



BRIEFING PAPER

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Special Educational Needs: support in England

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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. No response has yet been published.

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

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.¹

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).²

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

² *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.³ 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.⁴ 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 1(7) 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.

³ *Education Act 1996*, section 321

⁴ *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.⁵

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.⁶

In addition, a number of reports looked at specific aspects of SEN provision⁷ 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 2010.⁸

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 earlier⁹

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

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

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

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

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

⁹ 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 2011.¹⁰

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 over¹¹

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](#).¹² 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 2011.¹³ These covered 31 local authorities and their PCT and emerging Clinical Commissioning Group partners. In a [Written Ministerial Statement](#) in May 2012,

¹⁰ [HC Deb 9 March 2011 cc63-5WS](#)

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

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

¹³ [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 2014.¹⁴

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](#).¹⁵ 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.¹⁶ 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.¹⁷

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

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

¹⁵ Cm 8438

¹⁶ [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](#).

¹⁷ [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.¹⁸

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

¹⁸ 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*¹⁹

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 guidance states:

¹⁹ *Ibid.*, p13-14

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The local offer must include information on services across education, health and social care and from birth to 25; how to access specialist support; how decisions are made including eligibility criteria for accessing services where appropriate; and how to complain or appeal.²⁰

The guidance 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.²¹

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.²²

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 outcomes²³

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.²⁴

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, guidance on the legislation makes it clear that this does not mean that students have an automatic entitlement to education up to the age of 25:

²⁰ Department for Education, [Implementing a new 0-25 special needs system: LAs and partners](#), March 2015, p16

²¹ *Ibid.*

²² Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p15

²³ *Ibid.*, p142

²⁴ *Ibid.*, p15

9.151 In line with preparing young people for adulthood, a local authority must not cease an EHC plan simply because a young person is aged 19 or over. Young people with EHC plans may need longer in education or training in order to achieve their outcomes and make an effective transition into adulthood. However, this position does not mean that there is an automatic entitlement to continued support at age 19 or an expectation that those with an EHC plan should all remain in education until age 25. A local authority may cease a plan for a 19- to 25-year-old if it decides that it is no longer necessary for the EHC plan to be maintained. Such circumstances include where the young person no longer requires the special educational provision specified in their EHC plan. In deciding that the special educational provision is no longer required, the local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved (see the section on Outcomes, paragraphs 9.64 to 9.69).²⁵

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.²⁶

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
- clear and simple statements of eligibility criteria and the decision-making processes that underpin them²⁷

²⁵ *Ibid.*, p190

²⁶ *Ibid.*, p178

²⁷ *Ibid.*, p48

Further requirements for September 2014 and beyond

The [implementation guidance](#) describes the requirements for local authorities from September 2014. As with the local offer, these points represented a base from which authorities are expected to further develop local provision, working alongside partners locally, rather than a final statement of what the system should provide.

Local authorities should have ensured that there is a source of independent information, advice and support for parents, and children and young people with SEN and disabilities, across education, health and care. This should include, but not be limited to, independent supporters, whose role is to directly help families of children and young people going through the new assessment and planning process.²⁸

By September 2014, LAs should have ensured that early years settings, schools and FE colleges in their area had:

- Reviewed the 0-25 SEND Code of Practice to ensure their provision will meet the requirements on teaching, curriculum and wider policies
- Engaged with children and young people with SEND and their families and put in place arrangements (or structures) on how they would regularly engage and discuss progress
- Explored how they would monitor and track the progress and development of children and young people with SEN and identify and deliver any training needed by staff
- Contributed to the development of the local offer and engaging with the LA in relation to delegated funding, joint commissioning, EHC plans and implications of personal budgets
- For schools: Have arrangements in place to support pupils with medical conditions
- For schools: Published the annual SEN information report.
- Published a plan, produced with parents and young people, setting out how they will go about transferring children and young people with existing statements or LDAs to EHC Plans by April 2018
- A co-ordinated education health and care assessment process in place which can be used to issue a final EHC plans within a maximum of 20 weeks, where children and young people need one
- A clear policy in place setting out the scope of the personal budget offer to families in September, and to be ready to respond to requests for personal budgets from families that have been assessed as needing an EHC plan
- Commissioned access to high quality mediation for those who need it.²⁹

Local authorities and Clinical Commissioning Groups (CCGs) are required work together with partners and parents at strategic level to develop the systems set out above.

²⁸ Department for Education, [Implementing a new 0-25 special needs system: LAs and partners](#), p9

²⁹ *Ibid.*, p6-7

The implementation guidance also provides information on how these requirements should be developed. As well as developing and improving the local offer over time, local authorities must:

- Review children and young people currently on School Action or School Action Plus (and equivalents) and put in place [SEN Support](#), with pupils in school or early years to have transferred by the end of spring term 2015. SEN Support is support for SEN provided to a pupil by their school or college, when an EHC Plan is not required. This will include setting clear targets for progress, agreeing what support should be provided and track how it is working
- Support new children and young people using SEN Support, using person centred approaches, and working with families
- Record all those who need special educational provision in the school census
- Develop partnerships with early years/post-16 providers and adult services (including employment) to ensure smooth transition between stages
- Ensure that all young people who currently receive support as a result of a LDA who request an EHC plan and need one are issued with one
- Ensure that all young people who currently receive support as a result of an LDA who continue in further education or training beyond 1 September 2016 have an EHC plan where one is needed;
- Ensure that all children and young people with statements are transferred to EHC plans by 1 April 2018; the transfer process must be completed within a maximum of 14 weeks
- Work with new entrants to the system to assess and issue EHC plans within 20 weeks where one is needed. You should work with those with existing statements and LDA begin transition to EHC plans in stages (see later section on transition planning for more info)
- Use joint commissioning arrangements and the local offer to deliver a year-on-year increase in the scope and availability of personal budgets
- Make mediation available for those who want it, issuing a certificate for those who want to go straight to Tribunal
- Over time, use those relationships to jointly commission services.³⁰

At all stages, a collaborative approach is emphasised, aimed at producing a cultural change in the way support for SEN is provided. The guidance states:

Local authorities must ensure that children, young people, parents and carers are provided with the information, advice and support necessary to enable participation in those decisions, by developing and having in place from September effective information, advice and support services.

Local authorities must also ensure that children, young people and their parents and carers are involved in decisions about local provision.³¹

³⁰ *Ibid.*

³¹ *Ibid.*, p8

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 adulthood³²

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 employment³³

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.³⁴

³² Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p19

³³ *Ibid.*, p19-20

³⁴ *Ibid.*, p20-29

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, 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.³⁵

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.

³⁵ Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), March 2015, p6

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.³⁶

Departmental Guidance published on proposed [changes to an academy](#) set out that significant changes relating to SEN provision would require 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."³⁷

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.

Children in school

As of 1 September 2014, it is no longer possible to request an assessment of special educational needs under the *Education Act 1996*. For a child or young person who does not already have a statement of SEN, no new LDAs can be commenced. While all existing cases should be transferred to the new system by April 2018, a timetable is in place for the transition of children and young people at various points in their educations.

The Government has published [transition guidance](#) provides the following information on when children and young people with SEN statements should be transferred to the reformed system.

In 2014/15, local authorities should aim to transfer to the new system, barring exceptional circumstances:

- children and young people with statements of SEN issued with non-statutory EHC Plans before 1 September 2014
- those moving from early years settings to school (including where the child remains at the same institution)
- those moving from an infant to a junior school
- those moving from primary to middle school
- those moving from primary to secondary school
- those moving from middle to secondary school
- those moving from mainstream to a special school
- those moving from a special to a mainstream school
- children in year 9
- all children in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities must take account of the wishes of families of children in year 6 in

³⁶ Department for Education, [School Organisation: Maintained Schools: Annex B: Guidance for Decision Makers](#), January 2014, p12

³⁷ Department for Education, [Making significant changes to an existing academy](#), January 2014, p7 and 14

determining whether to conduct a transfer review in that academic year)

- all children and young people in year 11, not just those who are moving into further education or training (including those who are leaving custody)
- those moving between one local authority and another
- those who receive direct payments, under the SEN Direct Payments Pilot Scheme, for SEN provision in their statement of SEN or Learning Difficulties Assessment (these children and young people will need to be transferred to EHC plans by 30 September 2015 if their direct payments are to continue), and
- Children and young people leaving custody³⁸

The guidance then provides that, between 1 September 2015 and 31 March 2018, local authorities must transfer children and young people with statements of SEN to the new arrangements in year 9, and prior to them moving from:

- early years settings to school (including where the child remains at the same institution)
- an infant to a junior school
- primary to middle school
- primary to secondary school
- middle to secondary school
- school (including school sixth forms) to a post-16 institution or an apprenticeship – including those in year 11 released from custody
- mainstream to a special school, or
- special school to a mainstream school

Additionally, local authorities should aim to transfer the following groups of children and young people from 1 September 2016 to 31 March 2018:

- all children with statements of SEN in year 6, not just those who are transferring from one institution to another – local authorities must consult the child's parent on whether to secure an EHC assessment
- all children and young people in year 11, not just those who are moving into further education
- children and young people leaving custody
- children and young people with statements of SEN issued with non-statutory EHC Plans before 1 September 2014 (where this expectation has not been met in 2014/15), and
- those moving between one local authority and another³⁹

Young people in Further Education

The existing LDA system will be abolished before the system of statements for children in school. The LDA system was less comprehensive, and to remove this disparity young people with an LDA must be moved over to the new system by 1 September 2016.⁴⁰

³⁸ Department for Education, [Transition to the new 0 to 25 special educational needs and disability system](#), March 2015, p22-23

³⁹ *Ibid.*, p23

⁴⁰ *Ibid.*, p20

Some further details on how the transition will affect those with LDAs are provided by the guidance:

5.21 Between 1 September 2014 and 31 August 2016, young people up to the age of 25 in further education or training who receive support to meet their special educational needs as a result of a LDA and who **do not intend** to continue in further education or training beyond that period can choose to either:

- continue to receive their support as a result of their LDA (where it is still required) until the end of their time in further education or training or until 1 September 2016 whichever comes first, or
- request an EHC needs assessment⁴¹

[...]

5.23 During academic year 2014/15, young people in further education or training who receive support to meet their special educational needs as a result of a LDA and who **intend** to continue in education beyond 31 August 2016 can also choose to either:

- continue to receive their support as a result of their LDA (where it is still required) or
- request an EHC needs assessment⁴²
- [...]

5.25 From 1 September 2014 local authorities should take all reasonable steps to inform young people in further education or training who receive support as a result of a LDA of their option to request an EHC needs assessment and how this could benefit them (e.g. planning focused on outcomes, social care and health input, personal budget, right of appeal).⁴³

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](#)⁴⁴) 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:

- 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)

⁴¹ *Ibid.*, p25

⁴² *Ibid.*, p26

⁴³ *Ibid.*, p26

⁴⁴ Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p222-243

- 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.⁴⁵

⁴⁵ Ibid., p223-224

3. Funding

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.⁴⁶

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. Specific post-16 allocations, if applicable, will show how much of the formula funding the LA has attributed to meeting SEN support costs. This is a notional amount and academies can spend more or less on the special educational provision their pupils need, as required.

Special academies and academies with special units or resourced provision receive £10,000 per place for each SEN place. Academies making alternative provision (AP) receive £8,000 for each AP place, as part of their payments.

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.⁴⁷

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 2015.⁴⁸

⁴⁶ [HC Deb 23 Jun 2014 c83W](#)

⁴⁷ IPSEA, [School Funding Reform: SEN Funding](#), May 2013

⁴⁸ Department for Education, [SEND funding: longer term changes: Call for evidence: summary of responses](#), July 2015

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 2018.⁴⁹

General information about school funding can be found in the Library standard note, [School funding: moving towards a national funding formula](#), SN/SP/6702.

⁴⁹ Department for Education, [£80 million to boost support for special educational needs](#), 29 January 2016

4. Accountability: consultation on Ofsted and CQC inspection

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 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,⁵⁰ and information about new arrangements for independent assessment, including a proposed inspections by Ofsted and the Care Quality Commission (CQC).⁵¹

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 SEN 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 media⁵²

The full [consultation document](#) provides more detail.⁵³ The consultation was open until 4 January 2016. No response has yet been published.

⁵⁰ Department for Education, [Special educational needs and disability: supporting local and national accountability](#), March 2015, p6

⁵¹ Ibid., p14-15

⁵² Ofsted, [Views sought on inspecting special educational needs provision](#), 12 October 2015

⁵³ 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

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 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.⁵⁴

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."⁵⁵

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."⁵⁶

5.2 National Autistic Society report

In January 2016, the National Autistic Society [NAS] published a [report](#) on the operation of the SEN system in England. The report stated that parents were finding the system hard to navigate and believed services were declining in quality, although parents whose children had EHC plans were generally satisfied with them:

[Parents] believe services are deteriorating and are increasingly locked in lengthy and traumatic legal action to get their children's needs met. The new SEN system promises to make things better, but one year on, the process itself is taking too long and facing clear challenges in the transition process between the two systems. Promisingly, parents and young people who have received EHC plans are more satisfied, although the number of plans being issued is lower, meaning we could see an even bigger increase in tribunal figures.⁵⁷

⁵⁴ Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND](#), October 2015, p3

⁵⁵ Ibid.

⁵⁶ BBC News Online, [Special needs pupils in 'fragmented' system](#), 14 October 2015

⁵⁷ National Autistic Society, [School Report 2015](#), p17

The NAS' survey of 1,431 parents and carers of children and young people on the autism spectrum in June and July 2015 found that:

- 23% of those who had been through the system were satisfied, with 48% dissatisfied;
- Many parents felt let down by the new process of applying for statutory support, finding it extremely stressful and in many cases taking longer than the 20 week legal limit;
- 36% had looked at their local offer; fewer than 4 in 10 of those found it easy to access information in it about support for children on the autism spectrum and roughly half found it difficult
- Once parents got an Education Health and Care (EHC) Plan for their child, they were generally satisfied with it.⁵⁸

The NAS made several recommendations based on its findings, including that Government conduct and publish the results of a systematic review of local authorities' implementation of the new SEN system, and make sure that there is compliance with the time limits on assessment for EHC plans and transfer reviews.⁵⁹

5.3 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 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.⁶⁰

⁵⁸ National Autistic Society, [NAS launches report on Special Education Needs system in England](#), 26 January 2016

⁵⁹ Ibid.

⁶⁰ 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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