



Updated: note from the Department for Education

Transitional and saving provisions (made under section 137 of the Children and Families Act 2014) relating to part 3 of the Children and Families Act 2014 (children and young people in England with special educational needs or disabilities)

1. To provide supporting information for Parliament's consideration of the draft Special Educational Needs Code of Practice: 0 to 25 years. This note sets out further information on how the Department for Education will use powers in section 137 of the Children and Families Act 2014 to support the transition to the new system of support for children and young people with special educational needs (SEN).
2. This note is an updated version of that issued in June. It reflects decisions made by Ministers in light of feedback from key interested parties to the recent technical consultation. The main changes are:
 - the introduction of a requirement for the child's parent or the young person to be invited to a meeting as part of the transfer review (see paragraph 19);
 - the introduction of a requirement for local authorities to consider whether an EHC needs assessment is required for those young people who receive support as a result of a Learning Difficulty Assessment (LDA) which it believes are likely to continue to receive further education or training beyond 31 August 2016 (see paragraph 21);
 - a reduction in the number of children and young people that local authorities will be required to transfer in 2014/15 (see paragraph 25).

Background

3. *Support and aspiration: A new approach to special educational needs and disability*, published in March 2011, set out the Government's intention to introduce by 2014:
 - an integrated assessment process, which is more streamlined, better involves children, young people and families and is completed quickly;
 - Education, Health and Care (EHC) plans, which bring services together and are focused on improving outcomes; and
 - the offer of a personal budget for families with an EHC plan who want one.
4. On 31 March 2014 the Parliamentary Under Secretary of State for Children and Families made an order to commence the provisions within Part 3 the Children and Families Act, with the

exception of those relating to detained children and young people, from 1 September 2014. To allow more time for local authorities to prepare for implementation of provisions relating to detained children and young people, the Government intends to commence these provisions from 1 April 2015.

5. In 2012, 29,565 children were assessed for SEN and 28,635 were issued with a statement of special educational needs for the first time. Approximately a quarter of a million children and young people in England have statements or receive support in further education or training as a result of a Learning Difficulty Assessment (LDA)¹ at any one time.
6. The Government wants all children and young people with SEN and their families to benefit from the new arrangements as soon as possible. Subject to Parliamentary approval of the Code of Practice, from 1 September 2014 it will no longer be possible to request a new SEN assessment under the Education Act 1996 for a child or young person who does not already have a statement, and no new LDAs under the Learning and Skills Act 2000 can be commenced. From that date, local authorities must consider all requests for an assessment of SEN for children and young people who do not have an existing statement under the new legislation. Those requiring a statutory plan to secure the relevant provision to meet their special educational needs should be issued with an Education, Health and Care (EHC) plan.
7. Children and young people with statements and young people in further education or training who are receiving provision to meet their special educational needs as a result of a LDA will be gradually transferred over to the new arrangements. To ensure these children and young people continue to receive the support they need, and so their rights and protections are maintained, transitional and saving arrangements will be put in place to maintain elements of the Education Act 1996 relating to statements and the Learning and Skills Act 2000 relating to LDAs.
8. The legal test of when a child or young person requires an EHC plan remains the same as that for a statement under the Education Act 1996. Therefore, it is expected that all children and young people who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan – no child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing. Similarly, local authorities have undertaken LDAs for young people either because they had a statement at school or because, in the opinion of the local authority, they are likely to need additional support as part of their future education or training and would benefit from a LDA to identify their learning needs and the provision required to meet those needs. Therefore, 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, must be issued with one.
9. We are committed to ensuring that the best service possible is maintained for children and young people with SEN and their families during the transition to the new system. We want to be sure that the changeover to EHC plans happens at a pace that allows for a smooth transition whilst at least maintaining the quality of assessments and services. To achieve this, a phased approach to transfer will be adopted.
10. We formally consulted on an approach to transitional arrangements at the end of last year (results available [online](#)). The largest group of respondents agreed with our proposals to transfer young people who receive support as a result of an LDA within two years and children and

¹ The term 'Learning Difficulty Assessment (LDA)' is used throughout this document to refer to the assessment which results in a written report.

young people with statements within three years. However, there was concern about the capacity of local authorities to deliver good quality EHC plans within the proposed timeframe and existing resources. To address these concerns, in April we confirmed that the period for phasing out statements would be extended to 1 April 2018. We are also providing a comprehensive package of support to local authorities to ensure they will have the resource to prepare for and implement these changes. This includes the £70 million SEN reform grant and an additional £45.2 million SEND implementation grant in 2014-15 (with an indicative amount of a further £31.7 million for 2015-16).

11. Following the formal consultation, we have continued to consult informally on transitional arrangements. We have recently concluded a short technical consultation with key interested parties (e.g. representatives of local authorities, parent groups and health organisations) on a draft order and accompanying draft guidance. To help local authorities and others plan for implementation of the reforms, we have published the [draft guidance](#) on our website. We will finalise the Order and guidance and publish them in the coming weeks. The following section sets out a summary of the arrangements that will be reflected in the final Order and guidance.

Summary approach to transitional arrangements

Assessments under the current systems in progress on 1 September 2014

12. Although many local authorities are already conducting SEN assessments in a way that anticipates the new arrangements, they are not required to comply with the new legislation until 1 September 2014. Local authorities may be considering assessments or conducting an assessment for children and young people on 1 September 2014. While we are keen for these children and young people to receive an EHC plan where one is needed, we want there to be confidence that these plans are robust. For this reason, transitional arrangements will be in place to allow for the following:

- where a local authority is considering a request for an assessment on 1 September 2014, the Education Act 1996 (SEN assessment for a statement) applies unless the local authority and the child's parents or the young person agree to treat it as a request for an EHC needs assessment.
- where a local authority is conducting an assessment on 1 September 2014, the Education Act 1996 applies unless the local authority and the child's parents or the young person agree to treat it as an EHC needs assessment.
- where a local authority is conducting a Learning Difficulty Assessment on 1 September 2014, the local authority may issue an EHC plan with the young person's agreement.

Arrangements relating to children and young people with statements and young people receiving support as a result of a LDA during the transition period

13. To ensure that children and young people with statements continue to receive the support they require to meet their special educational needs during the transition period, local authorities must continue to comply with the relevant section of Part IV of the Education Act 1996 and

accompanying regulations. During the transition period, a child or young person's statement will remain in place until:

- the local authority decides to cease the statement;
- the statement is ceased because the young person leaves education;
- the child or young person has a transfer review and:
 - an EHC plan is secured for her/him; or
 - a local authority decides that she/he does not require an EHC plan (see paragraph 8).

14. Parents of children with statements will continue to be able to request re-assessments under the 1996 Act rather than the 2014 Act during the transition period. However, where a re-assessment is needed and the local authority is able to, they can conduct an EHC needs assessment and transfer the child/young person to the new system.

15. Parents of those with statements will continue to be able to appeal to the First-tier Tribunal for reasons set out in the 1996 Education Act. However, through transitional arrangements, we intend to allow for the following changes to the possible outcome of an appeal to the Tribunal:

- in the case of an appeal against a decision not to assess, where the Tribunal upholds the appeal rather than orders that an assessment under the 1996 Act is conducted, the Tribunal will have a power to require the local authority to carry out an EHC needs assessment.
- in the case of an appeal against a decision not to re-assess (i.e. where the child/young person already has a statement), where the Tribunal upholds the appeal, the local authority can treat this as an EHC needs assessment with the agreement of the child's parents or young person;
- in the case of an appeal against a decision not to issue a statement, where the Tribunal upholds the appeal, the local authority with the parent's or young person's agreement, could instead issue an EHC plan.

16. Until 1 September 2016, local authorities should continue to implement the sections of the current Learning Difficulty Assessment guidance in relation to young people who receive support in post-16 education and training as a result of an LDA e.g. the LDA report should be reviewed regularly to ensure it continues to meet the needs of the young person.

Transfer process

17. The transfer process needs to result in a robust EHC plan, where one is needed, while minimising additional burdens on families. All young people and parents of children transferred to EHC plans have the right to request a personal budget.

18. To transfer a child or young person from a statement to the new SEN system, local authorities must initiate a 'transfer review'. An EHC needs assessment must be conducted in line with the Children and Families Act 2014 as part of the transfer review. It must allow for outcomes to be

established for the EHC plan and for provision to be identified to support the child/young person to achieve those outcomes. However, local authorities must not seek any advice required for this assessment if such advice has been previously provided and it is sufficient for the purposes of an EHC needs assessment. As much of the assessment information within existing statements will, in many cases, remain accurate, we anticipate transfer reviews will be completed well within the 14 week maximum.

19. The transfer review should replace the annual review in the academic year that the child/young person transfers to the new SEN system. The child's parents or the young person must be invited to a meeting as part of the transfer review. Local authorities should look to minimise disruption for families by scheduling meetings when the annual review meeting would have otherwise taken place. The transfer review must be completed within 12 months of the statement being issued or of the previous annual review. Once the transfer process has commenced, appeal rights under the 1996 Act are replaced by those under the 2014 Act.

Transfer timing

20. All children and young people with statements must be transferred to the new system by 1 April 2018.
21. An EHC plan should be in place by 1 September 2016 for young people in further education and training who receive provision as a result of a LDA if they are continuing in further education or training beyond that date. To move to the new SEN system, young people in further education or training who receive support as a result of a LDA can choose to request an EHC needs assessment at any point during the transition period. Local authorities should inform these young people of their options and provide advice to them about where they can obtain independent advice and support. To help ensure young people continue to receive appropriate support at the end of the transition period, local authorities will be under a duty in 2015/16 to consider whether an EHC needs assessment is required for young people it believes are likely to continue to receive further education or training beyond 31 August 2016. The local authority will consider their request in the same way as a request from any other young person. Existing assessment information within the LDA report should contribute to the EHC needs assessment where it remains accurate.
22. Where a non-statutory EHC plan rather than a statement has been issued in advance of 1 September (e.g. in some pathfinder areas), the local authority will become responsible for the child or young person under the Children and Families Act 2014 on 1 September. Local authorities will, therefore, be required to determine whether a statutory EHC needs assessment is necessary for these children and young people.
23. Following consultation with families and professionals and within the national parameters set out below, local authorities should determine when children and young people with statements will be transferred to the new system during the transition period. Local authorities should publish an initial version of their local transition plan by 1 September 2014. This should set out details about when and how children and young people with statements will be transferred to the new SEN system, and information for young people in further education and training who receive support as a result of a LDA.
24. To ensure momentum through the transition period and to provide some certainty to families, where possible local authorities should transfer children with statements to the new SEN system

at points in their education at which a significant review of the statement would have otherwise taken place. We want local authorities to transfer children and young people from statements to EHC plans in advance of them transferring to the next phase of education, and at the significant year 9 review point. While local authorities should aim to do this in 2014/15, this may be a challenge for some. In response to feedback to our recent consultation, in order not to overwhelm the new system we have reduced the requirement on local authorities in 2014/15.

25. Between 1 September 2014 and 1 September 2015, local authorities must transfer children and young people with statements to the new arrangements prior to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship.

26. In addition to complying with the requirements set out in paragraph 25, local authorities will be expected to prioritise transfer for the following groups of children and young people with statements in 2014/15:

- those transferring from early years settings to school (including where the child remains at the same institution);
- those transferring from an infant to a junior school;
- those transferring from primary to middle school;
- those transferring from primary to secondary school;
- those transferring from middle to secondary school;
- those transferring from mainstream to a special school or vice versa;
- 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 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;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014,
- those moving between one local authority and another; and
- those who receive direct payments, under the SEN Direct Payments Pilot Scheme, for SEN provision in their statement or Learning Difficulties Assessment (they must be transferred to EHC plans by 30 September 2015 if their direct payments are to continue).

27. Between 1 September 2015 and 1 April 2018, local authorities must transfer children and young people with statements to the new arrangements in year 9 and prior to them transferring 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.
- transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship;
- mainstream to a special school or vice versa.

28. In addition to complying with the requirements set out in paragraph 27, local authorities will be expected to prioritise transfer for the following groups of children and young people from a September 2016 to 31 March 2018:

- all children with statements in year 6, not just those who are transferring from one institution to another ;
- 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 issued with non-statutory EHC plans before 1 September 2014, and
- those moving between one local authority and another.