establishments.)

10.67 For a detained person with an EHC plan, appropriate special educational and health care provision is the provision specified in the plan. If it is not practicable to arrange the provision specified in the EHC plan, special educational and health provision corresponding as closely as possible to that in the EHC plan must be arranged. [...]

10.68 Where a detained person does not have an EHC plan, the appropriate person or the person in charge of the relevant youth accommodation can request an assessment of the detained person's post-detention EHC needs from the local authority. The appropriate person can appeal to the First-tier Tribunal (SEN and Disability) if they disagree with the decisions of the local authority about certain matters.

10.69 Anyone else, including YOTs and the education provider in custody, has a right to bring the detained person to the notice of the local authority as someone who may have special educational needs and the local authority must consider whether an assessment of their post-detention EHC needs is necessary.<sup>36</sup>

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<sup>36</sup> Ibid., p223-224

### 3. Funding: current system and proposed reform

#### 3.1 Current system

Funding for SEN in England is not allocated as a separate amount per pupil. SEN funding is part of the overall Dedicated Schools Grant allocated to each local authority to fund their schools budget. It is for local authorities, in consultation with their schools forums, to determine the individual allocation to schools.

The following PQ response provides information on SEN funding for maintained schools:

**Steve McCabe:** To ask the Secretary of State for Education whether special educational needs coordinators are able to request funds from his Department for extra assistance with SEN students in maintained schools. [201299]

**Mr Timpson:** The Department for Education does not give funds directly to local authority maintained schools. Funds for extra assistance with students with special educational needs (SEN) come from schools' budgets and, if the extra cost is more than £6,000 per year for an individual student, from local authorities in the form of top-up funding for the school. Local authorities can also give extra funding to schools with a disproportionate number of pupils with SEN. Special educational needs coordinators should therefore seek any additional funds required from the relevant local authority.<sup>37</sup>

Mainstream academies are in a similar position, as the [gov.uk website](#) sets out alongside funding information for special academies:

Mainstream academies (leaving aside any special units within them) are expected to contribute towards the cost of the additional educational support provision for high needs pupils and students, up to £6,000 from their school budget share. Their notional SEN budget is indicated in table A of their funding allocation pack.

If your academy receives a post-16 funding allocation, your statement will show how much of the formula funding the LA has attributed to meeting SEN support costs. [...]

Top-up funding above these levels, based on the assessed needs of the pupil and the cost of meeting these, should be agreed between the commissioning LA and the academy. Top-up funding is paid on a per-pupil basis, in or close to the real-time movement of the pupil. It is paid directly to academies by the LA. Top-up funding for pupils in AP can be paid directly by other academies and schools if they commission the places for those pupils.

The charity Independent Parental Special Education Advice (IPSEA), have produced a [helpful briefing](#) on changes to SEN funding that were introduced from April 2013, which provides more background on SEN funding.<sup>38</sup>

<sup>37</sup> [HC Deb 23 Jun 2014 c83W](#)

<sup>38</sup> IPSEA, [School Funding Reform: SEN Funding](#), May 2013

The Department for Education ran a consultation between November 2014 and February 2015 to inform the development of options for future changes to SEND funding. A [summary of responses](#) was published in July 2015.<sup>39</sup>

In January 2016 the Department for Education [announced](#) £80million of extra funding for SEND, the largest portion of which (£35.8million) was implementation funding for local authorities in 2016/17, “recognising the additional duties placed on them as a result of the transition to EHC plans.” The announcement included a commitment to fund this work for an additional year in 2017 to 2018, to last until the end of the transition to the reformed system in April 2018.<sup>40</sup>

### 3.2 Proposed reform: a national funding formula

The Government is proposing major reforms to the way schools in England are funded.

On 7 March 2016 Education Secretary Nicky Morgan announced initial consultations on funding reform, with further consultations to follow later in the spring. The first of these proposed a national school funding formula which will include a basic per-pupil amount, and factors reflecting pupil characteristics, school and areas costs.

A separate [consultation](#) was published on the same day on high needs funding – largely, this is for special educational provision. The Government is proposing the introduction of a national funding formula to allocate this ‘high needs’ funding to local authorities. However, for at least the next five years, funding allocations would continue to be calculated, in part, on the basis of LAs planned high needs spend in 2016-17 and not solely on assessed area needs, in order to ensure stability.

The consultation document stated that:

We are therefore proposing, from 2017-18, to move to a distribution of high needs funding from central to local government that is more formula-driven, using proxy indicators of need, rather than only using historic spending patterns. This should include funding for both SEN and disability provision and [alternative provision].<sup>41</sup>

The proposals on reform to high need funding are complex, but include:

- The introduction of a national formula to distribute high need funding to local authorities. This would include a basic unit of funding for pupils in specialist SEN provision. It would also be based on proxy measures of need such as disability and health indicators, prior attainment, deprivation and a ‘population factor’. There would also be an area cost adjustment.

<sup>39</sup> Department for Education, [SEND funding: longer term changes: Call for evidence: summary of responses](#), July 2015

<sup>40</sup> Department for Education, [£80 million to boost support for special educational needs](#), 29 January 2016

<sup>41</sup> Department for Education, [High needs funding formula and other reforms: Government consultation – stage one](#), 7 March 2015

- For at least the next five years the high needs formula will include an element of planned local authority spending on SEN in 2016-17. This is in recognition of the fact that to do otherwise could mean funding turbulence and disruption to pupils' established placements.
- Local authorities will retain responsibilities for distributing high need funding locally in most cases.
- Funding for infrastructure changes and restructuring as local authorities and providers adjust to the new funding arrangements.
- Changes to the way post-16 SEN provision is funded.

A [response to the first consultation was published along with the second stage of the consultation](#) in December 2016.

The [Executive Summary](#) published alongside the second stage proposals stated that the proposed national high needs formula would proceed with some local flexibility:

We received over 1,000 responses and there was strong support for our proposals for a high needs national funding formula. Over two thirds agreed that the principles on which we are basing our reforms are right, and a majority supported each of the proposed factors we set out for the formula. A significant concern raised during the first stage of the consultation was about how high needs pressures might be managed if a ring-fence was applied to the schools block. [...] The limited local flexibility we are proposing will enable local areas to reflect the balance in the numbers of pupils with high needs in mainstream and special schools, where the formulae for schools and high needs do not fully reflect those numbers.<sup>42</sup>

The [second stage consultation](#) ran until 22 March 2017. No further announcements have yet been made.

The Library briefing [School funding in England. Current system and proposals for 'fairer school funding'](#), SN06702, provides more information on the reforms.

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<sup>42</sup> Department for Education, [Schools and high needs national funding formulae: Executive Summary](#), December 2016, p16-17

## 4. Accountability: Ofsted and CQC inspections from May 2016

### 4.1 Consultation on proposed inspections

In March 2015, the Department for Education published [Special educational needs and disability: supporting local and national accountability](#), which provided a framework for monitoring the performance of the reformed SEND support system. The document indicated that the Government would develop a set of key indicators to monitor the progress and impact of the reforms locally and nationally,<sup>43</sup> and included information about new arrangements for independent assessment, including proposed inspections by Ofsted and the Care Quality Commission (CQC).<sup>44</sup>

A [consultation](#) on the proposed inspections by Ofsted and the CQC was launched in October 2015. It set out that, starting in May 2016, inspectors from these two bodies would inspect the provision of support for children and young people with SEND across the responsible local bodies in health, social services and education. The announcement stated that the consultation would seek responses on the following proposals on how these inspections should be carried out:

- inspectors will evaluate how effectively the local area identifies disabled children and young people and those who have special educational needs
- inspectors will evaluate how effectively the local area meets the needs and improves the outcomes of disabled children and young people and those with special educational needs
- a wide range of information will be used to evaluate the effectiveness of local area arrangements. This will include the views of children and young people, parents and carers, recent inspection reports and visits to a number of local education and health service providers
- a wide range of approaches will be used during the inspection to obtain the views of disabled children and young people, and their parents and carers, including meetings, online questionnaires and social media<sup>45</sup>

The full [consultation document](#) provides more detail.<sup>46</sup> The consultation was open until 4 January 2016.

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<sup>43</sup> Department for Education, [Special educational needs and disability: supporting local and national accountability](#), March 2015, p6

<sup>44</sup> Ibid., p14-15

<sup>45</sup> Ofsted, [Views sought on inspecting special educational needs provision](#), 12 October 2015

<sup>46</sup> Ofsted, [Local area SEND consultation: The inspection of local areas' effectiveness in identifying and meeting the needs of disabled children and young people and those who have special educational needs](#), October 2015

## 4.2 Response and next steps: inspections began May 2016

Ofsted and the CQC published a [response to the consultation](#) on 10 March 2016. The response set out how Ofsted and the CQC would develop their approach under the four headings outlined in section 4.1, informed by consultative pilot inspections.

Ofsted and the CQC stated that there was “considerable agreement” with the proposals and that inspections would begin in May 2016. The response further stated:

During the spring term of 2016, we will prepare to launch the new Local Area SEND inspection framework and complete the production of the framework and inspection handbook.

In the spring and summer terms 2016, we will:

- deliver a series of regional workshops to support local area planning, evaluation and understanding of the new inspection framework
- train our inspectors so that they are ready to inspect under the new framework
- publish the new local area SEND inspection framework and the local area SEND inspection handbook.<sup>47</sup>

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<sup>47</sup> Care Quality Commission and Ofsted, [The inspection of local areas' effectiveness in identifying and meeting the needs of children and young people who have special educational needs and/or disabilities: A report on the responses to the formal consultation](#), March 2016, p12

## 5. Research on the effectiveness of the reformed system

While the reformed system is in its early stages, some initial research has begun to appear on its operation.

### 5.1 Numbers of statements transferred to EHC Plans

DfE figures state that 42,005 or 18.2% of statements in place in January 2015 were transferred to EHC plans by January 2016. Rates varied by local authority from below 5% to more than 60%.

Source: [Statements of SEN and EHC plans: England, 2016, DfE](#)

### 5.2 DfE survey on EHC plans

In March 2017, the Department for Education published the findings of a survey of parents and young people on their [experiences of EHC plans](#). The following issues were listed among the report's key findings:

- Two thirds of parents and young people were satisfied with the overall process of getting an EHC plan and a similar proportion agreed that it would achieve the outcomes agreed for the child or young person (over one in ten were dissatisfied and just under one in ten disagreed respectively)
- Half found that starting the EHC plan process was easy, whereas almost one quarter found this to be difficult
- Two thirds of parents and young people were informed about the information, advice and support available
- The majority (80%) of parents agreed that their own wishes and opinions were included in the EHC plan. It was less common to report that the wishes and opinions of the child or young person were included (55%)
- Three quarters said that the nursery, school or college named in their EHC plan was the one they asked for in the drafting process
- More respondents thought that their EHC plan had been provided after the 20-week target had passed than before (62-38%). Official statistics show the majority of new plans were provided by 20 weeks. The report suggested that the difference may reflect respondents timing the process from an earlier point, imprecisions in respondents' estimates, and plans exempt from the 20-week timeframe being included in the survey data
- Almost three quarters agreed that their EHC plan led to the child or young person getting the help and support that they need; over two-thirds agreed it has improved the child/young person's experience of education. Respondents were more likely to agree (for both measures) the longer the plan had been in place<sup>48</sup>

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<sup>48</sup> Department for Education, [Experiences of Education, Health and Care Plans: research report](#), March 2017, p11

## 5.3 DfE Review of arrangements for disagreement resolution

Also in March 2017, the Department for Education published a [review of the arrangements for SEND disagreement resolution](#), and a [Government response](#) to the review.

The report urged some caution on its findings in terms of sample size, but found wide variations in approaches by local authorities to SEND dispute resolution, as well as that:

- ‘Person-centred’ EHC needs assessment and plan development was successful in fostering agreement
- The time disagreements took to resolve was important for the impact on the child or young person involved
- Mediation proved to be a cost-effective route for disagreement resolution
- Information, advice and support services varied in quality and quantity
- Disagreement resolution services were generally not understood or used
- Parents interviewed had three main concerns about SEND complaints processes:
  - when the complaint was ignored or not taken seriously
  - when the response to the complaint took too long to emerge
  - when the response did not help to put right the issue/s complained about

Full ‘headlines’ are available on pages 22-23 of [the report](#), with an expanded summary on the following pages.<sup>49</sup>

The [Government response](#) set out steps that the Government intended to take as a result of the review:

- To publish good practice guidance developed as part of the review to share with local areas through regional networks and delivery support partnerships
- Supporting continuous professional development for LA staff
- Considering how best to channel Government support for families from April 2018 (when transition to EHC plans will be complete)
- Supporting the mediation sector to introduce voluntary standards and accreditation of training programmes for SEND mediation;
- Producing accessible guidance for families on the available routes for complaint and disagreement resolution
- Introducing a two-year national trial of the expansion of the First-tier Tribunal SEND powers to make non-binding recommendations on the health and social care elements of EHC plans.<sup>50</sup>

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<sup>49</sup> Department for Education, [Review of arrangements for disagreement resolution \(SEND\)](#), March 2017

<sup>50</sup> Department for Education, [Special Educational Needs and Disabilities: Disagreement Resolution Arrangements in England](#), March 2017, p7

## 5.4 Lee Scott report: Experiences of the system

In November 2016, the Department for Education published a report by Lee Scott, a former Conservative MP, on the [experiences of children, young people and parents](#) of the SEND system, based on interviews and evidence from across the country.

The report contained mixed experiences of the system, for instance examples of good local authority communication with parents, and poor communication between authorities. It raised a number of areas (rather than formal recommendations) to improve the operation system as it stands:

- Improving Communication across all agencies and in every area, including capturing and replicating good practice in this area. Mr Scott also stated that it was important that the Government, and other leadership agencies, sent out strong messages about the need to improve.
- More training for all staff working with children and young people, for example on identifying SEND, and understanding the particular needs of adoptive children;
- The importance of staff access to training, and that leaders both allow and encourage staff to undertake training to improve awareness and expertise in SEND, and also the “impact of loss and trauma on a child’s ability to learn”
- Greater transparency over funding
- Application of the legislation, and the SEND Code of Practice, in a way that demonstrably led to culture change, and reducing a ‘postcode lottery’ where the standard of provision varies widely in different areas
- Whether more could be done in schools and colleges to do more to support children and young people with medical needs
- Whether more could be done to encourage local areas to develop expertise, discussions and strategies to ensure more young adults with SEND have access to training and employment opportunities

## 5.5 National Autistic Society report

In September 2016, the National Autistic Society (NAS) published its [annual report](#) on the operation of the SEND system. The report cited significant concerns:

- 74% of parents surveyed had not found it easy to get the educational support they believed their child needed
- 69% of parents said that their child had waited more than a year for support after concerns were first raised, with 16% waiting more than three years
- 50% of parents were satisfied with their child’s SEND provision, but only 33% were satisfied with health care provision and 30% with social care provision

- 17% of parents said they appealed to the SEND Tribunal against their local authority's decisions on their child's education<sup>51</sup>

The report stated in its conclusion that cultural change as a result of the 2014 had been slow to take effect, and that parents were still finding it hard to get their children the support they believed necessary:

The experience since the new system was introduced shows that it actually takes longer to bring about genuine cultural change in the way things are done at local level than it does to change the law nationally.

The SEND system the *Children and Families Act 2014* introduced prioritises collaboration around the individual child, joint working, early identification of needs, planning ahead, inclusiveness and openness. Yet the experience of parents of autistic children is that they have to advocate as hard as they did before on behalf of their children.<sup>52</sup>

## 5.6 Driver Youth Trust report

In October 2015, the Driver Youth Trust published a report, [Joining the Dots](#), which analysed the impact of the reforms in the year since their introduction. The report stated that:

Many examples of high-quality provision have emerged in response [to the reforms]. These are often driven by strong partnerships, well-managed change and skilled, impassioned leadership. However, at present provision is 'fragmented' leading to difficulties in sharing information and knowledge. As a result, many children and young people do not receive the support they deserve and gaps in the system lead to wasted resources as well as disconnected or duplicated services. Ultimately students, parents, schools and sector organisations are finding it difficult to navigate the new system and this is standing in the way of the reforms' success.<sup>53</sup>

The report cited Local Offers as an example of some of the difficulties faced, describing them as a "huge distraction; in many cases they are of little or no value and many parents are unaware that they even exist."<sup>54</sup>

In a BBC article on the report, a DfE spokesman was quoted as saying the reforms were "already [making] a real difference, with parents telling us the process is much more straightforward - but we want these experiences to continue improving."<sup>55</sup>

## 5.7 Bath Spa University research

[Articles](#) published in September 2015 cited research from a survey carried out by Helen Curran, a lecturer at Bath Spa University, which stated that 63 per cent of special educational needs coordinators (SENCOs) surveyed had said that the number of children on their school's SEN and disabilities register had fallen as a result of the

<sup>51</sup> National Autistic Society, [New report shows parents still face long battles to get right support for children](#), September 2016

<sup>52</sup> National Autistic Society, [School Report 2016](#), September 2016, p20

<sup>53</sup> Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND](#), October 2015, p3

<sup>54</sup> Ibid.

<sup>55</sup> BBC News Online, [Special needs pupils in 'fragmented' system](#), 14 October 2015

government's SEN reforms, raising the question of whether the relevant children had previously been misidentified as having SEN, or whether other pressures were reducing their numbers.<sup>56</sup>

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<sup>56</sup> See SecEd, [Concern for pupils who have lost their SEN recognition](#), 23 September 2015; NAHT, [SEN reforms and SENCOs](#), 25 September 2015. Research available at Bath Spa University, [SEND reforms 2014 and the narrative of the SENCO: early impact on children and young people with SEND, the SENCO and the school](#), 21 September 2015 [subscription required]

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