



Draft legislation on
Reform of provision for children and
young people with Special
Educational Needs

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

September 2012



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Foreword

Children and young people who have a special educational need or disability deserve the same life chances as every other child. But, too often, the systems that should support them and their families fail them, putting bureaucratic barriers in their way and failing to address their true needs.

In May 2012, we published *Support and aspiration: A new approach to special educational needs and disability – Progress and next steps*, to report on progress following the 2011 Special Educational Needs and Disability (SEND) Green Paper. That report provided proposals to reform provision for children and young people with special educational needs or with disabilities.

This document now sets out the draft legislation to put those proposals into practice, providing significant improvements to the support provided to children and young people, and to their parents. A single system would ensure children and young people received the support they need regardless of age or where they are taught, providing for them from birth until, where appropriate, their 25th birthday, with comparable statutory rights and protections throughout.

Local authorities in England would be required to work with local health services, to plan and commission support across education, health and social care. They would also be required to set out a local offer of the services available to children, young people and their families.

The current SEN statements and learning difficulties assessments would be replaced by a single assessment process. The resulting Education, Health and Care Plans would provide a commitment from all services to support educational and other outcomes. All young people and parents of children with an Education, Health and Care Plan would have the option of holding a personal budget, giving them greater control over how their support is delivered.

The reforms would also strengthen the redress process. Young people outside of the school system would be able to appeal to the First Tier Tribunal for the first time. Where parents or young people wished to make an appeal to the First Tier Tribunal (Special Educational Needs and Disability), they would first be required to go to mediation.

Together, these reforms build a system to work in the best interests of the children and young people it should serve and provide them with the greatest opportunity to succeed. The detail of the draft regulations and the guidance will be developed as we learn from the current pathfinders. It is intended that they would form part of the package of children and families legislation announced in the Queen's speech.

A handwritten signature in black ink, appearing to read 'Sarah Teather', written in a cursive style.

Sarah Teather MP
Minister of State for Children and Families

Provisions about children and young people in England with special educational needs

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PART 1

Special educational needs etc

1 When a child or young person has special educational needs

- (1) A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.
- (2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she –
 - (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
 - (b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made).
- (4) A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.
- (5) This section applies for the purposes of this Part.

2 Special educational provision, health provision and social care provision

- (1) “Special educational provision”, for a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in –
 - (a) mainstream schools in England,
 - (b) maintained nursery schools in England,
 - (c) mainstream post-16 institutions in England, or
 - (d) places in England at which relevant early years education is provided.
- (2) “Special educational provision”, for a child aged under two, means educational provision of any kind.
- (3) “Health provision” means the provision of health services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.
- (4) “Social care provision” means the provision made by a local authority in the exercise of its social services functions.

- (5) This section applies for the purposes of this Part.

Children and young people for whom a local authority is responsible

3 Identifying children and young people with special educational needs

A local authority in England must exercise its functions with a view to securing that it identifies all the children and young people in its area who have or may have special educational needs.

4 When a local authority is responsible for a child or young person

- (1) A local authority in England is responsible for a child or young person if he or she –
- (a) is in the authority’s area, and
 - (b) has been identified by the authority or brought to the authority’s attention as someone who has or may have special educational needs.
- (2) This section applies for the purposes of this Part.

Education, health and care provision: integration and joint commissioning

5 Promoting integration

- (1) A local authority in England must exercise its functions under this Part with a view to ensuring the integration of special educational provision with health provision and social care provision, where it thinks that this would –
- (a) promote the well-being of children or young people in its area who have special educational needs, or
 - (b) improve the quality of special educational provision –
 - (i) made in its area for children or young people who have special educational needs, or
 - (ii) made outside its area for children or young people for whom it is responsible who have special educational needs.
- (2) The reference in subsection (1) to the well-being of children and young people is to their well-being so far as relating to –
- (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) control by them over their day-to-day lives;
 - (d) participation in education, training or recreation;
 - (e) social and economic well-being;
 - (f) domestic, family and personal relationships;
 - (g) the contribution made by them to society.

6 Joint commissioning arrangements

- (1) A local authority in England and its partner clinical commissioning groups must make arrangements (“joint commissioning arrangements”) about the EHC provision to be secured for children and young people for whom the authority is responsible who have special educational needs.

- (2) In this Part “EHC provision” means –
 - (a) special educational provision;
 - (b) health provision;
 - (c) social care provision.
- (3) Joint commissioning arrangements must include arrangements for considering and agreeing –
 - (a) the EHC provision reasonably required by the special educational needs of the children and young people concerned;
 - (b) what EHC provision is to be secured;
 - (c) by whom EHC provision is to be secured;
 - (d) procedures for ensuring that disputes between the parties to the joint commissioning arrangements are resolved as quickly as possible.
- (4) Joint commissioning arrangements about securing EHC provision must in particular include arrangements for –
 - (a) securing EHC needs assessments;
 - (b) securing the EHC provision set out in EHC plans;
 - (c) agreeing personal budgets under section 26.
- (5) Joint commissioning arrangements may also include other provision.
- (6) The parties to joint commissioning arrangements must –
 - (a) have regard to them in the exercise of their functions, and
 - (b) keep them under review.
- (7) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section.
- (8) A “partner clinical commissioning group”, in relation to a local authority, is a clinical commissioning group whose area coincides with, or falls wholly or partly within, the authority’s area.

Review of education and care provision

7 Duty to keep education and care provision under review

- (1) A local authority in England must keep under review –
 - (a) the special educational provision and social care provision made in its area for children and young people who have special educational needs, and
 - (b) the special educational provision and social care provision made outside its area for children and young people for whom it is responsible who have special educational needs.
- (2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the special educational needs and social care needs of the children and young people concerned.
- (3) In exercising its functions under this section, the authority must consult –
 - (a) the governing bodies of maintained schools and maintained nursery schools in its area;

- (b) the proprietors of Academies in its area;
 - (c) the governing bodies, proprietors or principals of post-16 institutions in its area;
 - (d) the governing bodies of non-maintained special schools in its area;
 - (e) the advisory boards of children’s centres in its area;
 - (f) the providers of relevant early years education in its area;
 - (g) the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by children or young people for whom it is responsible.
- (4) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section.
- (5) “Children’s centre” has the meaning given by section 5A(4) of the Childcare Act 2006.

Co-operation and assistance

8 Co-operating generally: local authority functions

- (1) A local authority in England must co-operate with each of its local partners, and each local partner must co-operate with the authority, in the exercise of the authority’s functions under this Part.
- (2) Each of the following is a local partner of a local authority in England for this purpose –
- (a) where the authority is a county council for an area for which there is also a district council, the district council;
 - (b) the governing body of a maintained school or maintained nursery school that is maintained by the authority or provides education or training for children or young people for whom the authority is responsible;
 - (c) the proprietor of an Academy that is in the authority’s area or provides education or training for children or young people for whom the authority is responsible;
 - (d) the proprietor of a non-maintained special school that is in the authority’s area or provides education or training for children or young people for whom the authority is responsible;
 - (e) the governing body of an institution within the further education sector that is in the authority’s area, or is in England and is or is likely to be attended by children or young people for whom the authority is responsible;
 - (f) the management committee of a pupil referral unit that is in the authority’s area, or is in England and is or is likely to be attended by children or young people for whom the authority is responsible;
 - (g) any other person (other than a school or post-16 institution) that makes special educational provision for a child or young person for whom the authority is responsible;
 - (h) the National Health Service Commissioning Board;
 - (i) a clinical commissioning group –

- (i) whose area coincides with, or falls wholly or partly within, the authority's area, or
 - (ii) which exercises functions in relation to children or young people for whom the authority is responsible;
 - (j) an NHS trust or NHS foundation trust which provides services in the authority's area, or which exercises functions in relation to children or young people for whom the authority is responsible;
 - (k) a Local Health Board which exercises functions in relation to children or young people for whom the authority is responsible.
- (3) A local authority in England must make arrangements for ensuring co-operation between—
- (a) the officers of the authority who exercise the authority's functions relating to education or training, and
 - (b) the officers of the authority who exercise the authority's social services functions for children or young people with special educational needs.

9 Co-operating generally: governing body functions

- (1) This section applies where an appropriate authority for a school or post-16 institution mentioned in subsection (2) has functions under this Part.
- (2) The schools and post-16 institutions referred to in subsection (1) are—
- (a) mainstream schools;
 - (b) maintained nursery schools;
 - (c) 16 to 19 Academies;
 - (d) institutions within the further education sector;
 - (e) pupil referral units.
- (3) The appropriate authority must co-operate with each responsible local authority, and each responsible local authority must co-operate with the appropriate authority, in the exercise of those functions.
- (4) A responsible local authority, in relation to an appropriate authority for a school or post-16 institution mentioned in subsection (2), is a local authority in England that is responsible for any child or young person who is a registered pupil or a student at the school or post-16 institution.
- (5) The "appropriate authority" for a school or post-16 institution is—
- (a) in the case of a maintained school, maintained nursery school, or institution within the further education sector, the governing body;
 - (b) in the case of an Academy, the proprietor;
 - (c) in the case of a pupil referral unit, the management committee.

10 Co-operating in specific cases: local authority functions

- (1) This section applies where a local authority in England requests the co-operation of any of the following bodies in the exercise of a function under this Part—
- (a) another local authority;
 - (b) the National Health Service Commissioning Board;
 - (c) a clinical commissioning group;
 - (d) a Local Health Board;

- (e) an NHS trust or NHS foundation trust.
- (2) The body must comply with the request, unless it considers that doing so would –
 - (a) be incompatible with its own duties, or
 - (b) otherwise have an adverse effect on the exercise of its functions.
- (3) A body that decides not to comply with a request under subsection (1) must give the authority that made the request written reasons for the decision.
- (4) Regulations may provide that, where a body is under a duty to comply with a request to co-operate with a local authority in securing an EHC needs assessment or the preparation of an EHC plan, the body must comply with the request within a prescribed period, unless a prescribed exception applies.

Information and advice

11 Local offer for children and young people with special educational needs

- (1) A local authority in England must publish information about –
 - (a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs, and
 - (b) the provision within subsection (2) it expects to be available outside its area at that time for children and young people for whom it is responsible.
- (2) The provision for children and young people referred to in subsection (1) is –
 - (a) EHC provision;
 - (b) other educational provision;
 - (c) training provision;
 - (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided.
- (3) Information required to be published by an authority under this section is to be known as its “local offer”.
- (4) Regulations may make provision about –
 - (a) the information to be included in an authority’s local offer;
 - (b) how an authority’s local offer is to be published;
 - (c) who is to be consulted by an authority in preparing its local offer;
 - (d) how an authority is to involve children and young people with special educational needs, and the parents of children with special educational needs, in the preparation of its local offer.
- (5) The regulations may in particular require an authority’s local offer to include –
 - (a) information about how to obtain an EHC needs assessment;
 - (b) information about other sources of information, advice and support for children and young people with special educational needs and those who care for them;
 - (c) information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2);
 - (d) information about how to make a complaint about provision mentioned in subsection (2).

- (6) A local authority must keep its local offer under review and may from time to time revise it.

12 Advice and information for parents and young people

- (1) A local authority in England must arrange for the parents of children for whom it is responsible, and young people for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned.
- (2) The authority must take such steps as it thinks appropriate for making the services provided under subsection (1) known to –
 - (a) the parents of children in its area;
 - (b) young people in its area;
 - (c) the head teachers, proprietors and principals of schools and post-16 institutions in its area.
- (3) The authority may also take such steps as it thinks appropriate for making the services provided under subsection (1) known to such other persons as it thinks appropriate.

Mainstream education

13 Children and young people with EHC plans

- (1) This section applies where a local authority is securing the preparation of an EHC plan for a child or young person who is to be educated in a school or post-16 institution.
- (2) In a case within section 19(5) or 20(2), the local authority must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with –
 - (a) the wishes of the child's parent or the young person, or
 - (b) the provision of efficient education for others.
- (3) A local authority may rely on the exception in subsection (2)(b) in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.
- (4) A local authority may rely on the exception in subsection (2)(b) in relation to a particular maintained nursery school, mainstream school or mainstream post-16 institution only if it shows that there are no reasonable steps that it or the governing body, proprietor or principal could take to prevent the incompatibility.
- (5) The governing body, proprietor or principal of a maintained nursery school, mainstream school or mainstream post-16 institution may rely on the exception in subsection (2)(b) only if they show that there are no reasonable steps that they or the local authority could take to prevent the incompatibility.
- (6) Subsection (2) does not prevent the child or young person from being educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State.

- (7) This section does not affect the operation of section 36 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions).

14 Children and young people with special educational needs but no EHC plan

- (1) This section applies to a child or young person in England who has special educational needs but for whom no EHC plan is maintained, if he or she is to be educated in a school or post-16 institution.
- (2) The child or young person must be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, subject to subsections (3) and (4).
- (3) The child or young person may be educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State.
- (4) The child or young person may be educated in a special school or special post-16 institution during any period in which any of subsections (5) to (9) applies.
- (5) This subsection applies while the child or young person is admitted to a special school or special post-16 institution for the purposes of an EHC needs assessment, if all the following have agreed to his or her admission to the school or post-16 institution –
- (a) the local authority which is responsible for him or her;
 - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
 - (c) the child's parent or the young person;
 - (d) anyone else whose advice is required to be obtained in connection with the assessment by virtue of regulations under section 16(6).
- (6) This subsection applies while the child or young person remains admitted to a special school or special post-16 institution, in prescribed circumstances, following an EHC needs assessment at the school or post-16 institution.
- (7) This subsection applies while the child or young person is admitted to a special school or special post-16 institution, following a change in his or her circumstances, if all the following have agreed to his or her admission to the school or post-16 institution –
- (a) the local authority which is responsible for him or her;
 - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
 - (c) the child's parent or the young person.
- (8) This subsection applies while the child or young person is admitted to a special school which is established in a hospital and is –
- (a) a community or foundation special school, or
 - (b) an Academy school.
- (9) This subsection applies while the child is admitted to a special school or special post-16 institution that is an Academy, if the Academy arrangements made in respect of the school or post-16 institution permit it to admit children and young people with special educational needs for whom no EHC plan is maintained.

- (10) This section does not affect the operation of section 36 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions).

15 Children with SEN in maintained nurseries and mainstream schools

- (1) This section applies where a child with special educational needs is being educated in a maintained nursery school or a mainstream school.
- (2) Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs, subject to subsection (3).
- (3) Subsection (2) applies only so far as is reasonably practicable and is compatible with—
- (a) the child receiving the special educational provision called for by his or her special educational needs,
 - (b) the provision of efficient education for the children with whom he or she will be educated, and
 - (c) the efficient use of resources.

Assessment

16 Assessment of education, health and care needs

- (1) This section applies where all the following requirements are met in respect of a child or young person who has or may have special educational needs—
- (a) a local authority has become responsible for the child or young person;
 - (b) the authority is of the opinion that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;
 - (c) no EHC plan is maintained for the child or young person;
 - (d) the child or young person has not been assessed under this section during the previous six months.
- (2) The local authority must give notice to the child's parent or the young person—
- (a) that it is considering securing an assessment of the child's or young person's educational, health and social care needs (an "EHC needs assessment"), and
 - (b) that the parent or young person has the right to—
 - (i) express views to the authority (orally or in writing), and
 - (ii) submit evidence to the authority.
- (3) The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted, the authority is of the opinion that—
- (a) the child or young person has or may have special educational needs, and
 - (b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (4) After an EHC needs assessment has been carried out, the local authority must inform the child's parent or the young person of—

- (a) the outcome of the assessment,
 - (b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and
 - (c) the reasons for that decision.
- (5) In forming an opinion for the purposes of this section in relation to a young person aged over 18, a local authority must have regard to his or her age.
- (6) Regulations may make provision about EHC needs assessments, in particular –
- (a) about giving notice, expressing views and submitting evidence under subsection (2);
 - (b) about how assessments are to be conducted;
 - (c) about advice to be obtained in connection with an assessment;
 - (d) requiring the attendance of persons of a prescribed description in connection with an assessment;
 - (e) about combining an EHC needs assessment with other assessments;
 - (f) about the use for the purposes of an EHC needs assessment of information obtained as a result of other assessments;
 - (g) about the use of information obtained as a result of an EHC needs assessment, including the use of that information for the purposes of other assessments.

Education, health and care plans

17 Education, health and care plans

- (1) Where, as a result of an EHC needs assessment, a local authority decides that it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan –
- (a) the authority must secure that an EHC plan is prepared for the child or young person, and
 - (b) once an EHC plan has been prepared, it must maintain the plan.
- (2) For the purposes of this Part, an EHC plan is a plan setting out –
- (a) the child’s or young person’s special educational needs;
 - (b) the outcomes sought for him or her;
 - (c) the special educational provision required by him or her;
 - (d) any health and social care provision of a prescribed description required by him or her.
- (3) In making a decision for the purposes of this section in relation to a young person aged over 18, a local authority must have regard to his or her age.
- (4) Regulations may make provision about the preparation, content and maintenance of EHC plans.

18 Preparation of EHC plans: draft plan

- (1) Where a local authority is required to secure that an EHC plan is prepared for a child or young person it must –
- (a) send a draft of the EHC plan to the child’s parent or the young person, and

- (b) give the child's parent or young person notice of his or her right to –
 - (i) make representations about the content of the draft plan, and
 - (ii) request the authority to secure that a particular school or other institution within subsection (2) is named in the plan.
- (2) A school or other institution is within this subsection if it is –
 - (a) a maintained school;
 - (b) a maintained nursery school;
 - (c) an Academy;
 - (d) an institution within the further education sector;
 - (e) a non-maintained special school.
- (3) A notice under subsection (1)(b) must specify a period before the end of which any representations or requests must be made.
- (4) The draft EHC plan sent to the child's parent or the young person must not –
 - (a) name a school or other institution, or
 - (b) specify a type of school or other institution.

19 Finalising EHC plans: request for particular school or other institution

- (1) This section applies where, before the end of the period specified in a notice under section 18(3), a request is made to a local authority to secure that a particular school or other institution is named in an EHC plan.
- (2) The local authority must consult –
 - (a) the governing body, proprietor or principal of the school or other institution,
 - (b) the governing body, proprietor or principal of any other school or other institution the authority is considering having named in the plan, and
 - (c) if a school or other institution is within paragraph (a) or (b) and is maintained by another local authority, that authority.
- (3) The local authority must secure that the EHC plan names the school or other institution specified in the request, unless subsection (4) applies.
- (4) This subsection applies where the local authority thinks that –
 - (a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or
 - (b) the attendance of the child or young person at the requested school or other institution would be incompatible with –
 - (i) the provision of efficient education for others, or
 - (ii) the efficient use of resources.
- (5) Where subsection (4) applies, the local authority must secure that the plan –
 - (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person, or
 - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.
- (6) Before securing that the plan names a school or other institution under subsection (5)(a), the local authority must (if it has not already done so) consult –

- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
 - (b) if that school or other institution is maintained by another local authority, that authority.
- (7) The local authority must, at the end of the period specified in the notice under section 18(3), secure that any changes it thinks necessary are made to the draft EHC plan.
- (8) The local authority must send a copy of the finalised EHC plan to –
- (a) the child’s parent or the young person, and
 - (b) the governing body, proprietor or principal of any school or other institution named in the plan.

20 Finalising EHC plans: no request for particular school or other institution

- (1) This section applies where no request is made to a local authority before the end of the period specified in a notice under section 18(3) to secure that a particular school or other institution is named in an EHC plan.
- (2) The local authority must secure that the plan –
- (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person concerned, or
 - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.
- (3) Before securing that the plan names a school or other institution under subsection (2)(a), the local authority must consult –
- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
 - (b) if that school or other institution is maintained by another local authority, that authority.
- (4) The local authority must also secure that any changes it thinks necessary are made to the draft EHC plan.
- (5) The local authority must send a copy of the finalised EHC plan to –
- (a) the child’s parent or the young person, and
 - (b) the governing body, proprietor or principal of any school or other institution named in the plan.

21 Duty to secure special educational provision in accordance with EHC Plan

- (1) A local authority that maintains an EHC plan for a child or young person must secure the special educational provision set out in the plan.
- (2) Subsection (1) does not apply if the child’s parent or the young person has made suitable arrangements.

22 Schools and other institutions named in EHC plan: duty to admit

- (1) If a maintained school, maintained nursery school, Academy, institution within the further education sector or non-maintained special school is named in an EHC plan, the governing body, proprietor or principal of the school or

post-16 institution must admit the child or young person for whom the plan is maintained.

- (2) Subsection (1) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of SSFA 1998.
- (3) Subsection (1) does not affect any power to exclude a pupil or student from a school or other institution.

23 Reviews and re-assessments

- (1) A local authority must review an EHC plan that it maintains –
 - (a) in the period of 12 months starting with the date on which the plan was first made, and
 - (b) in each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section.
- (2) A local authority must secure a re-assessment of the educational, health and social care needs of a child or young person for whom it maintains an EHC plan if a request is made to it by –
 - (a) the child's parent or the young person, or
 - (b) the governing body, proprietor or principal of the school, post-16 institution or other institution which the child or young person attends.
- (3) Subsection (2) is subject to any contrary provision in regulations made under subsection (5)(b).
- (4) A local authority may also secure a re-assessment of those needs at any other time if it thinks it necessary.
- (5) Regulations may make provision about reviews and re-assessments, in particular –
 - (a) about other circumstances in which a local authority must or may review an EHC plan or secure a re-assessment (including at the end of a specified phase of a child's or young person's education);
 - (b) about circumstances in which it is not necessary for a local authority to review an EHC plan or secure a re-assessment;
 - (c) about amending or replacing an EHC plan following a review or re-assessment.
- (6) Regulations under subsection (5) about re-assessments may in particular apply provisions of or made under this Part that are applicable to EHC needs assessments to re-assessments, with or without modifications.
- (7) Regulations under subsection (5)(c) must include provision applying section 13 (mainstream education for children and young people with EHC plan) to a case where an EHC plan is to be amended following a review.

24 Ceasing to maintain an EHC plan

- (1) A local authority may cease to maintain an EHC plan for a child or young person only if –
 - (a) the authority is no longer responsible for the child or young person, or
 - (b) the authority determines that it is no longer necessary for the plan to be maintained.

- (2) The circumstances in which it is no longer necessary for an EHC plan to be maintained for a child include where the child no longer requires the special educational provision set out in the plan.
- (3) The circumstances in which it is no longer necessary for an EHC plan to be maintained for a young person include where –
 - (a) the educational outcomes set out in the plan have been achieved;
 - (b) the young person is no longer receiving education or training;
 - (c) the young person is receiving apprenticeship training (as defined in section 83(5) of the Apprenticeships, Skills, Children and Learning Act 2009).
- (4) Regulations may make provision about the procedure to be followed by a local authority when determining whether to cease to maintain an EHC plan.

25 Release of child or young person for whom EHC plan previously maintained

- (1) This section applies where –
 - (a) a child or young person who has been subject to a custodial sentence is released, and
 - (b) an EHC plan was maintained for the child or young person immediately before the start of the custodial sentence.
- (2) The authority that is responsible for the child or young person on the release date must –
 - (a) maintain the plan, and
 - (b) review the plan as soon as reasonably practicable after that date.
- (3) Subsection (2)(b) is subject to any contrary provision in regulations under section 23(5)(b).

26 Personal budgets

- (1) A local authority that maintains an EHC plan for a child or young person must prepare a personal budget for him or her if asked to do so by the child's parent or the young person.
- (2) The authority prepares a "personal budget" for the child or young person if it identifies an amount as available to secure particular provision set out in the EHC plan, with a view to the child's parent or the young person being involved in securing the provision.
- (3) Regulations may make provision about personal budgets, in particular –
 - (a) about requests for personal budgets;
 - (b) about the amount of a personal budget;
 - (c) about the sources of the funds making up a personal budget;
 - (d) for payments ("direct payments") representing all or part of a personal budget to be made to a child's parent or a young person, or a person of a prescribed description in prescribed circumstances, in order to secure provision to which the budget relates;
 - (e) about the description of provision to which personal budgets and direct payments may (and may not) relate;
 - (f) for a personal budget or direct payment to cover the agreed cost of the provision to which the budget or payment relates;

- (g) about when, how, to whom and on what conditions direct payments may (and may not) be made;
 - (h) about when direct payments may be required to be repaid and the recovery of unpaid sums;
 - (i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment;
 - (j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.
- (4) If the regulations include provision authorising direct payments, they must –
- (a) require the consent of a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, to be obtained before direct payments are made;
 - (b) require the authority to stop making direct payments where the required consent is withdrawn.
- (5) Provision acquired by means of a direct payment made by a local authority is to be treated as provision secured by the authority in pursuance of its duty under section 21(1), subject to any conditions set out in regulations.

27 Continuation of services under section 17 of the Children Act 1989

After section 17 of the Children Act 1989 (provision of services for children etc) insert –

“17ZA Section 17 services: continued provision where EHC plan maintained

- (1) This section applies where, immediately before a child in need reaches the age of 18 –
 - (a) a local authority is providing services for the child in the exercise of functions conferred by section 17, and
 - (b) an EHC plan is maintained for the child.
- (2) The local authority may continue to provide services for the child in the exercise of those functions after the child reaches the age of 18, but may not continue to do so after the EHC plan has ceased to be maintained.
- (3) In this section “EHC plan” has the meaning given by section 17(2) of the Children and Families Act 2013.”

Appeals, mediation and dispute resolution

28 Appeals

- (1) A child’s parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 29 (mediation).
- (2) The matters are –
 - (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;
 - (b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;
 - (c) where an EHC plan is maintained for the child or young person –

- (i) the child's or young person's special educational needs as set out in the plan;
 - (ii) the special educational provision set out in the plan;
 - (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;
 - (iv) if no school or other institution is named in the plan, that fact;
 - (d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 23 following a request to do so;
 - (e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 23;
 - (f) a decision of a local authority under section 24 to cease to maintain an EHC plan for the child or young person.
- (3) A child's parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c) –
- (a) when an EHC plan is first finalised for the child or young person, and
 - (b) following an amendment or replacement of the plan.
- (4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC plans, in particular about –
- (a) other matters relating to EHC plans against which appeals may be brought;
 - (b) making and determining appeals;
 - (c) the powers of the First-tier Tribunal on determining an appeal;
 - (d) unopposed appeals.

29 Mediation

- (1) This section applies where a child's parent or young person intends to appeal to the First-tier Tribunal under section 28 in respect of anything done by a local authority, or the content of an EHC plan maintained by a local authority.
- (2) This section does not apply in respect of an appeal concerning only –
- (a) the school or other institution named in an EHC plan;
 - (b) the type of school or other institution specified in an EHC plan;
 - (c) the fact that an EHC plan does not name a school or other institution.
- (3) The child's parent or young person must notify the authority of his or her intention to appeal.
- (4) The local authority must then arrange for mediation between it and the parent or young person.
- (5) The child's parent or young person must take part in mediation under this section before making an appeal.
- (6) The authority must arrange for the mediation to be conducted by an independent person.
- (7) For the purposes of subsection (6), a person is not independent if he or she is employed by a local authority in England.

- (8) At the conclusion of the mediation, the mediator must issue a certificate to both the local authority and the parent or young person –
 - (a) setting out what has been agreed by the parties (including any agreed time limits), or
 - (b) stating that no agreement has been reached.
- (9) The parent or young person may make the appeal only if –
 - (a) no agreement has been reached, or
 - (b) the local authority does not act in accordance with what is set out under subsection (8)(a) before any agreed time limits expire.
- (10) Regulations may make provision about mediation under this section, in particular –
 - (a) about giving notice;
 - (b) imposing time limits;
 - (c) enabling a local authority to take prescribed steps following the conclusion of the mediation;
 - (d) about circumstances in which mediation under this section is not necessary;
 - (e) about the circumstances in which the parties to mediation need not meet face-to-face during the mediation;
 - (f) about the consequences of failure to take part or properly take part in the mediation;
 - (g) about who may attend the mediation;
 - (h) where a child's parent is a party to the mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;
 - (i) about the provision of advocacy and other support services for the parent or young person;
 - (j) requiring a local authority to pay the other party's reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit;
 - (k) about the training, qualifications and experience of persons who may act as a mediator;
 - (l) requiring a parent or young person to take prescribed steps when appealing to the First-tier Tribunal under section 28 after mediation;
 - (m) requiring the First-tier Tribunal not to determine an appeal under section 28 if requirements imposed under this section have not been met.

30 Resolution of disagreements

- (1) A local authority in England must make arrangements with a view to avoiding or resolving disagreements within subsection (2).
- (2) The disagreements are those about the exercise by the local authority or relevant bodies of their functions under this Part, where the disagreement is between –
 - (a) the local authority or a relevant body, and
 - (b) the parents of children, and young people, in the authority's area.
- (3) A local authority in England must make arrangements with a view to avoiding or resolving, in each relevant school or post-16 institution, disagreements within subsection (4).

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- (4) The disagreements are those about the special educational provision made for a child or young person with special educational needs who is a registered pupil or a student at the relevant school or post-16 institution concerned, where the disagreement is between –
- (a) the child’s parent, or the young person, and
 - (b) the appropriate authority for the school or post-16 institution.
- (5) Arrangements within this section must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply.
- (6) For the purposes of subsection (5), a person is not independent if he or she is employed by a local authority in England.
- (7) A local authority in England must take such steps as it thinks appropriate for making the arrangements under this section known to –
- (a) the parents of children in its area with special educational needs,
 - (b) young people in its area with special educational needs, and
 - (c) the head teachers, governing bodies, proprietors and principals of schools and post-16 institutions in its area.
- (8) A local authority in England may take such steps as it thinks appropriate for making the arrangements under this section known to such other persons as it thinks appropriate.
- (9) In this section –
- “relevant body” means –
- (a) the governing body of a maintained school, maintained nursery school or institution within the further education sector;
 - (b) the proprietor of an Academy;
- “relevant school or post-16 institution” means –
- (a) a maintained school;
 - (b) a maintained nursery school;
 - (c) a post-16 institution;
 - (d) an Academy;
 - (e) an independent school;
 - (f) a non-maintained special school;
 - (g) a pupil referral unit;
 - (h) a place at which relevant early years education is provided.
- (10) For the purposes of this section, the “appropriate authority” for a relevant school or post-16 institution is –
- (a) in the case of a maintained school, maintained nursery school or non-maintained special school, the governing body;
 - (b) in the case of a post-16 institution, the governing body, proprietor or principal;
 - (c) in the case of an Academy or independent school, the proprietor;
 - (d) in the case of a pupil referral unit, the management committee;
 - (e) in the case of a place at which relevant early years education is provided, the provider of the relevant early years education.

31 Appeals and claims by children: pilot schemes

- (1) The Secretary of State may by order make pilot schemes enabling children in England to –
 - (a) appeal to the First-tier Tribunal under section 28;
 - (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability.
- (2) An order under subsection (1) may, in particular, make provision –
 - (a) about the age from which children may appeal or make a claim;
 - (b) in respect of appeals under section 28, about mediation and the application of section 29;
 - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
 - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
 - (e) enabling a person to exercise a child’s rights under an order under subsection (1) on behalf of the child;
 - (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
 - (g) about the provision of advocacy and other support services to children;
 - (h) requiring notices to be given to a child (as well as to his or her parent);
 - (i) requiring documents to be served on a child (as well as on his or her parent).
- (3) An order under subsection (1) may apply a statutory provision to an appeal brought or claim made under that order, with or without modifications.
- (4) In subsection (3), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.
- (5) This section is repealed at the end of five years beginning with the day on which this Act is passed.

32 Appeals and claims by children: follow-up provision

- (1) The Secretary of State may by order provide that children in England may –
 - (a) appeal to the First-tier Tribunal under section 28;
 - (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability.
- (2) The Secretary of State may not make an order under subsection (1) until the end of two years beginning with the day on which the first order is made under section 31(1).
- (3) An order under subsection (1) may, in particular, make provision –
 - (a) about the age from which children may appeal or make a claim;
 - (b) in respect of appeals under section 28, about mediation and the application of section 29;

- (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
 - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
 - (e) enabling a person to exercise a child's rights under an order under subsection (1) on behalf of the child;
 - (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
 - (g) about the provision of advocacy and other support services to children;
 - (h) requiring notices to be given to a child (as well as to his or her parent);
 - (i) requiring documents to be served on a child (as well as on his or her parent).
- (4) An order under subsection (1) may –
- (a) amend a statutory provision, or
 - (b) apply a statutory provision, with or without modifications.
- (5) In subsection (4), "statutory provision" means a provision made by or under this or any other Act, whenever passed or made.

33 Equality Act 2010: claims against schools by disabled young people

In Part 2 of Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement in tribunals in England and Wales), in paragraph 3 (who may make a claim that a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability) for "to the Tribunal by the person's parent" substitute "–

- (a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;
- (b) to the Welsh Tribunal by the person's parent."

Special educational provision: functions of local authorities

34 Special educational provision otherwise than in schools, post-16 institutions etc

- (1) A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.
- (2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.
- (3) Before doing so, the authority must consult the child's parent or the young person.

35 Special educational provision outside England and Wales

- (1) This section applies where a local authority in England makes arrangements for a child or young person for whom it maintains an EHC plan to attend an institution outside England and Wales which specialises in providing for children or young people with special educational needs.

- (2) The arrangements may (in particular) include contributing to or paying –
 - (a) fees charged by the institution;
 - (b) the child's or young person's travelling expenses;
 - (c) expenses reasonably incurred in maintaining the child or young person while at the institution or travelling to or from it;
 - (d) expenses reasonably incurred by someone accompanying the child or young person while travelling to or from the institution or staying there.

36 Fees for special educational provision at non-maintained schools and post-16 institutions

- (1) Subsection (2) applies where –
 - (a) a local authority maintains an EHC plan for a child or young person,
 - (b) special educational provision in respect of the child or young person is made at a school, post-16 institution or place at which relevant early years education is provided, and
 - (c) that school, institution or place is named in the EHC plan.
- (2) The local authority must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the EHC plan.
- (3) Subsection (4) applies where –
 - (a) a local authority is responsible for a child or young person for whom no EHC plan is maintained,
 - (b) special educational provision in respect of the child or young person is made at a school, post-16 institution or place at which relevant early years education is provided, and
 - (c) the local authority is satisfied that –
 - (i) the interests of the child or young person require special educational provision to be made, and
 - (ii) it is appropriate for education or training to be provided to the child or young person at the school, institution or place in question.
- (4) The local authority must pay any fees payable in respect of the special educational provision made at the school, institution or place in question which is required to meet the special educational needs of the child or young person.
- (5) Where board and lodging are provided for the child or young person at the school, post-16 institution or place mentioned in subsection (2) or (4), the authority must also pay any fees in respect of the board and lodging, if satisfied that special educational provision cannot be provided at the school, post-16 institution or place unless the board and lodging are also provided.

37 Supply of goods and services

- (1) A local authority in England may supply goods and services to –
 - (a) the governing body of a maintained school or maintained nursery school in England;
 - (b) the proprietor of an Academy;

- (c) the governing body of an institution within the further education sector that the authority thinks is or is to be attended by a young person for whom the authority maintains an EHC plan, but only for the purpose set out in subsection (2).
- (2) The purpose is that of assisting the governing body or proprietor in the performance of –
 - (a) any duty imposed on the body under section 39(2) (duty to use best endeavours to secure special educational provision called for by special educational needs);
 - (b) in the case of a governing body of a community or foundation special school, any duty imposed on the body.
- (3) The goods and services may be supplied on the terms and conditions that the authority thinks fit, including terms as to payment.
- (4) A local authority in England may supply goods and services to another authority or any other person (other than a governing body or proprietor within subsection (1)), but only for the purpose set out in subsection (5).
- (5) The purpose is that of assisting the authority or other person in making special educational provision for a child who is receiving relevant early years education, in a case where the authority has decided that the special educational provision is necessary for the child.

38 Access to schools, post-16 institutions and other institutions

- (1) This section applies where a local authority in England maintains an EHC plan for a child or young person.
- (2) A person authorised by the authority is entitled to have access at any reasonable time to the premises of a school, post-16 institution or other institution at which education or training is provided in pursuance of the plan, for the purpose of monitoring the education or training.

Special educational provision: functions of governing bodies and others

39 Using best endeavours to secure special educational provision

- (1) This section imposes duties on the appropriate authorities for the following schools and other institutions in England –
 - (a) mainstream schools;
 - (b) maintained nursery schools;
 - (c) 16 to 19 Academies;
 - (d) alternative provision Academies;
 - (e) institutions within the further education sector;
 - (f) pupil referral units.
- (2) If a registered pupil or a student at a school or other institution has special educational needs, the appropriate authority must, in exercising its functions in relation to the school or other institution, use its best endeavours to secure that the special educational provision called for by the pupil's or student's special educational needs is made.
- (3) The “appropriate authority” for a school or other institution is –

- (a) in the case of a maintained school, maintained nursery school or institution within the further education sector, the governing body;
- (b) in the case of an Academy, the proprietor;
- (c) in the case of a pupil referral unit, the management committee.

40 SEN co-ordinators

- (1) This section imposes duties on the appropriate authorities of the following schools in England –
 - (a) mainstream schools;
 - (b) maintained nursery schools.
- (2) The appropriate authority must designate a member of staff at the school (to be known as the “SEN co-ordinator”) as having responsibility for co-ordinating the provision for pupils with special educational needs.
- (3) Regulations may –
 - (a) require appropriate authorities to which this section applies to ensure that SEN co-ordinators have prescribed qualifications or prescribed experience (or both);
 - (b) confer other functions relating to SEN co-ordinators on appropriate authorities to which this section applies.
- (4) The “appropriate authority” for a school is –
 - (a) in the case of a maintained school or maintained nursery school, the governing body;
 - (b) in the case of an Academy, the proprietor.

41 Informing parents and young people

- (1) This section applies if –
 - (a) special educational provision is made for a child or young person at a maintained school, a maintained nursery school, an Academy school, an alternative provision Academy or a pupil referral unit, and
 - (b) no EHC plan is maintained for the child or young person.
- (2) The appropriate authority for the school must inform the child’s parent or the young person that special educational provision is being made for the child or young person.
- (3) The “appropriate authority” for a school is –
 - (a) in the case of a maintained school or maintained nursery school, the governing body;
 - (b) in the case of an Academy school or an alternative provision Academy, the proprietor;
 - (c) in the case of a pupil referral unit, the management committee.

42 SEN information report

- (1) This section imposes a duty on –
 - (a) the governing bodies of maintained schools and maintained nursery schools in England, and
 - (b) the proprietors of Academy schools.

- (2) A governing body or proprietor must prepare a report containing SEN information.
- (3) “SEN information” is –
- (a) such information as may be prescribed about the implementation of the governing body’s or proprietor’s policy for pupils at the school with special educational needs;
 - (b) information as to –
 - (i) the arrangements for the admission of disabled persons as pupils at the school;
 - (ii) the steps taken to prevent disabled pupils from being treated less favourably than other pupils;
 - (iii) the facilities provided to assist access to the school by disabled pupils;
 - (iv) the plan prepared by the governing body or proprietor under paragraph 3 of Schedule 10 to the Equality Act 2010 (accessibility plan).
- (4) In this section –
- “disabled person” means a person who is a disabled person for the purposes of the Equality Act 2010;
- “disabled pupil” includes a disabled person who may be admitted to a school as a pupil.

Information to improve well-being of children and young people with SEN

43 Provision and publication of special needs information

- (1) The Secretary of State must exercise the powers listed in subsection (2) with a view to securing, in particular, the provision of special needs information which the Secretary of State thinks would be likely to assist the Secretary of State or others in improving the well-being of –
- (a) children in England with special educational needs, and
 - (b) young people aged under 19 in England with special educational needs.
- (2) The powers are those of the Secretary of State under the following provisions of EA 1996 (so far as relating to England) –
- (a) section 29 (information from local authorities for purposes of Secretary of State’s functions);
 - (b) section 408 (information in relation to maintained schools);
 - (c) section 537 (information about schools);
 - (d) section 537A (information about individual pupils);
 - (e) section 537B (information about children receiving funded education outside school);
 - (f) section 538 (information from governing bodies for purposes of Secretary of State’s education functions).
- (3) In each calendar year, the Secretary of State must publish, or arrange to be published, special needs information which has been obtained under EA 1996, where the Secretary of State thinks the publication of the information would be likely to assist the Secretary of State or others in improving the well-being of –
- (a) children in England with special educational needs, and

- (b) young people aged under 19 in England with special educational needs.
- (4) Information published under subsection (3) must be published in the form and manner that the Secretary of State thinks fit, except that the names of the children and young people to whom the information relates must not be included.
- (5) The Secretary of State may make a charge, or arrange for a charge to be made, for documents supplied by virtue of this section.
- (6) A charge under subsection (5) must not exceed the cost of supply.
- (7) “Special needs information” means –
 - (a) information about children, and young people, in England with special educational needs, and
 - (b) information about special educational provision made for those children and young people.
- (8) References to the well-being of children and young people with special educational needs are to their well-being so far as relating to –
 - (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) control by them over their day-to-day lives;
 - (d) participation in education, training or recreation;
 - (e) social and economic well-being;
 - (f) domestic, family and personal relationships;
 - (g) the contribution made by them to society.

Code of practice

44 Code of practice

- (1) The Secretary of State must issue a code of practice giving guidance about the exercise of their functions under this Part to –
 - (a) local authorities in England;
 - (b) the governing bodies of schools;
 - (c) the governing bodies of institutions within the further education sector;
 - (d) the proprietors of Academies;
 - (e) the management committees of pupil referral units;
 - (f) providers of relevant early years education.
- (2) The Secretary of State may revise the code from time to time.
- (3) The Secretary of State must publish the current version of the code.
- (4) The persons listed in paragraphs (a) to (e) of subsection (1) must have regard to the code in exercising their functions under this Part.
- (5) Those who exercise functions for the purpose of the exercise by those persons of functions under this Part must also have regard to the code.
- (6) The First-tier Tribunal must have regard to any provision of the code that appears to it to be relevant to a question arising on an appeal under this Part.

*Special schools etc***45 Special schools, non-maintained special schools and independent schools**

- (1) EA 1996 is amended as follows.
- (2) For section 337 (special schools) substitute –

“337 Special schools

A school is a special school if it is specially organised to make special educational provision for pupils with special educational needs, and it is –

- (a) maintained by a local authority,
 - (b) an Academy school, or
 - (c) a non-maintained special school.”
- (3) In section 342 (approval of non-maintained special schools), in subsection (1)(b), after “community or foundation special school” insert “or an Academy school”.
 - (4) In section 463 (meaning of “independent school”) –
 - (a) in subsection (1)(b), after “for whom” insert “an EHC plan is maintained or for whom”;
 - (b) in subsection (1), for “or a special school not so maintained” substitute “non-maintained special school”;
 - (c) after subsection (2) insert –
 - “(3) In subsection (1), “EHC plan” has the meaning given by section 17(2) of the Children and Families Act 2013.”

*Supplementary***46 Parents and young people lacking capacity**

- (1) In this Part, references to the parent of a child are to be read as references to any representative of the parent, in a case where the parent lacks capacity at the relevant time.
- (2) In this Part, references in the provisions listed in subsection (3) to a young person are to be read as references to –
 - (a) any representative of the young person, in a case where the young person lacks capacity at the relevant time;
 - (b) the young person’s parent, in a case where the young person lacks capacity at the relevant time and does not have a representative;
 - (c) any representative of the young person’s parent, in a case where both the young person and the young person’s parent lack capacity at the relevant time and the young person does not have a representative.
- (3) The provisions are –
 - section 12(1) and (2)(b);
 - section 13(2)(a);
 - section 14(5)(c) and (7)(c);
 - section 16(2) (opening words and paragraph (b)) and (4) (opening words);
 - section 18(1)(a) and (b) and (4);

- section 19(8)(a);
 - section 20(5)(a);
 - section 21(2);
 - section 23(2)(a);
 - section 26(1) (second reference), (2) (second reference), (3)(d) and (4)(a);
 - section 28(1) and (3) (opening words);
 - section 29(1), (3), (4), (7), (8) and (9)(i) and (l);
 - section 30(2)(b), (4)(a) and (6)(b);
 - section 34(3);
 - section 41(2) (first reference).
- (4) Subsections (1) and (2)(c) have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005 (Act does not permit decisions on discharging parental responsibilities in matters not relating to a child’s property to be made on a person’s behalf).
- (5) “Representative”, in relation to a parent or young person, means –
- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent’s or young person’s behalf in relation to matters within this Part;
 - (b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or young person to make decisions on his or her behalf in relation to matters within this Part;
 - (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.
- (6) “The relevant time” means the time at which, under this Part, something is required or permitted to be done by or in relation to a child’s parent or a young person.
- (7) References to lacking capacity are to lacking capacity within the meaning of the Mental Capacity Act 2005.

47 Part does not apply to detained children and young people

Nothing in or made under this Part applies to a child or young person who is detained in pursuance of –

- (a) an order made by a court, or
- (b) an order of recall made by the Secretary of State.

48 Interpretation

- (1) In this Part –
- “EA 1996” means the Education Act 1996;
 - “SSFA 1998” means the School Standards and Framework Act 1998.
- (2) In this Part –
- “education” has the same meaning as in section 15ZA of EA 1996;
 - “EHC needs assessment” has the meaning given by section 16(2)(a);
 - “EHC plan” means a plan within section 17(2);

- “EHC provision” has the meaning given by section 6(2);
- “health provision” has the meaning given by section 2(3);
- “mainstream post-16 institution” means a post-16 institution that is not a special post-16 institution;
- “mainstream school” means –
- (a) a maintained school that is not a special school;
 - (b) an Academy school that is not a special school;
- “maintained school” means –
- (a) a community, foundation or voluntary school, or
 - (b) a community or foundation special school not established in a hospital;
- “post-16 institution” means an institution which –
- (a) provides education or training for those over compulsory school age, but
 - (b) is not a school or other institution within the higher education sector;
- “relevant early years education” has the meaning given by section 123 of SSFA 1998;
- “social care provision” has the meaning given by section 2(4);
- “social services functions” in relation to a local authority has the same meaning as in the Local Authority Social Services Act 1970;
- “special educational needs” has the meaning given by section 1(1);
- “special educational provision” has the meaning given by section 2(1) and (2);
- “special post-16 institution” means a post-16 institution that is specially organised to make special educational provision for students with special educational needs;
- “training” has the same meaning as in section 15ZA of EA 1996;
- “young person” means a person over compulsory school age but under 25.

- (3) EA 1996 and sections 1 to 26, 28 to 32, 34 to 44 and 46 to 51 of this Part are to be read as if those sections were contained in EA 1996.
- (4) A reference in this Part to –
 - (a) a community, foundation or voluntary school, or
 - (b) a community or foundation special school,
 is to such a school within the meaning of SSFA 1998.

49 Disapplication of Chapter 1 of Part 4 of EA 1996 in relation to children in England

Chapter 1 of Part 4 of EA 1996 (children with special educational needs) ceases to apply in relation to children in the area of a local authority in England.

Final provisions

50 Commencement

- (1) This Part comes into force on such day as the Secretary of State appoints by order.

- (2) An order under subsection (1) may –
 - (a) appoint different days for different purposes, and
 - (b) contain transitional, transitory or saving provision in connection with the coming into force of this Part.

51 Extent

- (1) This Part extends to England and Wales only, subject to subsection (2).
- (2) An amendment or repeal made by this Part has the same extent as the provision to which it relates.

These notes refer to provisions about children and young people in England with special educational needs

PROVISIONS ABOUT CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to provisions about children and young people in England with special educational needs, published for pre-legislative scrutiny in September 2012. They have been prepared by the Department for Education in order to assist the reader in understanding the provisions. They do not form part of the provisions and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the draft provisions. They are not, and are not meant to be, a comprehensive description of them. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Government's policy reforms for special educational needs are set out in its Green Paper, *Support and Aspiration: A new approach to Special Educational Needs and Disability (March 2011)* and the follow up *Progress and Next Steps* publication (May 2012). These clauses set out the statutory provisions to support those reforms.

4. The provisions are about identifying children and young people with special educational needs, assessing their needs and making provision for them. They require local authorities to keep local provision under review, to cooperate with their partners to plan and commission provision and publish clear information on services available. The clauses set out the statutory framework for identifying, and assessing the needs of children and young people who require support beyond that which is normally available. They are intended to extend the rights parents of children with statements of special educational needs currently have to express a preference for the school they wish their child to attend to young people and to include within the institutions for which they can express a preference Academies, further education colleges and sixth form colleges. They are also intended to give them greater control over the way their support is provided. The provisions introduce a requirement for mediation before appeals can be made to the First-tier Tribunal. This is to help resolve disagreements without the need for Tribunal appeals wherever possible. The provisions also include

These notes refer to provisions about children and young people in England with special educational needs

a power to pilot giving children the right to make appeals to the Tribunal themselves, rather than it having to be through their parent.

5. The clauses replace and extend, in relation to England, provisions in Part 4 of the Education Act 1996 and associated Schedules and regulations, and sections 139A to 139C of the Learning and Skills Act 2000, which will be repealed in relation to children and young people in the area of a local authority in England. Consequential amendments giving effect to this would be addressed in any future Bill to implement these provisions. Regulations will set out the detailed requirements of particular provisions where indicated in the draft clauses. The regulations will be drafted, taking account of pre-legislative scrutiny and findings from local pathfinders testing the reforms in practice. A statutory Code of Practice will be developed to provide guidance on the new framework for special educational needs.

6. Clauses 1 to 4 explain which children and young people these provisions relate to, what is meant by special educational provision, and when a local authority is responsible for a child or young person with special educational needs.

7. Clauses 5 and 6 promote integrated provision for education, health and social care and are intended to build on the Health and Social Care Act 2012 and the provisions in the draft Care and Support Bill 2012. Clause 6 requires joint planning and commissioning of services for children and young people with special educational needs between local authorities and local clinical commissioning groups.

8. Clause 7 requires local authorities to keep special educational provision and social care provision for children and young people with special educational needs under review

9. Clauses 8 to 10 require co-operation between local authorities and a range of bodies commissioning and providing services for children and young people with special educational needs. They support all of the special educational needs provisions but in particular those of clauses 5 and 6 (integration and joint commissioning), 7 (keeping provision under review) and 11 (publishing a local offer of services).

10. Clauses 11 and 12 require local authorities to provide information about services available to local children and young people with special educational needs and their families. The duties of cooperation set out in clauses 8 to 10 will contribute to the preparation and review of a local authority's local offer and the integrated working and joint commissioning undertaken for clauses 5 and 6, and the review of provision in clause 7, will be reflected in the services set out in the local offer.

11. Clauses 13 and 14 set out the action a local authority must take regarding education placements in the mainstream for children and young people with special educational needs. The clauses provide for children and young people with special educational needs, whether or not they have an Education, Health and Care Plan, to be educated in mainstream settings with specified exceptions. These clauses complement

These notes refer to provisions about children and young people in England with special educational needs

clause 18, which makes specific provision for a parent of a child, or a young person, with an Education, Health and Care Plan who expresses a preference for a particular state funded school, non-maintained special school, further education college or sixth form college. Clause 15 relates to children with special educational needs in school engaging in activities with other children.

12. Clause 16 makes provision for assessing children and young people with special educational needs.

13. Clauses 17 to 27 set out the duties on local authorities for preparing and delivering Education, Health and Care Plans for children and young people with special educational needs. Local authorities must give parents of children with Plans and young people with Plans the chance to say where they want to be educated, offer personal budgets to parents and young people with a Plan, ensure provision in a Plan is made, carry out reviews and reassessments and decide whether to stop maintaining a Plan.

14. They largely replicate provision in the Education Act 1996 but increase the range of institutions which parents and young people can request to be named in the Plan and extend the scope of a statutory plan to those in further education or training (up to the young person's 25th birthday when appropriate).

15. The co-operation duties in clauses 8 to 10 and the integrated working and joint commissioning carried out by local authorities and their health and other partners under clauses 5 and 6 are intended to help the local authority in developing packages of support to be included in Education, Health and Care Plans.

16. Clauses 28 to 32 set out the circumstances in which parents and young people can appeal to the independent First-tier Tribunal (Special Educational Needs and Disability) where they do not agree with the decisions made by their local authority in relation to assessing special educational needs and making special educational provision. While parents of children in schools already have a right to appeal to the Tribunal young people have not previously had that right, nor has that right applied in respect of young people in post-16 institutions. The provisions introduce a requirement for parents or young people to take part in mediation before appealing to the Tribunal (clause 29). They set out provisions for avoiding or resolving disagreements involving schools and colleges (Clause 30). They also provide for pilots to be conducted giving children themselves the right to appeal. Clause 33 makes provision in relation to claims of disability discrimination against schools under the Equality Act 2010, which also go to the First-tier Tribunal.

17. Clauses 34 to 38 set out the local authority's powers and duties in relation to arranging and/or funding special educational provision for individual children or young people outside of schools, post-16 institutions or providers of early years education in England and in specialist institutions outside of England and Wales; supplying goods and services to others to help them make special educational

These notes refer to provisions about children and young people in England with special educational needs

provision; and accessing schools and other institutions to monitor education and training provided for children or young people with Education, Health and Care Plans.

18. Clauses 39 to 42 set out the specific duties on schools and other institutions in relation to children and young people with special educational needs.

19. Clause 43 requires the Secretary of State to use his information-gathering powers to secure special needs information that would assist him or others in improving the well-being of children and young people under 19 with special educational needs.

20. Clause 44 requires the Secretary of State to issue a code of practice giving guidance about these provisions.

21. Clause 45 changes the definition of a special school in the Education Act 1996 and makes consequential amendments.

22. Clause 46 makes provision for cases where a child's parent or a young person lacks the capacity necessary to take specific action.

23. Clause 47 provides that these provisions do not apply to a child or young person who is detained in custody.

TERRITORIAL EXTENT AND APPLICATION

24. These provisions extend to England and Wales, but the majority only apply in England. There will be some cross border effects, where a child or young person in England attends a school or institution in Wales, and the amendments made by clause 45 will apply in Wales. A legislative consent motion will be sought.

25. The provisions do not extend to Scotland or Northern Ireland, and so have no effect there.

COMMENTARY

Special educational needs etc

Clause 1: When a child or young person has special educational needs

26. A child or young person has special educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for them (see clause 2).

27. Children and young people with special educational needs may require extra or different provision in relation to thinking and understanding, as a result of physical

These notes refer to provisions about children and young people in England with special educational needs

or sensory difficulties, emotional or behavioural difficulties, difficulties with speech and language or how they relate to and behave with other people. Disabled children or young people may require extra or different provision, for example, if they are less mobile than their peers and require additional or extra provision so they can access the same learning opportunities.

28. A child or young person does not have a learning difficulty or disability simply because the language in which they are (or will be) taught is different from the one they speak at home.

29. This clause replicates the current definition of special educational needs in section 312 Education Act 1996 and the definition of learning difficulty in section 15Z (6) and (7) of the Education Act 1996, applying a single definition to children and young people from birth to their 25th birthday.

30. Clause 48 defines various terms:

- Young person is a person over compulsory school age but under 25.
- Mainstream schools are maintained schools and Academy schools that are not special schools. A maintained school is a community, foundation or voluntary school, or a community or foundation special school not established in a hospital.
- Mainstream post-16 institutions are those which are not specially organised to make special educational provision for students with special educational needs, that is, further education colleges, sixth form colleges, 16-19 Academies and training providers, but not independent specialist providers.

** Compulsory school age* has the meaning given by section 8 of the Education Act 1996 (c.56). A person begins to be of compulsory school age when he attains the age of 5 on 31st March, 31st August or 31st December in any year, or where he attains the age of 5 on another date, he begins to be of compulsory school age on whichever of those dates comes next after his fifth birthday. He ceases to be of compulsory school age on the last Friday in June of the school year in which he attains the age of 16.

**child* is a person who is not over compulsory school age: see section 579 of the Education Act 1996

Clause 2: Special educational provision, health provision and social care provision

31. This clause defines special educational provision, health provision and social care provision.

These notes refer to provisions about children and young people in England with special educational needs

32. Special educational provision is additional to or different from that which would normally be provided for children or young people of the same age in mainstream schools or colleges, maintained nursery schools and places at which relevant early years education is provided. It might include support from a specialist teacher, access to a specialist teaching programme, specialist ICT equipment or a specialist job coach. For children under two it means educational provision of any kind.

33. Health provision means health services provided under the National Health Service and social care provision is provision made by local authority social services.

34. The clause replicates, and replaces in England, the current definition of special educational provision in section 312 Education Act 1996 and applies it to young people over compulsory school age. The Education Act provision will be repealed in relation to England when these provisions are introduced to Parliament.

35. Relevant early years education is defined in clause 48 as free early years provision (as defined in section 20 of the Childcare Act 2006 (c.21)) which is provided under arrangements made by a local authority pursuant to section 7 of the Childcare Act 2006.

Children and young people for whom a local authority is responsible

Clause 3: Identifying children and young people with special educational needs

36. This clause places a duty on local authorities to identify all those children and young people in their area who have special educational needs. Children and young people can be brought to the attention of the local authority by their parents or by professionals, for example a social worker, General Practitioner, health visitor, teacher, early years professional or a further education tutor.

37. This clause is based on, but differs from section 321 of the Education Act 1996 and section 13(5) of the Education Act 1996 and will apply in England. The Education Act provision will be repealed in relation to England when these provisions are introduced to Parliament.

Clause 4: When a local authority is responsible for a child or young person

38. This clause specifies the children and young people for whom a local authority is responsible for the purposes of these provisions, which includes provision for identifying and assessing a child or young person's education, health and care needs and drawing up an Education Health and Care Plan to meet them and preparing a local offer of services that are available for children and young people with special educational needs and their families.

39. A local authority is responsible for a child or young person if he or she is in the authority's area and he or she has been identified by the authority or brought to its attention as someone who has or may have special educational needs. This will cover children who are in the authority's area and educated within it and those for whom the

These notes refer to provisions about children and young people in England with special educational needs

authority is responsible but who are educated outside its area. This would include, for example, children or young people in the local authority's area with an Education, Health and Care Plan who the authority has placed in an independent school or post-16 Independent Specialist Provider.

40. This clause replaces, in England, section 321 of the Education Act 1996 and section 139B(4) of the Learning and Skills Act 2000. The Education Act provision will be repealed in relation to England when these provisions are introduced to Parliament.

Education, Health and Care provision: integration and joint commissioning

Clause 5: Promoting integration

41. Local authorities are required to carry out their functions in relation to special educational provision in a way that promotes integration between special educational provision, health provision and social care provision where they consider that this would promote the well-being of children or young people or where it would improve the quality of special educational provision for them (as described in *subsection (1)*).

42. The clause is intended to assist children and young people with more complex special educational, health and social care needs by improving the way services work together to provide support for them.

43. The clause reflects the duty placed on clinical commissioning groups by section 14Z1 of the National Health Service Act 2006 (as inserted by section 26 of the Health and Social Care Act 2012) and the proposed duty on local authorities under clause 6 of the draft Care and Support Bill which look to improve integrated working between services.

Clause 6: Joint commissioning arrangements

44. This clause requires the local authority and local Clinical Commissioning Groups to work in partnership and make arrangements for commissioning jointly special educational provision, health provision and social care provision for children and young people with special educational needs for whom the local authority is responsible. It does not specify the form which the arrangements should take as this should be agreed locally.

45. The joint commissioning arrangements must include arrangements for the local authority and Clinical Commissioning Groups to consider and agree the special educational, health and social care provision required locally, and to determine what provision is to be secured and by whom, in order to meet that need. In addition to the wider strategy, the arrangements will also include procedures for resolving disputes between the partners.

46. The joint commissioning arrangements are also intended to help support other provisions. It is anticipated that the arrangements will help the local authority better

These notes refer to provisions about children and young people in England with special educational needs

inform its local offer (see clause 11), help those children and young people who have special educational, health and social care needs by ensuring that there are adequate and ‘joined up’ assessments under clause 16, help secure the provision included in those Plans, and help in agreeing personal budgets for providing support (see clause 26). The local authority and its partner Clinical Commissioning Groups are required to act consistently with the joint commissioning arrangements and to keep them under review so they can be updated where necessary.

47. The duty under joint commissioning arrangements may be fulfilled by making use of existing local arrangements where they are used to meet the purposes set out under this clause. Such arrangements will include joint strategic needs assessments and joint health and wellbeing strategies developed pursuant to s116 of the Local Government and Public Involvement in Health Act 2007 (as amended by sections 192 and 193 of the Health and Social Care Act 2012).

Review of education and care provision

Clause 7: Duty to keep education and care provision under review

48. This clause requires local authorities in England to keep under review the special educational provision and social care provision made in their area for children and young people with special educational needs and the provision made outside their area for children and young people with special educational needs for whom they are responsible.

49. Local authorities must consider the extent of provision and whether it is sufficient to meet children and young people’s special educational needs and social care needs. This complements the local authority’s duties under section 14 and section 15ZA of the Education Act 1996 to secure sufficient schools and suitable education and training for young people.

50. When keeping their provision under review local authorities are required to consult with the governing bodies, proprietors and principals of maintained schools, maintained nursery schools, Academies, non-maintained special schools and colleges in their area, including post-16 Independent Specialist Providers and training providers. They are required to consult the advisory boards of children’s centres and all providers of early years education in their area. They must also consult the governing bodies, proprietors and principals of schools and colleges in other local authority areas in England and Wales that are attended or likely to be attended by children or young people with special educational needs for whom they are responsible.

51. In carrying out their duties under this clause local authorities must have regard to the relevant Joint Strategic Needs Assessment and Health and Well-being Strategy.

52. This clause replaces, in England, section 315 of the Education Act 1996 and will operate alongside clause 6 to provide the local authority with relevant information with which to prepare the local offer.

These notes refer to provisions about children and young people in England with special educational needs

Co-operation and assistance

Clause 8: Co-operating generally: local authority functions

53. This clause is a reciprocal duty of co-operation which requires local authorities and partners (listed in *subsection (2)*) to co-operate with one another in the exercise of the authority's functions relating to children and young people with special educational needs. Those partners include the governing bodies of maintained schools, proprietors of Academies (including 16-19 Academies) and non-maintained special schools, institutions in the further education sector (further education colleges and sixth form colleges), management committees of pupil referral units and a range of health bodies, including the National Health Commissioning Board, clinical commissioning groups and NHS Trusts or NHS Foundation Trusts.

54. The local authority must also ensure that its education and training officers co-operate with its social services officers.

Clause 9: Co-operating generally: governing body functions

55. This clause complements the duty in clause 8. It requires co-operation between governing bodies of schools and institutions in the further education sector (further education colleges and sixth form colleges) and 16-19 Academies and local authorities in the delivery of the governing body's duties set out in these provisions.

Clause 10: Co-operating in specific cases: local authority functions

56. This clause supplements the duties in clauses 8 and 9. It requires health service partners and other local authorities to co-operate when asked by a local authority for help in carrying out its duties towards children and young people with special educational needs.

57. Requests for cooperation could be in relation to assessments of individual children's special educational needs and preparation of Education, Health and Care Plans. Regulations may impose time limits where a request to co-operate relates to local authority duties in these areas.

58. This clause replaces, in England, section 322 of the Education Act 1996.

Information and advice

Clause 11: Local offer for children and young people with special educational needs

59. This clause requires local authorities to publish information about services they expect to be available for children and young people with special educational needs. The information will be called the "local offer" and local authorities will keep their local offer under review and revise it. The local offer must include information about the provision the local authority expects to be available in its own area for children and young people with special educational needs and outside of its area for the children and young people for whom it is responsible, regardless of whether or not

These notes refer to provisions about children and young people in England with special educational needs

they have Education, Health and Care Plans. Information about provision outside the local authority's area could include, for example, specialist provision located in a neighbouring authority which is available to children and young people in its area.

60. The local offer will cover special educational, health and social care provision, other educational provision, training provision, and arrangements for children and young people to travel to schools, colleges (including, for example, further education colleges, sixth form colleges, independent specialist providers or training providers) and providers of relevant early years education.

61. Regulations will set out information local authorities should include in their local offer, how it is to be published, who is to be consulted in preparing it and how the authority will involve children and young people with special educational needs and parents of children with special educational needs in preparing it. Local authorities may have to include information about how to seek an assessment for an Education Health and Care Plan, about other sources of information, advice and support, and about how to make a complaint about provision in the local offer. The regulations could also set out the extent of the information local authorities should include about provision outside of their area, but local authorities will be free to include other information in their local offer.

Clause 12: Advice and information for parents and young people

62. This clause requires local authorities to make arrangements for advice and information about special educational needs to be provided for the parents of children, and young people, in its area with those needs, and to make the services provided known to those people and to schools and colleges and others they consider appropriate. Local authorities already provide information and advice for parents through their special educational needs Parent Partnership Services.

63. This clause replaces and extends section 332A of the Education Act 1996 under which local authorities have provided special educational needs parent partnership services. Section 332A related to children, parents and schools. The new clause extends the reach of the provision in section 332A to young people. It places a duty on local authorities to make these provisions known to the head teachers, proprietors and principals of schools and post-16 institutions in their area. The local authority may also inform anyone else it thinks is appropriate.

Mainstream education

Clause 13: Children and young people with Education, Health and Care Plans

64. Clause 18 provides for parents of children with Education, Health and Care Plans or a young person with a Plan to be able to express a preference for any state-funded school (including Academy or Free School), non-maintained special school, or institution in the further education sector (further education college or sixth form college). Clause 13 sets out what action should be taken when a local authority is making an Education, Health and Care Plan for a child or young person with special

These notes refer to provisions about children and young people in England with special educational needs

educational needs who is to go to a school or college and the child's parents or the young person do not ask for a particular school or college to be named in the Plan, or where they did make a request, but the local authority is not going to name the school or college requested.

65. It places a duty on the local authority to make sure that the Plan provides for the child or young person to be educated in a maintained nursery school or mainstream setting (that is, not in a special school or special college) unless that is against the wishes of the young person or the child's parent, or would damage the efficient education of others and there are no reasonable steps that could be taken to overcome this. If one of those conditions applies, the child or young person's Plan can provide for them to be educated in a special school or a special post-16 institution such as an independent specialist provider.

66. This clause replaces, in England, sections 316 and 316A of the Education Act 1996 and extends the provisions to young people in further education

Clause 14: Children and young people with special educational needs but no Education, Health and Care Plan

67. This clause applies to a child or young person in England who has special educational needs but no Education, Health and Care Plan and who is to be educated in a school or college. It sets out the general principle that those children and young people must be educated in a maintained nursery school, mainstream school or mainstream college except in particular circumstances. These are: where it is agreed that they are admitted to a special school or special post-16 institution to be assessed for an Education, Health and Care Plan; it is agreed that they are admitted to a special school or special post-16 institution following a change in their circumstances; they are admitted to a special school which is established in a hospital; or where they are admitted to a Special Academy whose Academy arrangements allow it to admit children or young people with special educational needs who do not have an Education, Health and Care Plan.

68. This clause replaces, in England, section 316 and 316A of the Education Act 1996 and extends the provisions to young people in further education and training.

Clause 15: Children with special educational needs in maintained nursery schools and mainstream schools

69. When a child with special educational needs is being educated in a maintained nursery school or a mainstream school the school must enable the child to take part in the activities of the school with other children as far as is reasonably practicable and so long as this ensures the child gets the special educational provision they need, it does not damage the education of the other children and it does not mean an inefficient use of resources.

70. This clause replaces, in England, section 317(4) of the Education Act 1996.

These notes refer to provisions about children and young people in England with special educational needs

Assessment

Clause 16: Assessment of education, health and care needs

71. This clause sets out the local authority's duties when assessing a child or young person for whom they are responsible. The local authority must inform the child's parents or the young person that they intend to carry out an education, health and care needs assessment and make sure that they are aware of their rights to have their own views considered by the local authority (either orally or in writing).

72. The local authority must carry out an assessment if, after taking account of any views expressed and evidence submitted, it thinks that the child or young person has or may have special educational needs and that it may be necessary for special educational provision to be made for a child or young person through an Education, Health and Care Plan. Parents and young people should be informed of the outcome of the assessment and whether the local authority intends to prepare an Education, Health and Care Plan. Further detail about the assessment process will be set out in regulations, including, for example, how assessments are conducted and advice obtained and how parents and young people can express their views and submit evidence.

73. Clause 28 provides that if, having received and considered a request for an assessment, a local authority decides not to carry one out, the child's parents or the young person may appeal against that decision to the First-tier Tribunal.

74. The provision in *subsection (5)* is intended to make clear that when a local authority is deciding whether to carry out an assessment for a young person aged 19 or over, it must have regard to that person's age. Young people up to their 25th birthday may have an assessment for an Education, Health and Care Plan. A local authority may continue to maintain an Education, Health and Care Plan until a young person reaches the age of 25 if that young person needs more time to complete their education or training and gain the skills they need to make a successful transition to independence. Young people will be ready to leave education or training and make the transition into adult life at differing ages and it will not always be appropriate for a young person to continue to have an Education, Health and Care Plan until their 25th birthday.

75. This clause replaces, in England, sections 323 and 331 of the Education Act 1996 and will replace sections 139A to 139C of the Learning and Skills Act 2000. Those provisions will be repealed when these provisions are introduced to Parliament.

Education, Health and Care Plans

Clause 17: Education, health and care plans

76. This clause sets out what a local authority must do if the education, health and care assessment in clause 16 indicates that a child or young person requires an Education, Health and Care Plan for their special educational provision.

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77. The local authority is under a duty to make sure that a Plan is prepared and then implemented. The Plan should set out the short and long term outcomes that it is designed to help the child or young person achieve and the special educational, health and social care provision that will be made to support them. This could include, for example, access to specialist teaching, speech and language therapy provision, and short breaks. It may not always be necessary for the local authority to maintain an Education, Health and Care Plan once a young person is over 18, but the local authority will be able to decide whether it is necessary for it to do so, for example, where a young person needs time to complete a particular course or training. Further detail about the content of an Education, Health and Care Plan may be set out in regulations.

78. When a local authority is deciding whether or not a young person aged 19 or over needs an Education, Health and Care Plan, it should take into account that person's age. Young people up to age 25 may have a Plan, but it will not always be appropriate for them to have a Plan until they reach 25, for example, if the young person moves into employment or completes their further education or training. Young people aged 19 or over will be ready to leave education and training and make the transition into adult life at differing ages.

79. This clause replaces, in England, section 324 of the Education Act 1996.

Clause 18: Preparation of Education, Health and Care Plans: draft plan

80. This clause sets out the process that must be undertaken by a local authority when preparing a draft Education, Health and Care Plan. The local authority must send a copy of the draft plan to the child's parent or the young person and make sure that they are aware of the ways in which they can express their views on the draft plan.

81. The draft plan must not name a specific institution or a type of institution. This is so that parents or young people have the opportunity to request (before the end of the time period which is specified in the notice sent to the parent or young person under subsection (1)(b)) that a particular school, further education college, or other institution is named in the Plan before it is finalised. These institutions include any maintained school or Academy, any maintained nursery school, any institution in the further education sector (further education college or sixth form college) and any non-maintained special school. Parents and young people will also be able make representations for an independent school or post-16 independent specialist provider as is the case under the current legislative framework (although there will be no corresponding duty on the local authority to name such an institution in the Education, Health and Care Plan). Local authorities may also specify education otherwise than in a school or post-16 institution in an Education, Health and Care Plan where they consider this to be suitable provision.

82. This clause replaces, in England, section 323 of the Education Act 1996.

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Clause 19: Finalising Education Health and Care Plans: request for particular school or other institution

83. This clause applies where the child's parent or the young person has received a draft Plan and requested that a particular maintained school, maintained nursery school, Academy, further education institution (further education college or sixth form college) or non-maintained special school is named in the Plan.

84. The local authority is required to consult any institution that it is considering naming in the Plan and, where that institution is maintained by another local authority, the other authority. The local authority must comply with the parent or young person's request unless it would not meet the child or young person's special educational needs, or be incompatible with the efficient education of others or the efficient use of resources. If it believes that these circumstances apply, the local authority must name the school or other institution, or type of institution, that the local authority considers to be most appropriate for the child or young person (having consulted the particular institution before naming it in the Plan). A copy of the final Plan must then be sent to the child's parent or the young person and to the school, college or other institution that has been named in the Plan.

85. This clause replaces, in England, section 324 and parts of Schedule 27 of the Education Act 1996.

Clause 20: Finalising Education, Health and Care Plans: no request for particular school or other institution

86. This clause applies where the child's parent or young person has received a draft Plan but has not made a request for a particular maintained school, Academy, maintained nursery school, further education institution (a further education college or sixth form college) or non-maintained special school. They may have instead said they would like an independent school, independent specialist provider, training provider or early years education provider to be named, or may have made no request at all.

87. If no request has been received (or they have said they would like an independent provider to be named), the Plan must name the specific institution or type of institution that the local authority considers appropriate. The local authority must consult any school or institution that it is considering naming, and where that institution is maintained by another local authority, that authority, before finalising the Plan. A copy of the final Plan must then be sent to the child's parent or the young person and the school or other institution named in the Plan.

88. Further duties on the local authority which apply in these circumstances are set out in clause 13 (duty to educate within the mainstream sector).

89. This clause replaces, in England, section 324 of the Education Act 1996.

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Clause 21: Duty to secure special educational provision in accordance with Education, Health and Care Plan

90. Where a Plan is maintained for a child or young person, the local authority must make sure that the special educational provision set out in it is made. The local authority need not make the provision set out in the Plan if the child's parent or the young person makes alternative, suitable arrangements.

91. This clause replaces, in England, section 324 of the Education Act 1996.

Clause 22: Schools and other institutions named in Education, Health and Care Plan: duty to admit

92. Where a maintained school, maintained nursery school, Academy, further education institution (further education college or sixth form college) or non-maintained special school is named in an Education, Health and Care Plan it must admit the child or young person.

93. This clause replaces, in England, section 324 of the Education Act 1996.

Clause 23: Reviews and reassessments

94. This clause requires local authorities to review a child or young person's Education, Health and Care Plan at least every 12 months. It also sets out when reassessments must take place. A review is intended to consider whether the provision in the Plan is meeting the child or young person's assessed needs and whether they are making progress towards the outcomes identified. A reassessment means undertaking the assessment process in Clause 16 again, for example when a child or young person's needs may have changed.

95. The local authority must carry out a reassessment if one is requested by the child's parent, the young person or the school, college or other institution that they attend, subject to particular exemptions to be set out in Regulations which are likely to include where a previous assessment has been conducted relatively recently. The local authority also has the power to carry out a re-assessment without waiting for one to be requested by a parent or school. More detail about the process for reviewing, amending or replacing Education, Health and Care Plans will be provided in Regulations.

96. This clause replaces, in England, section 323 of the Education Act 1996.

Clause 24: Ceasing to maintain an Education, Health and Care Plan

97. A local authority may only stop maintaining an Education, Health and Care Plan (i.e. providing what is set out in the plan) if they are no longer responsible for that child or young person, for example if the child or young person has moved to another area, or they consider that it is no longer necessary for the Plan to be maintained.

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98. The clause sets out some of the circumstances under which it would no longer be necessary to maintain the Plan, for example, where the educational outcomes set out in the plan for the young person have been achieved, or he or she is no longer receiving education or training.

Clause 25: Release of a child or young person for whom Education, Health and Care Plan previously maintained

99. If a child or young person who is released from a custodial sentence previously had an Education, Health and Care Plan, the local authority that is responsible for child or young person on their release (which may not be the same local authority that secured the Plan originally) must maintain the previous Plan and review it as soon as is practicable after release. The circumstances under which it is not necessary to review a plan are to be set out in regulations under clause 23(5)(b). This is likely to include cases where the period in custody is short and a review has been carried out prior to the period of custody.

Clause 26: Personal budgets

100. This clause requires local authorities to prepare a personal budget for children or young people with an Education, Health and Care Plan if asked to do so by the parent or young person. A personal budget is an amount available to secure particular provision set out in the Education, Health and Care Plan and it provides a way of involving parents or young people in securing that provision.

101. Personal budgets can take the form of direct payments which families can spend themselves or notional budgets which they can devise with the local authority and which the local authority can spend on their behalf at their direction by arranging the provision in the plan – or a combination of both.

102. Regulations will provide details about personal budgets, including provision that may be included in a personal budget or to which a direct payment may relate, the provision of information, support and advice in connection with personal budgets and direct payments, and when, to whom and on what conditions direct payments may or may not be made.

103. Any regulations which authorise direct payments to a parent or a young person must require them to consent before a direct payment can be made. They must also require local authorities to stop making direct payments where that consent is withdrawn.

104. Provision purchased with a direct payment will be treated as provision secured by the local authority for the purposes of fulfilling its duty under clause 21 to secure the special educational provision in an Education Health and Care Plan.

Clause 27: Continuation of services under section 17 of the Children Act 1989

105. This clause inserts a new provision (section 17ZA) into the Children Act 1989.

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106. It gives a power to local authorities to continue to provide services they have been providing to a young person before their 18th birthday under section 17 of the Children Act (services to children in need, their families and others) to the young person when they are 18 and over, where the young person has an Education Health and Care Plan. The local authority retains discretion over how long it chooses to provide services under section 17 while an Education, Health and Care Plan remains in place. Where the young person no longer has an Education Health and Care Plan, the local authority no longer has the power to extend the provision of these services to young people over 18.

107. The provision in this clause aims to support better transitions to adult life for young people with Education, Health and Care Plans. Guidance on how an authority should use this discretion will be issued in the Code of Practice (see clause 44).

Appeals, mediation and dispute resolution

Clause 28: Appeals

108. This clause sets out the decisions taken by a local authority in relation to assessments and Education, Health and Care Plans against which a parent or young person can appeal. These are set out in *subsection (2)*.

109. This clause extends the current right of appeal to the First-tier Tribunal to young people over compulsory school age and, in the case of young people in school, transfers the right from the parent to the young person. Currently, only the parents of children and young people under 19 with special educational needs in school are able to appeal to the First-tier Tribunal. The clause also extends the right of appeal to the Tribunal to the parents of children under 2 years of age. Currently such parents cannot appeal to the Tribunal even where the local authority has drawn up a statement for their child.

110. An appeal can only be made after mediation in accordance with clause 29 has taken place. The Secretary of State may make regulations in relation to appeals.

111. This clause replaces, in England, sections 325, 326, 328, 328A, and 329 of and paragraphs 8 and 11 of Schedule 27 to the Education Act 1996.

Clause 29: Mediation

112. When a parent or young person wishes to bring an appeal, they must notify the local authority of this fact. The local authority must then arrange mediation and the parent or young person must take part in that mediation before they can bring an appeal to the First-tier Tribunal.

113. Mediation is different to an appeal, in that it seeks to resolve matters through agreement between parents/young people and local authorities rather than through a judicial decision. The mediator must be independent, so cannot be an employee of a local authority.

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114. When mediation has taken place, the mediator will issue a certificate. The certificate will explain either what has been agreed, or that there has been no agreement (*subsection (4)*). Where no agreement has been reached, or the local authority has not done what it agreed to within agreed time limits, the parents or young person can make an appeal to the First-tier Tribunal.

115. Appeals which only concern the name of a school, college or other institution specified in the Education, Health and Care Plan or the type of school, college or institution specified in the Plan or the fact that the Plan does not name any school, college or other institution can be made without going to mediation. This is because the parent or young person will already have been able to request a particular school or institution in the further education sector, and had discussions with the local authority about which institution should be named on the Plan. Requiring mediation in these circumstances would involve repeating the same discussions. The clause gives the Secretary of State regulation-making powers concerning mediation as listed in the clause.

Clause 30: Resolution of disagreements

116. Local authorities must make arrangements for avoiding or resolving disagreements where the parents of a child with special educational needs or a young person with such needs, don't agree with how the local authority or an education body (listed in *subsection (9)* with duties under these provisions has carried out those duties. It must also make arrangements to avoid or resolve disagreements between the parents of a child or a young person and any school or post-16 institution specifically about the special educational provision made by the institution for that child or young person.

117. The clause does not require either parents or young people on the one hand, or education bodies or local authorities on the other, to participate in resolving disagreements – use of these arrangements is entirely voluntary.

118. Local authorities must appoint someone who is independent to help resolve a disagreement, or prevent it happening in the first place. Employees of a local authority do not meet the criterion of being independent and cannot take on that role.

119. Local authorities must tell various people, including parents and young people, about the arrangements they have put in place to resolve disagreements.

120. This clause replaces, in England, section 332B of the Education Act 1996.

Clause 31: Appeals and claims by children: pilot schemes

121. This clause gives the Secretary of State a power to establish pilot schemes in local authority areas to enable children to make appeals in relation to their special educational needs and to bring disability discrimination claims against schools to the First-tier Tribunal. Currently the Education Act 1996 and the Equality Act 2010 only give parents such a right.

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122. The pilots will test whether the right to appeal is something that children would use, the best way to handle these appeals and the cost implications, with a view to extending the right to children across England. The clause establishes the things an order made by the Secretary of State can cover. These include the age from which a child may appeal and make claims; how mediation before a child's appeal works; and advice, information and advocacy provided to a child. The clause stipulates that the power to make an order is repealed after five years (from the date on which these provisions receive Royal Assent).

Clause 32: Appeals and claims by children: follow-up provision

123. This clause provides the Secretary of State with the power to make an order enabling children in all local authority areas in England to bring appeals and make disability discrimination claims to the First-tier Tribunal.

124. The power would be used after pilots have been run. The Secretary of State may not use this power until pilot schemes have been in place for two years.

125. The clause establishes what an order made by the Secretary of State can cover and this includes the age from which a child may bring appeals or make disability discrimination claims; how mediation before a child's appeal works; and advice, information and advocacy provided to a child (mirroring clause 31 *subsection(2)*).

Clause 33: Equality Act 2010: claims against schools by disabled young people

126. This clause amends the Equality Act 2010 so that young people in England who are over compulsory school age and in school can make disability discrimination claims to the First-tier Tribunal themselves. Currently only the parents of disabled young people can make claims to the Tribunal. This mirrors the provision made in clause 25 which allows for young people over compulsory school age to make special educational needs appeals to the Tribunal.

127. The clause does not affect the rights of parents of young people in Wales to make disability discrimination claims to the Special Educational Needs Tribunal for Wales. Pilots on giving children and young people in Wales the right to make special educational needs appeals and disability discrimination claims to its Tribunal are being conducted with the right being given to all children and young people in Wales following the pilots. The necessary changes to the Equality Act 2010 and the Education Act 1996 will be achieved through a Welsh Measure.

Special educational provision: functions of local authorities

Clause 34: Special educational provision otherwise than in schools, post-16 institutions etc

128. A local authority may arrange for special educational provision to be made for a child or young person otherwise than in a school, college or provider of relevant early years education. But before it can do so it has to be satisfied that it would be inappropriate for provision to be made in one of those settings and must have consulted the child's parent or the young person.

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129. This provision could include, for example, education in the home, or in early years education that is not part of the free entitlement to early years education under section 7 of the Childcare Act 2006.

130. This clause replaces, in England, section 319 of the Education Act 1996.

Clause 35: Special educational provision outside England and Wales

131. This clause enables local authorities to arrange special education provision for a child or young person with an Education Health and Care Plan outside England and Wales in an institution that specialises in providing for special educational needs, and gives them power to pay for, or contribute to, the costs of the child or young person attending such an institution.

132. This clause replaces, in England, section 320 of the Education Act 1996.

Clause 36: Fees for special educational provision at non-maintained schools and post-16 institutions

133. Where a local authority is responsible for a child or young person with special educational needs, and special educational provision is made for him or her at a school, post-16 institution or provider of relevant early years education, the local authority must pay the fees for the education and training received where the institution named in the Plan or, if there is no Plan, the local authority is satisfied the child or young person requires special educational provision, and that it is appropriate to receive it at the institution in question.

134. Where board and lodging are provided for the child or young person at such a school or college or place where relevant early years education is provided, the local authority must pay those fees if it is satisfied that special educational provision cannot be made there unless board and lodging are provided.

135. This clause replaces, in England, section 348 of the Education Act 1996.

Clause 37: Supply of goods and services

136. This clause gives local authorities the power to supply goods and services to maintained schools, maintained nursery schools, Academies and institutions in the further education sector (further education colleges or sixth form colleges) that are likely to be attended by a person with an Education, Health and Care Plan that the authority is maintaining for the purpose of supporting children and young people with special educational needs. Local authorities may supply goods and services on terms and conditions they see fit (including payment). Local authorities may supply goods and services to other local authorities and other bodies to help them make special educational provision for children receiving relevant early years education. This could cover specialist services to support children with different special educational needs, for example, sensory impairments.

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137. This clause replaces, in England, section 318 of the Education Act 1996,

Clause 38: Access to schools, post-16 institutions and other institutions

138. This clause gives local authorities in England the right to have access at any reasonable time to the premises of a school or other institution at which education or training is provided to a child or young person with an Education, Health or Care Plan maintained by the local authority in question, for the purpose of monitoring that education or training.

139. The clause replaces, in England, and expands the remit of, section 327 of the Education Act 1996. Section 327 only applies to maintained schools which are maintained by another authority and independent schools whereas this clause takes account of the extended age remit to which the new special educational needs provisions apply and applies to any institution providing the child or young person with education or training in accordance with an Education, Health and Care Plan.

Special educational provision: functions of governing bodies and others

Clause 39: Using best endeavours to secure special educational provision

140. This clause requires that the governing bodies of mainstream schools (both maintained schools and Academy schools), maintained nursery schools and further education institutions (further education colleges and sixth form colleges), the proprietors of 16-19 Academies and Alternative Provision Academies, and the management committees of pupil referral units use their best endeavours to secure that the special educational provision that is called for by a pupil or student's special educational needs is made.

141. The clause, in England replaces, and expands the remit of section 317(1)(a) of the Education Act 1996. Section 317 applied to the governing bodies of community, foundation or voluntary schools or maintained nursery schools. The new clause takes account of the age remit of the new special educational needs provisions and the expansion in the number of Academies by applying the duty to further education institutions, Academy schools and 16 to 19 Academies. The new clause also applies to pupil referral units.

Clause 40: Special Educational Needs Co-ordinators

142. This clause requires governing bodies of maintained mainstream schools, (including Academy schools) and maintained nursery schools to ensure that there is a member of staff designated as Special Educational Needs (SEN) co-ordinator. The SEN Co-ordinator will have responsibility for co-ordinating special educational provision for children and young people with special educational needs in their school. This can include providing advice to other teachers on supporting children with special educational needs and liaising with agencies outside the school such as social care services.

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143. The clause gives the Secretary of State power to make regulations requiring governing bodies and proprietors to ensure that SEN Co-ordinators have prescribed qualifications and/or experience and confer other functions on them in relation to SEN co-ordinators.

144. This clause replaces, in England, section 317 (subsections 3A and 3B) of the Education Act 1996.

Clause 41: Informing parents and young people

145. This clause, which applies where a child or young person has no Education, Health and Care Plan, requires governing bodies of maintained schools, maintained nursery schools, the management committees of Pupil Referral Units, and the proprietors of Academy schools and Alternative Provision Academies to tell a child's parent, or the young person when special educational provision is being made for the child or young person. This does not need to happen if the child or young person has an Education, Health and Care Plan since parents of children with Plans and young people who have Plans will already be aware that special educational provision is being made.

146. This clause replaces, in England, section 317A of the Education Act 1996 and extends the provision to include young people.

Clause 42: Special educational needs information report

147. This clause imposes a duty on the governing bodies of maintained schools and maintained nursery schools in England, and proprietors of Academy schools in England to prepare a report containing 'special educational needs information'. Special educational needs information is information about the implementation of the governing body's or proprietor's policy for pupils at the school with special educational needs, and information as to the arrangements for the admission of disabled pupils to the school; the steps taken to prevent less favourable treatment of disabled pupils; the facilities provided to assist access to the school by disabled pupils; and the accessibility plan which schools must publish under the Equality Act 2010.

148. This clause replaces, in England, section 317(5) and (6) of the Education Act 1996. This information is currently published on schools' websites.

Information to improve well-being of children and young people with special educational needs

Clause 43: Provision and publication of special needs information

149. This clause places a duty on the Secretary of State to exercise his information-gathering powers to secure special educational needs information about children and young people under 19 from schools and local authorities and the provision made for them which he thinks would be likely to help in improving the well-being of those children and young people. This must be published annually, in a form chosen by the Secretary of State, and must not include the names of individual children.

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150. This clause replaces, in England, section 332C of the Education Act 1996. That power has been used to publish a document each year containing a range of information about the numbers of children and young people with special educational needs, their characteristics, including the types of special educational needs, where they are educated and their achievements.

Code of Practice

Clause 44: Code of Practice

151. This clause requires the Secretary of State to issue a code of practice giving guidance to local authorities in England, the governing bodies of schools and further education institutions (further education colleges and sixth form colleges), the proprietors of Academies, the management committees of pupil referral units and persons providing relevant early years education on how to carry out their functions under these provisions. These people and bodies must take account of the code when carrying out those functions, as must those who help them carry out those functions, such as health service bodies.

152. The First-tier Tribunal must also take account of the guidance in the code that it considers to be relevant to any questions arising out of a special educational needs appeal with which it is dealing.

153. The clause also empowers the Secretary of State to revise the code from time to time and requires him to always publish the current version.

154. The clause replaces, in England, section 313 of the Education Act 1996 and widens the scope of who must have regard to the code from maintained schools, maintained nursery schools and local authorities to include colleges, Academies, pupil referral units and early years education providers.

Special schools etc

Clause 45: Special schools, non-maintained special schools and independent schools

155. This clause changes the definition of a “special school” in the Education Act 1996. It provides that such a school is a school specially designed to make special educational provision for pupils with special educational needs. They can be maintained by a local authority, or be an Academy school or a non-maintained special school. It also makes consequential amendments to other provisions in the Education Act 1996.

**Non-maintained special schools are special schools approved by the Secretary of State under section 342 of the Education Act 1996: see section 337A of that Act.*

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156. This clause inserts a new section 337 into the Education Act 1996.

Supplementary

Clause 46: Parents and young people lacking capacity

157. The clause provides for the specified references to a parent or young person to be read as referring to a representative of that person, where that person lacks capacity at the relevant time. “Lacking capacity” has the same meaning as in the Mental Capacity Act 2005. “Relevant time” means the time at which something is required or permitted to be done by or in relation to a child’s parent or young person. A representative is a deputy under the Mental Capacity Act, the donee of a lasting power of attorney or an attorney in whom an enduring power of attorney has been created. Where a young person lacking capacity does not have a representative, the reference to young person should be read as the young person’s parent (or where that parent also lacks capacity, to that parent’s representative).

158. The clause gives a deputy under the Mental Health Act the power to take the relevant decisions, even where this requires the discharge of parental responsibilities, which would otherwise not be permitted by that Act.

159. The specified references include taking decisions in respect of an appeal to the First-tier Tribunal and making a request for a school or college to be named in a Plan.

Clause 47: Part does not apply to detained children and young people

160. This clause provides that these provisions do not apply if a child or young person is detained because of a court order, or by order of recall made by the Secretary of State. This would, for example, include children or young people subject to a custodial sentence in a young offender institution or a young person in prison. Clause 19 sets out what happens when a child or young person who previously had an Education, Health and Care Plan is released from detention. Section 562C of the Education Act 1996 makes provision for special educational support to be provided to children and young people who are in detention and for the passing of information about their special educational needs between local authorities.

Clause 48: Interpretation

161. This clause sets out the definitions of terms used in these provisions.

Clause 49: Disapplication of Chapter 1 of Part 4 of the Education Act 1996 in relation to children in England

162. This clause provides for Chapter 1 of Part 4 of the Education Act 1996 in England to cease to apply in relation to children with special educational needs in the area of a local authority in England when these provisions are implemented. It will continue to apply in relation to Wales and children with SEN statements prepared by a local authority in Wales under that Chapter.

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Clause 50: Commencement

163. These provisions will come into force on the day the Secretary of State makes an order for them to do so. The order may provide for different duties, powers or requirements to come into effect on different days and for transitional provision.

Clause 51: Extent

164. These provisions extend to England and Wales although most of the provisions will operate mainly or exclusively in England.

EFFECT ON PUBLIC EXPENDITURE AND PUBLIC SERVICE MANPOWER

165. There will be some costs to local authorities associated with the special educational needs provisions on providing parents with an option for a personal budget, the development and planning for the single assessment and education health and care plan and mediation on all appeal cases. There will also be some additional cost associated with giving young people the right to appeal to the First-tier Tribunal.

166. These will be offset against the benefits to education, health and social care professionals of working within a more efficient system, including the reduced need for new assessments when young people move into further education, a downward trend on costs associated with appeals owing to the availability, through a local offer, of clear information for parents and others about support that is normally available in schools and colleges, and from health and social care services, without the need for specialist assessments; a better, less adversarial assessment process for children and young people who need support beyond that which is normally available; the introduction of compulsory mediation; and reduced demand for adult social care and health services where young people are helped to live independently and obtain paid employment (which the National Audit Office estimates could reduce lifetime support costs by as much as £1m per person).

167. There may also be a small increase in the number of young people over compulsory school age and under 25 participating in education with an Education, Health and Care Plan over those who would have a statement or learning difficulty assessment under the present arrangements, spread over seven years after the change is first introduced. These costs can be met within existing participation and support budgets and will be offset against learners leaving the system more quickly as a result of the stronger focus on outcomes in the new education, health and care plan. There are no tax implications.

IMPACT ASSESSMENTS

168. Four economic impact assessments have been prepared for the special educational needs provisions, covering i) single assessment process and education

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health and care plans and changes to parental choice of schools, ii) local offer, iii) the option for a personal budgets and iv) children's right to appeal and compulsory mediation. All measures have been confirmed as out of scope for one in one out consideration. The Regulatory Policy Committee (RPC) has assessed the impact assessments as fit for purpose and the Reducing Regulation Committee (RRC) has given their approval to them.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

169. The provisions are considered to be compatible with the European Declaration on Human Rights. Clause 29 'mediation' is considered to give rise to human rights considerations under Article 6. This clause requires the parties to attend compulsory mediation before being able to exercise an appeal right to the First Tier Tribunal. However, it is unlikely that the subject matter of the appeal will be a civil right that falls within the protection of Article 6. To the extent that the clause does fall within the scope of Article 6, it is considered that the requirement is in pursuit of the legitimate aim of trying to reach an amicable solution between parties that is less resource-intensive. It is considered to be proportionate as there are exceptions to the requirement to mediate and it is proposed that the scheme will allow the mediator discretion to dispense with the requirement to mediate in certain circumstances.

170. The special educational needs provisions have also been considered with reference to the UN Convention on the Rights of the Child. Clause 31 'Appeals and Claims by Children: pilot schemes' allows the Secretary of State to make an Order to provide for pilot schemes to give children in test areas a right to appeal in special educational needs matters and to bring their own disability discrimination claims. This seeks to take on board Article 12 UNCRC and the child's right to express his or her views.

COMMENCEMENT DATES

171. The special educational needs provisions will be brought into force by Order after Royal Assent.



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