



Department  
for Education

# **Transition to the new 0 to 25 special educational needs and disability system**

**Departmental advice for local authorities  
and their partners**

**March 2015**

# Contents

1. Summary	4
About this departmental advice	4
Expiry or review date	4
Who is this advice for?	4
Main points	5
2. Introduction	7
3. Assessments in progress on 1 September 2014	9
Consideration of assessments and re-assessments under the Education Act 1996 in progress on 1 September 2014 (Article 5 of the Transitional and Savings Provisions)	9
Assessments and re-assessments under the Education Act 1996 in progress on 1 September 2014 (Articles 6, 7 and 23 of the Transitional and Savings Provisions)	10
Learning Difficulty Assessments in progress on 1 September 2014 (Articles 27 and 28 of the Transitional and Savings Provisions)	11
Where a Learning Difficulty Assessment is in progress but no report has been written (Article 27)	11
Where a Learning Difficulty Assessment has been carried out and a report has been written (Article 28)	12
4. Arrangements relating to statements of SEN and Learning Difficulty Assessments during the transition period	13
Statements of SEN	13
Requests for re-assessments of children and young people with statements of SEN made after 1 September 2014 (Article 23 of the Transitional and Saving Provisions)	14
Appeals to the First-tier Tribunal (SEN and Disability) about assessments and statements of SEN during the transition period (Articles 8-10 and 18 and 19 of the Transitional and Saving Provisions)	15
Learning Difficulty Assessments (Article 29 of the Transitional and Saving Provisions)	18
5. Timing of transfers to the new SEN and disability system	20
Overall timeframe for transition to the new SEN and disability system	20
Local Transition Plans	21
Requirements and expectations relating to the timing of transfers from statements of SEN to the new SEN and disability system (Articles 12-17 of the Transitional and Saving Provisions)	22
Timing of transfer to EHC plans for children and young people with non-statutory EHC plans issued before 1 September 2014	24

Timing of transfer to EHC plans for young people in further education and training who receive support as a result of a LDA (Articles 27-29 of the Transitional and Saving Provisions)	25
6. The 'transfer review' process	27
The process for transferring children and young people with statements of SEN to the new SEN and disability system ('transfer review') (Articles 5, 19 – 22 of the Transitional and Saving Provisions)	27
Process for transferring young people who receive support as a result of LDAs to EHC plan (Articles 27-29 of the Transitional and Saving Provisions)	30
Non-statutory EHC plans issued before 1 September 2014	31
Personal budgets	32
7. Arrangements relating to statements of SEN and Learning Difficulty Assessments for children and young people aged 18 and under in youth custody during the transition period.	33
Children and young people entering or detained in relevant youth accommodation with a statement of SEN (Articles 14A, 30, 31 and 36 of the Transitional and Savings Provisions)	33
Young people entering or in relevant youth accommodation with a LDA (Articles 29A and 29B of the Transitional and Savings Provisions)	34
The process for transferring detained persons to the new SEN and disability system (Articles 32- 35 of the Transitional and Savings Provisions)	35
Partial transfers on entry to or exit from custody, on moving between places of relevant youth accommodation and on moving to a new local authority on release	36
8. Transition to setting-based SEN support	38
Transferring to SEN Support in the early years and in schools	38
Introducing SEN Support in FE Colleges and sixth forms	39
Annex A:	41
Requirements and expectations relating to the transfer of different groups of children and young people to the new SEN system	41
Further information	43
Useful resources and external organisations	43
Education Act 1996	43
Learning and Skills Act 2000	43
Children and Families Act 2014	43
Other relevant departmental advice and statutory guidance	43

# 1. Summary

## About this departmental advice

- 1.1 This is departmental advice from the Department for Education. This advice is non-statutory, and has been produced to help recipients understand their obligations and duties in relation to the Children and Families Act 2014 (Transitional and Saving Provisions) (Amendment) Order 2015. Where the word must is used it refers to requirements set out in the Order. The word 'should' reflects the Government's expectations of how local authorities and other organisations will go about transferring all children and young people with SEN to the new system. Local authorities will be expected to explain any departure from these expectations.
- 1.2 The guidance covers how legislation relating to children and young people with special educational needs and (SEN) in England will operate between 1 September 2014 and 31 March 2018<sup>1</sup>, and how and when the new SEN and disability system will be made available to all children and young people with SEN in England by 31 March 2018. A 'young person' in this context is a person over compulsory school age and under 25. Compulsory school age ends on the last Friday of June in the academic year in which they become 16.
- 1.3 The legislation that underpins this guidance is available online: [The Children and Families Act 2014 \(Transitional and Saving Provisions\) \(Amendment\) \(No.2\) Order 2014 as amended by the Children and Families Act 2014 \(Transitional and Saving Provisions\) \(Amendment\) Order 2015](#) (link to be updated w/c 9 March 2015).
- 1.4 Enquiries about the guidance should be sent to [SENTtransitional.arrangements@education.gsi.gov.uk](mailto:SENTtransitional.arrangements@education.gsi.gov.uk)

## Expiry or review date

- 1.5 This guidance will be reviewed periodically during the transition period (1 September 2014 to 1 April 2018). It will expire on 1 April 2018.

## Who is this advice for?

- 1.6 Sections 1-7 of this guidance are intended primarily for local authorities but will also be of interest to other education, health and care organisations involved in statutory assessments of SEN and the provision of services for children and young people with SEN. Section 8 of this guidance is intended for early years settings, schools and further education and training providers.

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<sup>1</sup> The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014

## Main points

- 1.7 From 1 September 2014 young people in further education and training who receive support as a result of a Learning Difficulty Assessment (LDA) can choose to request an education, health and care needs (EHC) assessment under the Children and Families Act 2014. All young people who receive support as a result of a LDA who will continue in further education or training beyond 1 September 2016 **must** have an EHC plan by that date where one is needed. Until that point, local authorities should continue to implement their duties in relation to young people who receive support as a result of a LDA.
- 1.8 By 1 April 2018, local authorities **must** have transferred all children and young people with statements of SEN to the new SEN and disability system following a ‘transfer review’ – that is an EHC needs assessment in accordance with the Special Educational Needs and Disability Regulations 2014 (SI 2014/1530). We expect the vast majority of children and young people with statements of SEN to be transferred to an EHC plan. To ensure children and young people continue to receive the support they need during the transition period (1 September 2014 to 1 April 2018), local authorities **must** continue to comply with particular elements of the 1996 SEN framework (Part IV of the Education Act 1996 ( including schedules 26 and 27), The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 and 2007, the 2001 SEN Code of Practice and the statutory guidance, Inclusive Schooling), as applicable, in relation to children and young people with statements of SEN.
- 1.9 Local authorities should consult with parents, young people and relevant professionals to develop a local transition plan setting out when and how children and young people with statements of SEN and young people who receive support as a result of a LDA will transfer to the new system, including the order in which they will be transferred. To ensure that momentum is maintained across all areas, all local authorities will be required to ensure that some groups of children and young people are transferred to the new system by particular points during the transition period. Local authorities should publish the first version of their local transition plan in September 2014 to ensure that parents and young people can access information about when they will be transferred to the new system and what the transfer process will entail.
- 1.10 New provisions for children and young people aged 18 and under in youth custody commence on 1st April 2015. For those entering or already in youth custody with a statement of SEN, the special educational provision in the statement will be deemed as if it is made in an EHC plan. Local authorities will be under a duty to arrange appropriate support and **must** conduct a ‘transfer review’ on release if they have not conducted one in youth custody or where they are due to conduct a review under the wider procedures for transfer. Local authorities should take reasonable steps to inform those with LDAs of their right to request an

EHC needs assessment. For young people with LDAs who request an EHC needs assessment, where the local authority believes it may have to make special educational provision on release it **must** carry out an EHC needs assessment.

- 1.11 Early years settings and schools are expected to have adopted the new SEN support approach set out in the [‘SEND Code of Practice: 0 to 25 years’](#) by spring 2015 for children and young people who do not have statements of SEN and to have applied it to all children and young people by September 2015 at the latest.
- 1.12 Further education and training providers should implement the approach set out in the [‘SEND Code of Practice: 0 to 25 years’](#) from 1 September 2014.

## 2. Introduction

- 2.1 The Children and Families Act 2014 provides for new statutory assessment and planning arrangements for children and young people with special educational needs (SEN). From 1 September 2014, it will no longer be possible to request an assessment of special educational needs under the 1996 Education Act for a child or young person who does not already have a statement of SEN and no new Learning Difficulty Assessments (LDAs) can be commenced. From that date local authorities **must** consider all new requests for an assessment of SEN for children and young people who do not have an existing statement of SEN under the new legislation. Those requiring a statutory plan to secure the relevant provision to meet their special educational needs **must** be issued with an Education, Health and Care (EHC) plan.
- 2.2 Children and young people with statements of SEN and young people who receive support 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 legislation (see The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014) is in place to maintain elements of the Education Act 1996 relating to statements of SEN and the Learning and Skills Act 2000 relating to LDAs during the transitional phase.
- 2.3 The legal test of when a child or young person requires an EHC plan remains the same as that for a statement of SEN under the Education Act 1996. Therefore, it is expected that all children and young people who have a statement of SEN and who would have continued to have one under the 1996 provisions, will be transferred to an EHC plan. No child or young person should lose their statement of SEN and not have it replaced with an EHC plan simply because the system is changing.
- 2.4 Local authorities have undertaken LDAs for young people either because they had a statement of SEN at school or because, in their opinion these young people are likely to need additional support as part of their future education or training and would benefit from an 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.
- 2.5 The new 0-25 SEN and Disability Code of Practice 2014 introduced SEN Support in early years settings, schools and further education and training. This approach replaces Early years action and Early years action plus in early years settings and School action and School action plus in schools. Early years settings and schools are expected to adopt the new approach by spring 2015 and to have applied it to all children and young people by September 2015 at the latest. Further education and training providers should also implement the new approach set out in the 0-25 SEN Code of Practice from 1 September 2014.

2.6 This document provides guidance to local authorities on:

- assessments of educational needs and LDAs in progress on 1 September 2014 (section 3)
- arrangements relating to statements of SEN and LDAs during the transition period (section 4)
- the timing of transfers to the new system (section 5)
- the process for transferring the following groups of children and young people to the new SEN system:
  - children and young people with statements of SEN
  - young people in further education and training who receive provision as a result of a LDA
  - children and young people with non-statutory EHC plans issued before 1 September 2014 (section 6)
- Arrangements relating to statements of SEN and LDAs for children and young people aged 18 and under in youth custody during the transition period (section 7)
- transition to settings based SEN Support (section 8)



### 3. Assessments in progress on 1 September 2014

- 3.1 Although local authorities are not required to comply with the Children and Families Act 2014 until 1 September 2014, some have chosen to conduct assessments in line with the requirements for an EHC needs assessment prior to 1 September 2014. Some may be conducting assessments for children and young people, or considering whether one is needed, under existing legislation on 1 September 2014. We are keen for these children and young people to receive an EHC plan where one is required. However, EHC plan **must** only be issued where a robust assessment has taken place that aligns with the requirements for an EHC needs assessment and where this does not result in an unacceptable delay for families.
- 3.2 In advance of 1 September 2014, where they are able to, local authorities should work towards an assessment that meets the requirements of the Education Act 1996 but that will also contribute to meeting the requirements for an EHC needs assessment. This will ensure children and young people benefit from the new system as soon as possible, and help reduce the burden on families and local authorities of transferring them at a later date.
- 3.3 To achieve this, statutory processes relating to assessments of educational needs under the Education Act 1996 and Learning Difficulty Assessments under the Learning and Skills Act 2000 **must** be completed under those arrangements unless the local authority and the child's parent or the young person agree to treat the assessments under the Children and Families Act 2014. This section sets out the transitional arrangements that allow this to happen.

### Consideration of assessments and re-assessments under the Education Act 1996 in progress on 1 September 2014 (Article 5 of the Transitional and Savings Provisions)

- 3.4 Local authorities may be considering whether to make a statutory assessment or re-assessment of a child or young person's special educational needs under the Education Act 1996 on 1 September 2014. Unless Regulation 12(5) of The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 applies, the local authority **must** notify the child's parent whether or not it intends to conduct the assessment/re-assessment within six weeks of beginning their consideration. The consideration, and any subsequent assessment and statement of SEN **must** comply with Part IV of the Education Act 1996 and associated regulations unless the local authority decides to treat it as a consideration for an EHC needs assessment under section 36 of the Children and Families Act 2014 and the child's parents or the young person agrees.
- 3.5 In deciding whether to use this power, the local authority should be confident about which steps it has taken that have met the requirements for consideration of an EHC needs assessment and that it can complete any remaining steps within 6

weeks from the date of receipt of the original request for an assessment of educational needs (or the local authority otherwise notifying the child's parents that they are considering an assessment of educational needs under s323 of the Education Act 1996). Where a local authority decides to treat consideration of an assessment under the new arrangements, to help parents and young people make their decision, the local authority should explain to them the differences between the two systems and how they can access further information and advice.

- 3.6 If the child's parents or the young person agrees with the local authority's decision to treat consideration for an assessment of educational needs as consideration for an EHC needs assessment under Part 3 of the Children and Families Act 2014, the local authority should retain evidence of that agreement.
- 3.7 Where it is agreed to treat it as consideration for an EHC needs assessment, any steps already taken that satisfy those needed for consideration of an EHC needs assessment (see regulation 5 of The Special Educational Needs and Disability Regulations 2014) do not need to be repeated.
- 3.8 Where an EHC plan is needed, it must be issued within 26 weeks of the receipt of the original request for an assessment of educational needs (or the issue of a notice to parents under section 323) unless the exceptions in paragraph 6.8 apply.

### **Assessments and re-assessments under the Education Act 1996 in progress on 1 September 2014 (Articles 6, 7 and 23 of the Transitional and Savings Provisions)**

- 3.9 If a statutory assessment or re-assessment of educational needs under the Education Act 1996 is in progress on 1 September 2014 then it **must** continue under those arrangements unless the local authority decides to treat it as an EHC needs assessment under Part 3 of the Children and Families Act 2014 and the child's parents or the young person agrees.
- 3.10 If an assessment or re-assessment of educational needs under the Education Act 1996 has concluded, but a statement of SEN has yet to be drawn up/amended, a statement of SEN should be finalised under those arrangements unless the local authority decides to prepare an EHC plan instead of a statement of SEN and the child's parent or young person agrees.
- 3.11 In deciding whether to use these powers, the local authority should be confident about which steps it has taken that have met the requirements for an EHC needs assessment and that it can complete any remaining steps and issue an EHC plan, if required, within 26 weeks of the receipt of the original request for an assessment of educational needs (or the issue of a notice to parents under section 323). Where a local authority decides to treat a special educational needs assessment in progress as an EHC needs assessment, to help parents and young people make their decision, the local authority should explain to them the differences between the two

systems and how they can access get further information and advice.

- 3.12 Where the child's parents or the young person agrees with the local authority's decision to treat an assessment of educational needs as an EHC needs assessment or to prepare an EHC plan rather than a statement of SEN or SEN, the local authority should retain evidence of any such agreement.
- 3.13 If it is agreed to treat it as an EHC needs assessment, any steps already taken that satisfy those needed for an EHC needs assessment (see regulations 6, 7 and 9 of The Special Educational Needs and Disability Regulations 2014) do not need to be repeated.
- 3.14 Where it is agreed that an EHC plan should be prepared rather than a statement of SEN, any steps already taken that satisfy those relating to the preparation of an EHC plan (see regulations 11, 12, 13, 14) of The Special Educational Needs and Disability Regulations 2014) do not need to be repeated.
- 3.15 Where an EHC plan is needed, it **must** be issued within 26 weeks of the receipt of the original request for an assessment of educational needs (or the issue of a notice to parents under section 323) unless the exceptions in paragraph 6.8 apply.

## **Learning Difficulty Assessments in progress on 1 September 2014 (Articles 27 and 28 of the Transitional and Savings Provisions)**

- 3.16 There may be cases where LDAs are being conducted for young people at the time the provisions of Part 3 of the Children and Families Act 2014 come into effect on 1 September 2014. For example, where a young person with a statement of SEN has only decided to transfer from school to a further education college shortly before this date; or where a local authority has decided to use its power to conduct a LDA for a young person who did not have a statement of SEN at school. In advance of 1 September 2014, where they were ready and able to do so, local authorities could have commenced an assessment that met the requirements for an EHC needs assessment. This would more than satisfy the legal requirement to carry out a LDA.

## **Where a Learning Difficulty Assessment is in progress but no report has been written (Article 27)**

- 3.17 If, on 1 September 2014, a LDA under the Learning and Skills Act 2000 has commenced but has not yet resulted in a written LDA report for a young person who is entering further education or training in 2014/15 then it **must** continue under those arrangements unless the local authority decides to treat it as an EHC needs assessment and the young person agrees.
- 3.18 In deciding whether to use these powers, the local authority should be confident about which steps it has taken that have met the requirements for an EHC needs

assessment and that it can complete any remaining steps and issue an EHC plan, if required, within 14 weeks of the end of the two week notice period it provides to the young person that it is conducting a 'transfer review' - EHC needs assessment – and the young person's consent being given.

- 3.19 Where a local authority decides to treat an LDA in progress as an EHC needs assessment, to help the young people make their decision, the local authority should explain to them the differences between the two systems and where the young person can get further information and advice.
- 3.20 If it is agreed to treat it as an EHC needs assessment, any steps already taken that satisfy those needed for an EHC needs assessment (see regulations 6, 7 and 9 of The Special Educational Needs and Disability Regulations 2014) do not need to be repeated.
- 3.21 Where an EHC plan is required local authorities **must** secure an EHC plan for a young person where one is needed within 14 weeks of the young person's consent unless the exceptions in paragraph 6.8 apply.

### **Where a Learning Difficulty Assessment has been carried out and a report has been written (Article 28)**

- 3.22 Where a LDA has been carried out and a report has been written for a young person before 1 September 2014, the provisions of section 36 of Part 3 of the Children and Families Act do not come into effect in relation to that young person before 1 September 2016 unless they ask the local authority to secure an EHC needs assessment; a post-16 institution requests an EHC needs assessment; or the local authority decides to secure an EHC needs assessment. Where an EHC needs assessment is carried out the local authority must do this in accordance with section 36 of Part 3 of the Children and Families Act 2014.

## 4. Arrangements relating to statements of SEN and Learning Difficulty Assessments during the transition period

4.1 Although many local authorities will plan to make the new SEN and disability system available to all children and young people with SEN in their area before the end of the transition period, others may need the maximum time. To ensure that children and young people with statements of SEN and young people who receive support as a result of a LDA continue to receive the support they need, and so their rights and protections are maintained, transitional and saving provisions will be in place to maintain elements of the Education Act 1996 relating to statements of SEN and the Learning and Skills Act 2000 relating to LDAs. This section sets out the specific elements that will remain in force.

### Statements of SEN

4.2 Until 1 April 2018, much of Part IV of the Education Act 1996, associated schedules, the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, and the 2001 Code of Practice will continue to have effect in relation to children and young people with statements of SEN. During the transition period, a child or young person's statement of SEN **must** remain in place until:

- after the period within which a parent can register an appeal with the First-tier Tribunal following a local authority's decision to cease the statement of SEN, or, if an appeal is registered, after the appeal has been determined
- the statement of SEN is ceased because the young person leaves education
- a 'transfer review' has been completed for the child or young person (see section 6) and an EHC plan is secured for her/him
- after the period within which a parent or young person can register an appeal following a local authority's decision not to secure an EHC plan and to cease to maintain the statement of SEN following a 'transfer review'; or, if an appeal is registered, after a determination that an EHC plan is not required

4.3 During the transition period local authorities **must** continue to:

- where necessary, maintain statements of SEN
- review statements of SEN at least annually
- beginning at year 9, draw up a transition plan for a child and review it at least annually
- have regard to the 2001 SEN Code of Practice in fulfilling their duties to arrange provision for those with statements of SEN and maintaining those statements of SEN

- make information, advice and support services (known currently as SEN Information, Advice and Support Services) and disagreement resolution arrangements available to the parents of children and young people who have statements of SEN

4.4 During the transition period the parents of children and young people with statements of SEN **must** continue to be:

- invited to provide evidence for annual reviews, sent copies of the evidence that others have provided for the reviews and be invited to the annual review meeting in the timescales set out in the 2001 Regulations
- provided with a proposal to amend, or draft amended statement of SEN with an amendment notice, where the local authority proposes to amend a statement of SEN with the content of the notice as prescribed including their right to appeal to the First-tier Tribunal (SEN and Disability)
- advised of their right, following a review which does not result in an amendment to a statement of SEN, to appeal to the First-tier Tribunal
- advised of their right to appeal to the First-tier Tribunal where the local authority proposes to cease to maintain a statement of SEN and not replace it with an EHC plan

For appeals relating to statements of SEN, there will be no requirement for parents to consider mediation in advance of registering an appeal with the First-tier Tribunal.

4.5 Local authorities cannot commence an EHC needs assessment if an appeal has been brought under section 326 of the Education Act 1996 Act.

4.6 Parents of children and young people can continue to exercise pre-existing rights of appeal under the Education Act 1996, including those relating to choice of school (section 316, section 9, and schedule 27 (3) (3)) and under Schedule 27(8) relating to requests that the name of the school specified in Part 4 of the statement of SEN as the one the child or young person will attend be changed to another school as long as it is more than 12 months since the statement of SEN was drawn up or since the last request for the name of the school to be changed. Case law has established that in such cases parents can only request that, in relation to appeals under schedule 27 (8), the name of the school is changed to another school of the same type, for example a mainstream school to another maintained mainstream school or a maintained special school for another maintained special school.

### **Requests for re-assessments of children and young people with statements of SEN made after 1 September 2014 (Article 23 of the Transitional and Saving Provisions)**

4.7 The parent of a child with a statement of SEN will continue to be able to request a re-assessment under Part IV of the Education Act 1996 during the transition period

but will not have the right to request an EHC needs assessment under the Children and Families Act 2014 during the transition period.

- 4.8 Within six weeks of receiving the request for a re-assessment, local authorities **must** inform the child's parent whether they intend to go ahead with the re-assessment. Local authorities are not required to carry out a re-assessment if a re-assessment is not needed or where it has carried out an assessment or a re-assessment in the previous six months. If a re-assessment does go ahead it will be conducted under the arrangements set out in the 1996 Act and result, where necessary, in a revised statement of SEN. However, the local authority may choose to transfer the child/young person to the new SEN system at this point by initiating a 'transfer review' instead and conducting an EHC needs assessment. The decision to switch to an EHC needs assessment must be made with the agreement of the child's parents or the young person. Local authorities are encouraged to use this power where they are in able to do so to allow children, young people and their parents to benefit from the new arrangements earlier than was otherwise planned, and to reduce the outstanding burden of transfers to the new system.
- 4.9 Where a child or young person's needs have changed and the provision required to meet those needs has changed and it is necessary to carry out an assessment then the local authority **must** carry one out, whether as a re-assessment under the Education Act 1996 or an EHC assessment under the Children and Families Act 2014. If these considerations do not apply then the child or young person will not need a re-assessment and will be transferred to an EHC plan in accordance with the local authority's transition plan (see section 5).

### **Appeals to the First-tier Tribunal (SEN and Disability) about assessments and statements of SEN during the transition period (Articles 8-10 and 18 and 19 of the Transitional and Saving Provisions)**

- 4.10 Unless the local authority has provided notification that it is conducting a 'transfer review' (conducting an EHC needs assessment) (see section 6), during the transition period parents of children and young people with statements of SEN (or parents of children and young people who requested a statement of SEN prior to 1 September 2014 – see section 3) can appeal to the Tribunal under the Education Act 1996 in the following circumstances:
- where the local authority decides not to carry out an assessment of the child's educational needs (s. 329 (2) (b)) and 329A 8 (b))
  - where the local authority decides not to draw up an statement of SEN following an assessment (s. 325 (2))
  - over the description of the child's SEN in Part 2 of the statement of SEN (s 326 (1A) (a))
  - over the special educational provision specified in Part 3 (s. 326 (1A) (b))

- the school named in Part 4 of the statement of SEN (s. 326 (1A) (b))
- if no school is named in Part 4 of the statement of SEN (s. 326 (1A) (c))
- if the local authority refuses to change the name of the school named on a statement of SEN, where that statement of SEN is at least one year old (Schedule 27 8 (3) (b))
- where the local authority refuses to re-assess the SEN of a child with a statement of SEN, provided an assessment has not taken place in the last six months (s. 328 (3) (b))
- where the local authority decides not to amend the statement of SEN following a re-assessment (s. 326 (1) (c))
- where the local authority decides not to amend the statement of SEN following an annual or other review (s. 328A (3))
- where the local authority decides to cease to maintain a statement of SEN (Schedule 27 11 (2) (b))

The Tribunal makes a particular effort to hear and decide appeals about a child's school placement before the beginning of the academic year, however, there will be instances where parents have registered appeals, including placement appeals, which have not been heard and decided by 1 September 2014. The possible outcomes of appeals to the Tribunal heard after 1 September 2014 (whether registered before or after 1 September 2014) are as follows:

Reason for appeal	Possible Tribunal decisions
<ul style="list-style-type: none"> <li>• Appeal against decision not to assess (s329 or s329A)</li> <li>• (Article 8)</li> </ul>	Either uphold the local authority's decision not to arrange an assessment <b>or</b> order the local authority to arrange an assessment under the Education Act 1996 but with the option of the local authority securing an assessment under Part 3 of the Children and Families Act 2014 with the consent of the child's parents or the young person
<ul style="list-style-type: none"> <li>• Appeal against decision not to re-assess a child or young person with a statement of SEN where the request for the reassessment was made before 1 September 2014</li> <li>• (Article 23)</li> </ul>	Either uphold the local authority's decision <b>or</b> order the local authority to arrange a re- assessment under the Education Act 1996 but with the option of the local authority securing an assessment of the child or young person under the Children and Families Act 2014, with the consent of the child's parent or the young person.
<ul style="list-style-type: none"> <li>• Appeal against a decision not to</li> </ul>	Either uphold the local authority's decision



Reason for appeal	Possible Tribunal decisions
<p>issue a statement of SEN (s325)</p> <ul style="list-style-type: none"> <li>(Article 9)</li> </ul>	<p><b>or</b> order the local authority to make and maintain a statement of SEN with the option, if the parent and the local authority agree, to arrange an assessment of the child or young person with a view to issuing an EHC plan (they would be able to take into account all the information gathered during the statutory assessment under the 1996 Act) <b>or</b> remit the case back to the local authority to reconsider (In this case the local authority could decide to carry out an EHC needs assessment).</p>
<ul style="list-style-type: none"> <li>Appeal concerning the description of a child's SEN and/or the special educational provision specified in the statement of SEN (parts 2 and 3) (s326)</li> </ul>	<p>Either uphold the local authority's decision and dismiss the appeal <b>or</b> decide that the local authority must amend parts 2 and/or 3 of the statement of SEN. Or (s326 appeal only) direct that the LA shall cease to maintain the statement of SEN</p>
<ul style="list-style-type: none"> <li>Appeal against the name of the school or type of school specified in the statement of SEN or the fact that no school is named (s326)</li> </ul>	<p>Either uphold the local authority's decision <b>or</b> order the local authority to name a particular school or type of school on the statement of SEN.</p>
<ul style="list-style-type: none"> <li>Appeal against a decision to amend the descriptions of a child's SEN in a statement of SEN (part 2), the special educational provision set out in a statement of SEN (part 3), or the name of the school or type of school specified in the statement of SEN (part 4) (s326)</li> </ul>	<p>Either uphold the local authority's decision to amend <b>or</b> order the local authority not to amend the statement of SEN. (s326 only) <b>or</b> order the authority to maintain the statement of SEN</p>
<ul style="list-style-type: none"> <li>Appeal against decisions not to amend a statement of SEN following reviews (s328A) or re-assessments (s326)</li> </ul>	<p>Either uphold the local authority's decision <b>or</b> order the local authority to amend parts 2 and/or 3 and/or 4 of the statement of SEN.</p>
<ul style="list-style-type: none"> <li>Appeal against a decision not to change the name of the school specified in part 4 of the statement of SEN</li> <li>(paragraph 8 of schedule 27)</li> </ul>	<p>Either uphold the local authority's decision <b>or</b> order the local authority to change the name of the school.</p>

Reason for appeal	Possible Tribunal decisions
<ul style="list-style-type: none"> <li>• Appeal against a decision to cease to maintain a statement of SEN which is in progress on 1 September 2014</li> <li>• (Article 10)</li> </ul>	<p>Either uphold the local authority's decision <b>or</b> order the local authority to maintain the statement of SEN in its current form or with amendments to parts 2 and/or 3 and/or 4 with the option of the local authority treating the statement as an EHC plan with the parent's consent.</p>
<ul style="list-style-type: none"> <li>• Appeal against a decision to cease to maintain a statement taken after 1 September 2014</li> <li>• (Article 26)</li> </ul>	<p>Either uphold the local authority's decision <b>or</b> order the local authority to maintain the statement of SEN in its current form or with amendments to parts 2 and/or 3 and/or 4.</p>

## Learning Difficulty Assessments (Article 29 of the Transitional and Saving Provisions)

- 4.11 From 1 September 2016, all young people who receive support as a result of an LDA in further education and training who continue in further education or training beyond that point and who need an EHC plan **must** have one. Local authorities **must** have regard to the fact that they may be under a duty on or after 1 September 2016 to secure an EHC needs assessment for a young person who has had an LDA prior to 1 September 2016 and attends a post-16 institution on or after that date
- 4.12 Until 31 August 2015 where a 'transfer review' has not taken place, local authorities should, in line with the LDA guidance:
- continue to support young people with LDAs up to the age of 25 if they stay in further education or training (provided they still have learning difficulties)
  - use the evidence from a young person's LDA to make consistent, effective and robust decisions that will support the young person to move towards positive outcomes
  - regularly review the LDA to ensure it continues to meet the needs of the young person. LDA reports completed or reviewed after the age of 19 should continue to reflect the individual needs of students. LDAs for older students may include a greater emphasis on pathways to independent living and links to job seeking eg Jobcentre Plus and adult social services
  - once the student's education and training needs have been clearly identified, make placement decisions in the light of the overall budget available. The model for commissioning provision should take account of value for money considerations ensuring that the placement proposals that local authorities make remain within the indicative budget allocations made by the EFA while delivering

positive outcomes for young people. Consideration should include the total cost implications such as the additional social and health care costs that might be needed

- where a parent does not agree with the placement decision of the local authority, following a LDA, the local authority should undertake an initial review of the decision, most usually by a senior officer not involved in the original consideration. This initial review needs to be undertaken in a timely manner to enable later stages of the challenge process to be undertaken. If the original decision is upheld and the young person remains dissatisfied, access to the local authority mediation service could be considered. Local authorities may want to consider using independent mediation services to support this process. Having complained to a local authority, parents or students, if they remain dissatisfied, may raise the issue with the Local Government Ombudsman or seek a judicial review

## 5. Timing of transfers to the new SEN and disability system

- 5.1 As of 1 September 2014, it will no longer be possible to **request** an assessment of special educational needs under the 1996 Education Act for a child or young person who **does not already have a statement of SEN** and no new LDAs can be commenced. From that date local authorities **must** consider all requests for an assessment of SEN for such children and young people under the new legislation (unless the local authority has assessed their educational needs under the 1996 Act and decided not to issue a statement of SEN within the previous six months). Those requiring a statutory plan to secure the relevant provision to meet their special educational needs **must** be issued with an EHC plan.
- 5.2 Children and young people **with statements of SEN** and young people who receive support as a result of a LDA will be gradually transferred over to the new SEN system. This section and the grid at Annex A set out when transfers to the new system will take place.

## Overall timeframe for transition to the new SEN and disability system

- 5.3 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 they offer will be 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 can. This **must** be by **1 April 2018** at the latest. 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 6).
- 5.4 Improving the preparation of young people for adulthood is a key aim of the new system. Young people in further education and training who currently receive their provision as a result of a LDA have fewer rights and protections than their peers in the school system with statements of SEN. To address this disparity and ensure young people in further education and training can benefit from the new system as soon as possible, this group of young people **must** be transferred to the new system by **1 September 2016**.

## Local Transition Plans

5.5 Within the national requirements set out below, it is for local authorities to determine when children and young people will be transferred to the new SEN and disability system during the transition period. In accordance with the duty set out in section 19 of the Children and Families Act 2014, local authorities should consult young people with SEN and the parents of children with SEN (including through the local parent carer forums) as well as organisations such as schools, colleges, and health organisations that will be involved in transferring children and young people to the new system.

5.6 To ensure parents and young people know when their child/they will be transferred to the new system, local authorities should develop and publish a local transition plan, which should include:

- the groups that were consulted in developing the plan
- the total number of children and young people with statements of SEN and the number of young people receiving support as a result of an LDA which the local authority is responsible for and plans to transfer to the new system in each year of the transition period
- the order in which children and young people with statements of SEN in the area will be transferred to the new system (within the national parameters set out in paragraphs 5.9 to 5.26)
- how and when parents of children with SEN and young people with SEN, and their educational institution, will be made aware of the arrangements for a child or young person's transfer
- details of the 'transfer review' (EHC Needs Assessment) process
- the arrangements for the transfer of young people who receive support as a result of a LDA
- sources of impartial SEN information and advice
- who parents and young people can contact if they have queries about transition to the new system or if they or their child have not been transferred to the new system in accordance with the local transition plan

5.7 Local authorities should publish the first version of this plan in September 2014. So all families understand how the new SEN system applies to them, the transition plan should be published on the local authority's website alongside their local offer. The local authority should publish its arrangements for enabling people without access to the Internet and different groups, including people with special educational needs or a disability to obtain a copy of the transition plan.

5.8 A report on progress against the transition plan, and a revised transition plan should

be published at least annually.

## **Requirements and expectations relating to the timing of transfers from statements of SEN to the new SEN and disability system (Articles 12-17 of the Transitional and Saving Provisions)**

- 5.9 To ensure momentum through the transition period and to help local authorities manage their workloads and burdens on families, local authorities should aim to transfer children with statements of SEN to the new SEN system at points in their education at which a significant review of the statement of SEN would have otherwise taken place.
- 5.10 This may be a challenge for some local authorities in the first year of implementation. In order not to overwhelm the new system, between 1 September 2014 and 1 September 2015, local authorities will only be required to **(must)** transfer children and young people with statements of SEN to the new arrangements when leaving youth custody and prior to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship. This **must** be done by 31 May 2015.
- 5.11 Local authorities should aim to transfer children and young people in the following groups in **2014/15**:
- 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 (including those who are in youth custody)
  - 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 or training (including those who are in youth 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)

5.12 **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, when leaving youth custody 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
- mainstream to a special school, or
- special school to a mainstream school

5.13 In addition to complying with the requirements set out in paragraph 5.12, 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 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 another

5.14 Local authorities should have regard to the overarching principles set out in section 19 of the Children and Families Act 2014 in determining the point within the year that a transfer review takes place. Local authorities need not comply with the

requirements set out in 5.11 and 5.12 if it is impractical to do so because **exceptional personal circumstances** affect the child or the child's parents, or the young person

5.15 In the academic year within which the local authority intends to transfer the child or young person from a statement of SEN to the new SEN and disability system, the 'transfer review' (see section 6) should replace the annual review of the statement of SEN. Where the 'transfer review' does replace the annual review it **must** be completed within 12 months of the date the statement of SEN was issued or of the previous annual review of the child or young person's statement of SEN. The only exceptions to this are where a local authority:

- is prevented from commencing a transfer review because of an on-going appeal to the Tribunal in relation to a statement of SEN, or
- is unable to complete the transfer review for any of the reasons set out in paragraph 6.8

5.16 In accordance with regulation 18 of the *Special Educational Needs and Disability Regulations 2014*, where a transfer review is conducted within 12 months of a transfer between phases of education, the local authority **must** complete the transfer review before:

- 31 May 2015 for children or young people transferring from secondary school to post-16 institution on 1 September 2015 and, in subsequent years before 31 March in the calendar year of the child or young person's transfer to a post-16 institution, and
- 15 February in the calendar year of the child's transfer in any other case

5.17 Where a 'transfer review' (EHC needs assessment) cannot be carried out before 1 April 2018 or there is an on-going appeal in relation to a statement of SEN, the special educational provision in a statement of SEN will be regarded as if it were specified in an EHC plan and the local authority **must** ensure that an EHC assessment is carried out and concluded as soon as is reasonably practicable. In order to meet the 1 April 2018 deadline, local authorities should ensure that they commence transfer reviews by 1 October 2017 at the very latest for those with statements for whom a 'transfer review' has not already begun by that date.

## **Timing of transfer to EHC plans for children and young people with non-statutory EHC plans issued before 1 September 2014**

5.18 In order to test the provisions set out in what was the Children and Families Bill the Department of Education funded 20 'pathfinders' covering 31 local authority areas and associated clinical commissioning groups. Over 2500 non-statutory EHC plans have been drawn up for children and young people by the pathfinder local



authorities. Although Pathfinder local authorities should treat non-statutory EHC plans issued before 1 September 2014 as if they were a statutory document, these non-statutory EHC plans do not have the same duties and rights associated with them as an EHC plan issued on or after 1 September 2014.

- 5.19 Some children and young people who have been issued with non-statutory EHC plans before 1 September 2014 also have statements of SEN. Local authorities should transfer these children and young people to statutory EHC plans in 2014/15 in accordance with the 'transfer review' process (EHC Needs Assessment) set out in (section 6).
- 5.20 Where a non-statutory EHC plan has been issued in place of a statement of SEN in advance of 1 September, the local authority will become responsible for the child or young person under the Children and Families Act 2014 on 1 September. Local authorities, therefore, **must** determine whether a statutory EHC needs assessment is necessary for these children and young people. Within this group, children and young people in special schools with non-statutory plans who do not have statements of SEN should be treated as a priority for transfer to EHC plans from 1 September 2014.

## **Timing of transfer to EHC plans for young people in further education and training who receive support as a result of a LDA (Articles 27-29 of the Transitional and Saving Provisions)**

- 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 assessment
- 5.22 Local authorities will have undertaken LDAs for young people either because they had a statement of SEN 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 an 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.
- 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 assessment

During academic year 2015/16 local authorities **must** consider whether an EHC needs assessment is required for those young people who continue to receive their support as a result of their LDA and that it believes will remain in further education or training beyond 31 August 2016.

5.24 A request for an EHC needs assessment for a young person who receives support as a result of an LDA may also be made by a person acting on behalf of the post-16 institution, or the local authority may choose to determine whether it may be necessary for special educational provision to be made in accordance with an EHC plan for a young person in further education or training who is receiving support to meet their special educational needs as a result of a LDA. In these circumstances, an EHC needs assessment **must** only proceed with the young person's agreement.

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). This could be done, for example, through further education and training providers or by the local authority directly when notifying the young person about a forthcoming review of their LDA. Local authorities should also inform these young people about the local impartial information, advice and support service and independent supporters.

5.26 Further education and training providers should support local authorities by making sure their students are aware of their right to request an EHC plan.

## 6. The ‘transfer review’ process

- 6.1 Realising the benefits of the new EHC plans for children and young people who already have statements or young people who receive support as a result of an LDA, will require their transfer to the new system to be more than simply a re-badging of their existing statements or LDA report. To ensure that EHC plans are person-centred and focused on outcomes, an EHC plan **must** only be issued following a ‘transfer review’ – an EHC needs assessment. However, families should not be unnecessarily burdened by this process. The EHC assessment process will allow local authorities and families to work together to consider existing assessment information within the statement or LDA report and what, if any, further assessment information is required. The process of EHC assessment and EHC plan development **must** be carried out in a timely manner. The time limits set out below are the maximum time allowed. However, steps **must** be completed as soon as practicable.
- 6.2 This section sets out the **process** by which children and young people with statements of SEN or non-statutory EHC plans and young people who receive support as a result of an LDA **must** be transferred to the new SEN system.

### The process for transferring children and young people with statements of SEN to the new SEN and disability system (‘transfer review’) (Articles 5, 19 – 22 of the Transitional and Saving Provisions)

- 6.3 To transfer a child or young person from a statement of SEN to an EHC plan, a local authority **must** undertake a ‘transfer review’. This will require them to undertake an EHC needs assessment under section 36 of the Children and Families Act 2014. For children and young people who need an EHC need plan, the ‘transfer review’ will allow for outcomes to be developed for inclusion in their EHC plan and provision identified to support the child/young person to achieve those outcomes. Until the transfer review is completed the local authority will remain under a duty to maintain the statement of SEN and arrange the special educational provision set out in the statement of SEN.
- 6.4 In line with the notice period for an annual review under the Children and Families Act 2014, to initiate a ‘transfer review’ (an EHC needs assessment), the local authority **must** notify the child’s parent or the young person and the head teacher of the school attended by the child or young person at least two weeks before it starts when the ‘transfer review’ will commence. The notification should also set out the parent’s/young person’s rights of appeal. A local authority should not commence a ‘transfer review’ if there is an appeal in progress under the Education Act 1996 against any of the matters relating to a statement of SEN. Where local authorities have issued a notice of their intent to carry out an EHC needs assessment appeals

cannot be made under sections 326 (appeal against contents of a statement), 328 (reviews of educational needs), 328A (appeal against decision not to amend a statement) and 329A (review or assessment of educational needs at request of a school (or other responsible body) of Part 4 of the Education Act 1996.

- 6.5 To conduct a 'transfer review', the local authority **must** undertake an EHC needs assessment in accordance with Part 5 of *The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014*. Local authorities should have regard to the *Special Educational Needs and Disability Code of Practice: 0-25 years* in undertaking the EHC needs assessment. As part of the 'transfer review', local authorities **must** ensure that the child's parents or the young person are invited to a meeting to contribute to the transfer review. This **must** take place as part of the 'transfer review' in advance of the EHC plan being finalised. At least two weeks' notice of the date of the meeting **must** be given. This could be done when the local authority issues notice of the 'transfer review'. In the case of a child or young person attending a school (referred to in paragraph 12 of the Special Educational Needs and Disability Regulations 2014), the local authority can require the head teacher or principal of the school to arrange and hold that meeting.
- 6.6 The meeting should be used to consult or engage the child's parents or the young person as part of the 'transfer review'. The precise purpose of the meeting will vary depending on the point during the transfer review that the meeting takes place. It is for local authorities to determine who should attend the meeting to ensure it achieves its purpose. For example, the meeting may take the format of an annual review meeting which contributes to the EHC needs assessment to which a range of relevant professionals are invited to consider the child or young person's progress and the future provision required. Alternatively, the meeting may take place between the local authority and the child's parents or the young person to discuss the draft EHC plan.
- 6.7 The local authority **must not** seek any advice required for an EHC needs assessment if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parents or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment. To allow local authorities sufficient time to ensure that additional assessments can be conducted where needed, and a robust EHC plan developed where needed, subject to exceptions set out at (paragraph 6.8), local authorities **must** give parents or young people two weeks' notice before they begin a 'transfer review' (an EHC needs assessment) and must finalise an EHC plan, where one is needed, within **14 weeks** from the end of that two week notice period. In many cases much of the assessment information contained within the statement of SEN is likely to remain accurate, and local authorities will be able to complete the process within the 14 week maximum.

6.8 Local authorities need not comply with the time limits related to assessments (see paragraphs 3.14, 3.20 and 5.26) if it is impractical to do so because:

- the local authority has requested advice from an early years provider, school or post-16 institution which is closed for a period of more than four weeks providing the request was made a week or less in advance of it closing
- exceptional personal circumstances affect the child, the child's parents or the young person during that time period
- the child, the child's parents or the young person are absent from the local authority area for a continuous period of four weeks or more during that period

6.9 In accordance with regulation 7(e) of *Special Educational Needs and Disability Regulations 2014*, to minimise disruption for the child, the child's parents, the young person and their family, any meeting with the child's parent or young person to either consult or engage them as part of the EHC needs assessment should take place at the point that the annual review meeting would have otherwise taken place.

6.10 To conclude a 'transfer review', a local authority **must**:

- send a copy of the finalised EHC plan to the parent of the child or the young person and the governing body, proprietor or principal of any school or other institution named in the plan and the responsible commissioning body for health care provision (from that point, the statement is ceased and replaced by the EHC plan), or
- notify the child's parents or young person of its decision that it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan and that it is proposing to cease to maintain the child or young person's statement of SEN

From the point that the 'transfer review' commences, parents and young people will have appeal rights under the new system and appeal rights relating to statements of SEN under the Education Act 1996 will no longer be available to parents.

6.11 Where a local authority decides not to secure an EHC plan for a child or young person transferring from a statement of SEN, the local authority **must** notify the child's parents or the young person within 10 weeks of the start of the 'transfer review'. Under these circumstances, the statement of SEN will not be ceased until the end of the period that a parent/young person can consider mediation and register an appeal with the Tribunal, or if an appeal is registered:

- until the Tribunal upholds the local authority's decision, or
- until an EHC plan is secured following an order by the Tribunal

6.12 Some children and young people will move between local authority areas while they are transferring from a statement. The new authority in such cases must use any

additional information gathered as part of the transfer review to date. Depending on how far the transfer review had progressed, this information should help the new authority complete the transfer more quickly than it would otherwise have done.

6.13 Local disagreement resolution arrangements will be in place for those aspects of the transfer review process that are not covered by mediation and appeals to the First-tier Tribunal.

## **Process for transferring young people who receive support as a result of LDAs to EHC plan (Articles 27-29 of the Transitional and Saving Provisions)**

6.14 Local authorities **must** consider requests for an EHC needs assessment for a young person who receives support as a result of an LDA under the Children and Families Act 2014 and associated regulations. If the request is not made by the young person, the EHC needs assessment **must** only proceed with the young person's agreement.

6.15 Under the timescales set out in the SEN Regulations 2014 local authorities have six weeks following a request within which to consider whether it is necessary to carry out an assessment. The *Special Educational Needs and Disability Code of Practice: 0-25 years* (pages 133-136) sets out the evidence local authorities should take into account in considering whether an EHC needs assessment is necessary. This includes evidence of the action already being taken by the post-16 institution to meet the young person's SEN. Where a young person is aged over 18, the local authority **must** consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.

6.16 Where necessary, an EHC needs assessment **must** be carried out and an EHC plan drawn-up in accordance with the Children and Families Act 2014 and associated regulations. A request for an assessment from a young person to a local authority should result in an EHC plan, where one is required, within 20 weeks from when the local authority notifies the young person that it intends to carry out an assessment and the young person consents. However, as local authorities **must** use assessment information contained within the LDA report, where it remains accurate, to contribute to the EHC needs assessment, we expect the majority of transfers from LDAs to EHC plans be completed well within the maximum 20 week period. Where a local authority maintains a statement for a young person over compulsory school age the transfer **must** be completed in 14 weeks from the end of the two week notice period for commencement of the EHC needs assessment.

- 6.17 Where a local authority decides not to conduct an EHC needs assessment or not to secure an EHC plan, a young person has the right to appeal that decision. Where an EHC plan is not secured, the provision being made as a result of the young person's LDA should continue as planned.
- 6.18 For those young people who receive support as a result of an LDA and for whom local authorities are required to consider an EHC needs assessment in 2015/16, the local authority should liaise with the young person and the post-16 educational provider to identify the most appropriate time within the year for that assessment to take place. For example, it may be at the point the review of the LDA would have otherwise taken place.
- 6.19 Some young people will move between local authority areas while they are being assessed for an EHC plan. The new authority in such cases should decide whether it needs to carry out an EHC needs assessment themselves and it must decide whether to undertake an EHC needs assessment if it receives a request from the young person. The new authority should take account of the fact that the old authority decided to carry out an EHC needs assessment when making its decision. If it decides to do so then it should use the information already gathered as part of its own EHC needs assessment. Depending on how far the assessment had progressed, this information should help the new authority complete the assessment more quickly than it would otherwise have done.

## **Non-statutory EHC plans issued before 1 September 2014**

- 6.20 Local authorities must comply with the Children and Families Act 2014 and associated regulations in relation to children and young people with non-statutory EHC plans who do not have a statement. It is highly unlikely that a child or young person issued with a non-statutory EHC plan will not require a statutory EHC plan. As local authorities have knowledge of these children and young people and their needs, it is likely that the consideration period will be a simple formality. Only in very exceptional cases would it be expected to take as long as six weeks.
- 6.21 Although local authorities have a maximum of 20 weeks within which to conduct a new EHC needs assessment and issue an EHC plan, as the non-statutory plan will contain much of the information needed for the statutory plan, in many cases the process should be completed in a much shorter timeframe.
- 6.22 Some children and young people will move between local authority areas while they are being assessed for an EHC plan. The new authority in such cases should decide whether it needs to carry out an EHC needs assessment themselves and it **must** decide whether to undertake an EHC needs assessment if it receives a request from the young person. The new authority should take account of the fact that the old authority decided to carry out an EHC needs assessment when making

its decision. If it decides to do so then it should use the information already gathered as part of its own EHC needs assessment. Depending on how far the assessment had progressed, this information should help the new authority complete the assessment more quickly than it would otherwise have done.

## Personal budgets

6.23 Under section 49 of the Children and Families Act 2014 and the SEN (Personal Budgets) Regulations 2014, parents of children and young people themselves who are either transferred from statements of SEN, LDAs or non-statutory EHC plans to statutory EHC plans, or those for whom EHC plans are drawn up, have the right to request a personal budget.

6.24 From September 2014, the local offer **must** include information about the option of having a personal budget. This should include a local policy on personal budgets, co-produced with parents and young people, providing information on:

- the types of services across education, health and social care that lend themselves to use of personal budgets
- how families can take control of those budgets (direct payments, notional and third party arrangements)
- the eligibility criteria and decision making processes for personal budgets, and
- the support available to help families manage a personal budget

6.25 The SEN Direct Payments Pilot Scheme for pathfinder and former Individual Budgets for Disabled Children Pilot authorities will cease on 30 September 2015. Any parents or young people receiving direct payments, under the scheme, for SEN provision in a statement of SEN or following a LDA will need to be transferred to EHC plans by this date if their direct payments are to continue. The pilot scheme closes to new entrants from 31 August 2014.



## 7. Arrangements relating to statements of SEN and Learning Difficulty Assessments for children and young people aged 18 and under in youth custody during the transition period.

- 7.1 New provisions for children and young people aged 18 and under (detained persons) who have been sentenced or remanded by the Courts to relevant youth accommodation (Young Offenders Institution, Secure Training Centre, Secure Children's Home or Secure College) commence on 1st April 2015. The new duties in relation to detained persons with EHC plans, and rights to request a detained person's EHC assessment and plan are set out in chapter 10 of the SEN and Disability Code of Practice: 0 to 25 Years. As with the Code, all references to local authority in this section refer to the home authority – for children and young people in relevant youth accommodation this is the local authority that maintained the statement or prepared the LDA.

### Children and young people entering or detained in relevant youth accommodation with a statement of SEN (Articles 14A, 30, 31 and 36 of the Transitional and Savings Provisions)

- 7.2 Local authorities **must** not cease a statement of SEN when a child or young person enters custody. Local authorities **must** promote the fulfilment of the detained person's learning potential while they are in custody (and on their release). From 1st April 2015, for a child or young person entering or detained in custody, any special educational provision specified in a statement of SEN will be deemed as if it were specified in an EHC plan. The local authority **must** arrange appropriate special educational provision for the detained person while they are detained. Appropriate special educational provision is the provision specified in the statement of SEN. If it is not practicable to arrange the provision specified in the statement of SEN, special educational provision corresponding as closely as possible to that in the statement of SEN **must** be arranged. If it appears to the local authority that the special educational provision in the statement of SEN is no longer appropriate, the local authority **must** arrange provision it considers appropriate and this should also trigger a transfer review (further information on arranging special educational provision whilst in custody is set out in 10.74 to 10.77 of the Code).
- 7.3 The local authority **must** consider a request for a detained person's EHC needs assessment from the appropriate person (either the detained person's parent, where the detained person is a child, or the young person, where the detained person is a young person) or the person in charge of the relevant youth accommodation (the Governor, Director or Principal in charge of the accommodation), whilst they are detained. The local authority should carry out a transfer review in custody where this has been requested to make the best use of

the time in detention and so that appropriate support can be put in place as soon as possible on release.

- 7.4 The local authority may carry out an EHC needs assessment at any time while the detained person is detained and should do this at key points in the detained person's education in line with the local transition plan. If this has not been carried out during custody, the local authority **must** carry out an EHC needs assessment as soon as possible on release unless they are due to undertake a transfer under wider provisions set out in chapter 5 for children and young people in year 9, expected to enter into further education in 2015 (See paragraph 5.10) or at other key transition points (see paragraph 5.12)
- 7.5 All transfer reviews for detained persons **must** be completed by 1st of April 2018 and, where this has not taken place, the local authority **must** carry out a detained person's needs assessment as soon as possible, and the special educational provision specified in the statement is treated as if it were contained within a plan.

## **Young people entering or in relevant youth accommodation with a LDA (Articles 29A and 29B of the Transitional and Savings Provisions)**

- 7.6 Local authorities **must** promote the fulfilment of the detained persons learning potential while they are in custody (and on their release). From 1st April 2015, if the young person had an LDA immediately before entering custody, the local authority **must** consider any request for a detained person's EHC needs assessment from the young person whilst they are detained, or from the person in charge of the relevant youth accommodation or a post-16 institution (in these circumstances a detained person's EHC needs assessment should only proceed with the young person's agreement). The local authority **must** carry out the detained person's EHC needs assessment where this has been requested and it may be necessary to for special educational provision to be made in accordance with an EHC plan, and where the child or young person will return to further education or training on release.
- 7.7 If the young person had an LDA immediately before entering custody, the local authority **must** carry out a detained person's EHC needs assessment where it may be necessary to for special educational provision to be made in accordance with an EHC plan and the detained person is expected to return to further education or training on release. The local authority may carry out a detained person's EHC needs assessment at any time from 1 April 2015 to 1 September 2016 while the detained person is detained and where it believes the detained person will return to further education on release. The local authority should take reasonable steps to inform those with LDAs of their right to request an EHC needs assessment.

7.8 From 1 September 2016, all detained persons who have an LDA, who need an EHC plan and who will return to further education and training on release **must** have one where it is appropriate. All transfers from LDAs to EHC plans **must** take place by 1 September 2016 and, where a transfer has not taken place by this date, the local authority should carry out a detained person's EHC needs assessment as soon as possible.

## **The process for transferring detained persons to the new SEN and disability system (Articles 32- 35 of the Transitional and Savings Provisions)**

7.9 To transfer a detained person from a statement of SEN or LDA to an EHC plan a local authority **must** undertake a 'transfer review'. The process is broadly similar to that set out in paragraphs 6.3 to 6.13 of this guidance but will require a detained person's EHC needs assessment and local authorities **must** have regard to the Code of Practice (in particular Chapter 10) when carrying out the assessment. Local authorities **must** give a minimum of two weeks' notice of the assessment to:

- the appropriate person
- the person in charge of the relevant youth accommodation
- the home Clinical Commissioning Group (CCG) (with responsibility for commissioning the detained person's health services before he or she entered the relevant youth accommodation)
- NHS England (since it has commissioning responsibility for health services for detained persons while they are in the relevant youth accommodation)
- local authority officers responsible for social care for children or young people with SEN
- where a detained person is registered at a school, the headteacher (or equivalent)
- where the detained young person is registered at a post-16 institution, the principal (or equivalent)
- where a detained person is registered at a Pupil Referral Unit, the principal (or equivalent)
- the YOT responsible for the detained person.

7.10 As with reviews in the community, the process **must** involve a meeting with the appropriate person. This meeting should take place in the relevant youth accommodation and in some cases it may be appropriate for this to take place via video link. In such cases, careful consideration should be given as to whether this is accessible for the detained person. The local authority may invite any other person that it thinks appropriate to attend the meeting, however where the meeting takes

place in the relevant youth accommodation, this is with the consent of the person in charge of the relevant youth accommodation.

7.11 To conclude a transfer review for a detained person the local authority **must**:

- send a copy of the finalised EHC plan to the appropriate person, the person in charge of the relevant youth accommodation, the youth offending team responsible for the detained person, the governing body, proprietor or principal of any school or other institution named in the plan, the home commissioning body for health care provision and the detained person's health services commissioner within 14 weeks (following expiry of the two week notice period), and **must** cease the statement or
- notify the appropriate person, the person in charge of the relevant youth accommodation, the home commissioning body for health services, the detained person's health service commissioner, the youth offending team and the headteacher of any school or college principle where the detained person is registered, of its decision that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan and that it is proposing to cease the statement.

From the point that the 'transfer review' (detained persons' EHC needs assessment) commences the appropriate person will have appeal rights under the new system

7.12 Where a local authority decides not to secure an EHC plan for a detained person transferring from a statement of SEN or a LDA, they **must** notify the appropriate person within 10 weeks of the start of their 'transfer review' (the EHC needs assessment). Under this circumstance, any statement of SEN will not be ceased until the end of the period that the appropriate person can consider mediation and register an appeal with the Tribunal, or if an appeal is registered:

- Until the Tribunal upholds the local authorities decision, or
- Until an EHC plan is secured following an order by the Tribunal

In any case, regardless of whether an EHC plan is issued, the local authority **must** continue to promote the fulfilment of the detained persons learning potential while they are in custody and on their release.

## **Partial transfers on entry to or exit from custody, on moving between places of relevant youth accommodation and on moving to a new local authority on release**

7.13 Where a detained person is part way through a transfer review on entry to custody, the local authority **must** continue and complete the process following the guidance on detained persons' EHC needs assessments set out in sections 10.111 to 10.114 of the Code of Practice.

- 7.14 The majority of children and young people in custody will be serving short sentences. In most cases the transfer process will not have been completed before the detained person is released. The local authority **must** continue and complete the transfer process in the community following the guidance in Chapter 6 of this guidance.
- 7.15 The timeframes and process for completing an incomplete assessment do not start afresh because a detained person is released or a child or young person is detained. To achieve this, a local authority may treat steps taken in respect of an EHC needs assessment (a transfer review) in the community as satisfying steps which are required to be taken for a detained persons EHC needs assessment and vice versa. (Regulation 15 of the Special Educational Needs and Disability (Detained Persons) Regulations 2015.) This is referred to in the Special Educational Needs and Disability Regulations 2015 as 'comparable requirements'.
- 7.16 Similarly, if the detained person is part way through a transfer review and they move from one place of relevant youth accommodation to another, the local authority and the appropriate CCG **must** continue and complete the process following the guidance set out in Chapter 10 of the Code. The timeframes and process for completing an incomplete assessment do not start afresh. Anything already completed in relation to a transfer review by the person in charge of the relevant youth accommodation, including information and advice received may be treated as having been completed in relation to the new relevant youth accommodation.
- 7.17 If the detained person is released to a new local authority while they are part way through a transfer review, the new local authority in such cases should use any additional information gathered as part of the transfer review to date. Depending on how far the transfer review had progressed, this information should help the new authority complete the transfer more quickly than it would otherwise have done. The new local authority should draw on the expertise and knowledge of the YOT to continue the assessment process.

## 8. Transition to setting-based SEN support

- 8.1 The *Special Educational Needs and Disability Code of Practice: 0-25 years* sets out clear guidance for early years settings, schools and further education and training providers on the process for appropriate identification, monitoring and securing further support for children and young people with SEN. For schools, this approach, known as SEN support, replaces the Early years action/early years action plus and School Action/School Action Plus categories in the 2001 SEN Code of Practice. It aims to focus the system around the child or young person and on the impact of the support provided to them, rather than on how they access support according to the category they fit into. It will also challenge educational institutions to improve the quality of teaching and learning for all children and young people, avoiding inappropriately labelling children and young people as having SEN.
- 8.2 The new SEN support arrangements come into force from 1 September 2014. This section sets out how early years settings and schools make the change from School Action and School Action Plus to SEN Support, and how it should be introduced in post-16 provision for young people with SEN. The legal definition of SEN has not changed so that no child or young person should lose their support simply because the system is changing. Special educational provision should continue for children and young people who need it because they need educational provision that is additional to or different from, that made generally for others of the same age in mainstream settings. It may change only if:
- a child or young person's learning needs have changed, or
  - the educational setting has changed its universal offer

### Transferring to SEN Support in the early years and in schools

- 8.3 In preparation for these changes, early years settings and schools should:
- begin to review core teaching and wider policies and how it meet the requirements in the new SEND Code of Practice
  - engage with parents and pupils with SEN more widely and put in place arrangements (or structures) on how they would regularly review and discuss progress
  - ensure class teachers are aware of the changes and recognise their responsibilities for identifying and supporting children with SEN
  - explore how they will monitor and track the progress and development of pupils with SEN
  - identify and deliver any training needed by staff
  - contribute to the development of the local offer

- engage with the LA in relation to delegated funding, joint commissioning, EHC plans and implications of personal budgets
- explore how to support pupils with SEN with their transition to another setting or school or post-16 education

8.4 From 1 September 2014, early years settings and schools should:

- continue to review core teaching and wider policies so that all teachers and early years staff are meeting the requirements in the new SEND Code of Practice
- as part of their ongoing review of support for children with SEN, schools and early years settings should review pupils on Early years action/early years action plus and School Action/ School Action Plus to put in place SEN Support. This will include setting clear targets for progress, agreeing what support should be provided and tracking how it is working. We anticipate that most of these children will have transferred to the SEN support category by spring 2015, with all pupils moving to SEN support by September 2015
- continue to put children, young people and parents at the centre of decision making, including making sure parents are fully informed and involved with how pupils are progressing
- record all who need special educational provision in the school census in January 2015
- publish the annual SEN information report (for schools only), and
- develop partnerships as needed with early years/primary/secondary/ post-16 providers to help smooth transitions

## **Introducing SEN Support in FE Colleges and sixth forms**

8.5 Under the 0-25 SEND Code of Practice, SEN support is being introduced into FE Colleges and sixth forms. This means that where a student has a learning difficulty or disability that calls for special educational provision, the college must use its best endeavours to put appropriate support in place. Young people with SEN should be supported to participate in discussions about their aspirations, their needs, and the support they think will help them best. Support should be kept under review and should draw on expertise within and beyond the college where needed. Support should be aimed at promoting student independence and enabling the young person to make good progress towards employment and/or higher education, independent living, good health and participating in the community, and colleges should be designing tailored study programmes which enable them to achieve the best possible outcomes in adult life.

8.6 In preparation for September colleges will need to have:

- reviewed the 0-25 SEND Code of Practice to ensure their provision will meet the requirements on teaching, curriculum and wider policies
- worked with students with SEN and their families to put in place arrangements or structures on how they will regularly engage and discuss progress
- explored how they will monitor and track the progress and development of children and young people with SEN and identify and deliver any training needed by staff across the workforce
- contributed to the development of the local offer and engaged with their local authority in relation to delegated funding, joint commissioning, EHC plans and implications of personal budgets

8.7 From 1 September 2014 they should be ready to:

- support new students through SEN support, using person-centred approaches, and working with young people and their families
- record all those who need special educational provision in the individual learning record, and
- develop partnerships with secondary schools and adult services (including employment) to support transition into college, and their exit into the next phase of their life



## Annex A:

### Requirements and expectations relating to the transfer of different groups of children and young people to the new SEN system

The table below sets out statutory requirements (R) and non-statutory expectations (E) relating to the transfer of different groups of children and young people to the new SEN system from statements of SEN, non-statutory EHC plans issued before 1 September 2014, and receiving support as a result of an LDA.

The academic year given is the latest academic year in which that group of children or young people would be transferred to the new system. Following consultation with parents, young people and relevant professionals, local authorities may decide to transfer children and young people in these groups earlier than the academic year shown in the table.

No.	Groups of children/young people	Latest academic year for transfer to new SEN system			
		2014/15	2015/16	2016/17	2017/18 (by 1 April 2018)
1	children moving from an early years setting to a school	E	R	R	R
2	children moving from infant to junior school	E	R	R	R
3	children moving from primary to middle school	E	R	R	R
4	children moving from primary to secondary school	E	R	R	R
5	children moving from middle to secondary school	E	R	R	R
6	all other children with statements of SEN in year 6 (including those not moving institution)	E	E	E	R
7	children in year 9	E	R	R	R

No.	Groups of children/young people	Latest academic year for transfer to new SEN system			
		2014/15	2015/16	2016/17	2017/18 (by 1 April 2018)
8	children/young people moving from school (including school sixth forms) to a post-16 institution or an apprenticeship	R	R	R	R
9	all other children/young people in year 11 (including those not moving institution)	E	E	E	R
10	those moving from mainstream to special school or vice versa	E	R	R	R
11	those moving between local authorities	E	E	E	R
12	those leaving youth custody	R (on release)	R (on release)	R (on release)	R (on release)
13	those with non-statutory EHC plans and who have a statement of SEN	E	E	E	R
14	those with non-statutory EHC plans but who do not have a statement of SEN	R			
15	those with statements of SEN or LDAs who receive direct payments, under the SEN Direct Payments Pilot Scheme	E	E (by 30/9/15)		
16	young people who receive support as a result of an LDA who intend to be in education beyond 31 August 2016	R (on request)	R (on request)		
17	young people who receive support as a result of an LDA who do not intend to be in education beyond 31 August 2016	E (on request)	E (on request)		
18	all others who do not fall into the above categories				R

## Further information

### Useful resources and external organisations

#### Education Act 1996

- [Part IV Education Act 1996](#)
- [The Education \(Special Educational Needs\) \(England\) \(Consolidation\) \(Amendment\) Regulations 2007](#)
- [Special Educational Needs Code of Practice 2001](#)
- [Inclusive Schooling guidance](#)

#### Learning and Skills Act 2000

- [The Learning and Skills Act 2000](#)
- [Learning Difficulty Assessments Guidance](#)

#### Children and Families Act 2014

- [Part 3 Children and Families Act 2014](#)
- [The Special Educational Needs and Disability Regulations 2014](#)
- [The Special Educational Needs \(Personal Budgets\) Regulations 2014](#)
- [The Special Educational Needs and Disability \(Miscellaneous Amendments\) Regulations 2014](#)
- [The Special Educational Needs and Disability \(Detained Persons\) Regulations 2015](#)
- [Special Educational Needs and Disability Code of Practice: 0-25](#)

### Other relevant departmental advice and statutory guidance

- Statutory guidance: '[SEND Code of Practice: 0 to 25 years](#)'



Department  
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