



Department  
for Education

# Draft guidance on transition to the new 0 to 25 special educational needs and disability system

**Draft guidance on transitional arrangements**

**June 2014**

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## 1. Summary

### About this departmental guidance

- 1.1 This is non-statutory guidance from the Department for Education. It explains how legislation relating to children and young people with special educational needs (SEN) in England will operate between 1 September 2014 and 31 March 2018<sup>1</sup>, and how and when the new SEN and disability system will be made available to all children and young people with SEN in England by 31 March 2018.

### Expiry or review date

- 1.2 This guidance will be reviewed by 1 April 2015 and periodically thereafter during the transition period (1 September 2014 to 1 April 2018). It will expire on 1 April 2018.

### Who is this guidance for?

- 1.3 This guidance is intended primarily for local authorities but will also be of interest to others involved in statutory SEN assessments and the provision of services for children and young people with SEN.

### Main points

- 1.4 From 1 September 2014 young people in further education and training who receive special educational provision as a result of a Learning Difficulty Assessment (LDA) can choose to request an education, health and care needs assessment. All young people who receive support as a result of a LDA remaining in further education or training beyond 1 September 2016 should have an EHC plan by that date where one is needed. Until that point, local authorities remain under a duty to have regard to statutory LDA guidance in relation to these young people.
- 1.5 By 1 April 2018, local authorities must have transferred all children and young people with statements to the new SEN and disability system following a ‘transfer review’. We expect the vast majority of children and young people with statements to be transferred to an EHC plan. During the transition period (1 September 2014 to 1 April 2018) local authorities must continue to comply with Part IV of the Education Act 1996 in relation to children and young people with statements.
- 1.6 Within national parameters local authorities should develop their own transition plans, following consultation with parents, young people and professionals. Local authorities should publish the first version of their local transition plan by 1 September 2014 to ensure that parents and young people can access information about when they will be transferred to the new system and what the transfer process will entail.

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<sup>1</sup> [The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014 – to be made summer 2014]

## 2. Introduction

- 2.1 The Children and Families Act 2014 provides for new statutory assessment and planning arrangements for children and young people with special educational needs (SEN). As of 1 September 2014, it is no longer possible to request an assessment for a statement for a child or young person who does not already have one, and no new Learning Difficulty Assessments (LDAs) can be commenced. From that date local authorities **must** consider all requests for an assessment of SEN for children and young people who do not have an existing statement under the new legislation. Those requiring a statutory plan to secure the relevant provision to meet their special educational needs should be issued with an Education, Health and Care (EHC) plan.
- 2.2 Children and young people with statements and young people who are receiving provision to meet their special educational needs as a result of a LDA will be gradually transferred over to the new arrangements. To ensure these children and young people continue to receive the support they need, and so their rights and protections are maintained, transitional legislation (to be added at annex A) is in place to maintain elements of the Education Act 1996 relating to statements and the Learning and Skills Act 2000 relating to LDAs.
- 2.3 The legal test of when a child or young person requires an EHC plan remains the same as that for a statement under the Education Act 1996. Therefore, it is expected that all children and young people who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan – no child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing.
- 2.4 Local authorities have undertaken LDAs for young people either because they had a statement at school or because, in the opinion of the local authority, they are likely to need additional support as part of their future education or training and would benefit from an LDA to identify their learning needs and the provision required to meet those needs. Therefore, the expectation is that young people are currently receiving support as a result of a LDA and remain in further education or training during the transition period, who request and need an EHC plan, will be issued with one.
- 2.5 This document provides guidance to local authorities on:
- LDAs and assessments for statements ongoing on 1 September 2014 [(section 3)];
  - arrangements relating to statements and LDAs during the transition period [(section 4)];
  - the process for transferring:
    - children and young people with statements to the new SEN and disability system;
    - young people in further education and training who receive provision as a result of a LDA to the new system;
    - children and young people with non-statutory EHC plans issued before 1 September 2014 to the new system [(section 5)].
  - interim arrangements for children and young people in custody [(section 6)].

### 3. Assessments and re-assessments in progress on 1 September 2014

#### Assessment and re-assessment for a statement requested but not commenced before 1 September 2014

3.1 Local authorities may be considering requests for assessments or re-assessments under the Education Act 1996 on 1 September 2014. Unless Regulation 12(5) of The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 applies, the local authority **must** notify the parent whether or not it intends to conduct the assessment/re-assessment within six weeks of the request. Consideration of these requests **must** comply with Part IV of the Education Act 1996, unless the local authority decides to treat it as a request for an EHC needs assessment under section 36 of the 2014 Act and the child's parents or the young person agrees.

#### Assessment and re-assessment for a statement in progress on 1 September 2014

3.2 In cases where the assessment or re-assessment for a statement is in progress<sup>2</sup> on 1 September 2014 then it **must** continue under the arrangements provided for by the Education Act 1996 unless there is agreement between the parent or young person and the local authority to treat it as an EHC needs assessment. In advance of 1 September 2014, where they are able to, local authorities should work towards a statement assessment that meets the requirements of the 1996 Act but that also anticipates the requirements for an EHC needs assessment. This will ensure children and young people benefit from the new system as soon as possible, and help reduce the burden on families and local authorities of needing to conduct transfer reviews for these children and young people later.

3.3 If an assessment or re-assessment continues under the 1996 Act, any subsequent statement will be drawn up/amended under the 1996 Act arrangements unless the local authority believes the assessment provides a sufficient basis on which to draw up an EHC plan and the child's parents or young person agrees.

3.4 If the decision is taken to treat the on-going assessment as an EHC needs assessment, any assessment already undertaken **must** not be repeated. Where the assessment was triggered by a request and an EHC plan is needed, it **must** be issued within 26 weeks of the original request for an assessment for a statement unless the exceptions in [paragraph 6.5] apply.

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<sup>2</sup> Article [xx] of *The Children and Families Act 2014 (Transitional and Saving Provisions)* (No. 2) Order 2014 defines an assessment for a statement as being 'in progress':

- **from** '*...the date on which the local authority gives notice to the child's parents under section 323 (4) of the EA 1996*' or from '*...the date on which the local authority has to or decides to make an assessment under section 331 of the EA 1996*'
- **to** the date on which the local authority '*makes or amends the statement (as appropriate)*' or '*notifies the child's parents under regulation 17 of the 2001 Regulations that it is not making a statement or amending the statement (as appropriate)*'

## Learning Difficulty Assessments in progress on 1 September 2014

3.5 There may be cases where LDAs are being conducted at the time the provisions of Part 3 of the Children and Families Act 2014 come into effect on 1 September 2014. For example, where a young person with a statement has only decided to transfer from school to a further education college shortly before this date; or where a local authority has decided to use its power to conduct a LDA for a young person who did not have a statement at school. In advance of 1 September 2014, where they were ready and able to, local authorities could have commenced an assessment that met the requirements for an EHC needs assessment. This would more than satisfy the legal requirement to carry out a S139A Learning Difficulty Assessment.

3.6 Where a local authority is confident that that the assessment has met the requirements for an EHC needs assessment, an EHC plan can be issued after 1 September 2014. Where an EHC plan is required, it should be issued as soon as possible after 1 September 2014 to ensure the young person receives appropriate support promptly. In these circumstances, local authorities **must** secure an EHC plan for a young person where one is needed within 14 weeks of 1 September 2014.

3.7 The Department recommends that, where they are able to, local authorities use this power to allow young people to benefit from the new 0-25 SEN and disability system as soon as possible and to reduce the number of future requests for EHC needs assessments from young people in further education and training.

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

### Statements

4.1 Although many local authorities will plan to make the new SEN and disability system available to all children and young people with SEN in their area before the end of the transition period, others may need the maximum time. To ensure that children and young people with statements continue to receive the support they require to meet their special educational needs, much of Part IV of the Education Act 1996 and the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 will continue to have effect until 1 April 2018 in relation to those children and young people.

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

- the local authority decides to cease the statement following an annual review;
- the statement is ceased because the young person leaves education;
- the child or young person has a transfer review and:
  - an EHC plan is secured for her/him; or
  - a local authority decides that she/he does not require an EHC plan (see paragraph 2.3).

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

- where necessary, maintain statements;
- review statements at least annually;
- beginning at year 9, draw up and annually review a transition plan;
- have regard to the 2002 SEN Code of Practice while arranging provision for those with statements and maintaining those statements;
- make 'parent partnership services' and disagreement resolution arrangements available to the parents of children and young people who have statements.

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

- invited to provide evidence for annual reviews, sent copies of the evidence that others have provided for the reviews and be invited to the annual review meeting in the timescales set out in the 2002 Regulations;
- provided with an amendment notice where the local authority proposes to amend a statement and when an amended statement is sent to them be advised of their right to appeal to the First-tier Tribunal (SEN and Disability);
- advised of their right, following a review which does not result in an amendment to a statement, to appeal to the Tribunal;
- advised of their right to appeal to the Tribunal where the local authority proposes to cease to maintain a statement and not replace it with an EHC plan.<sup>3</sup>

4.5 The parents of children and young people with statements will continue to have the

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<sup>3</sup> No new appeals under Part IV of the Education Act 1996 can be registered from 1 October 2017.

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right to request that the name of the school specified in Part 4 of the statement as the one the child will attend be changed to another school as long as it is more than 12 months since the statement was drawn up or since the name of the school was last changed. Case law has established that in such cases parents can only request that the name of the school is changed to another school of the same type, for example a mainstream school to another maintained mainstream school or a maintained special school for another maintained special school.

### **Requests for re-assessments of children and young people with statements made after 1 September 2014**

- 4.6 Where the parents of a child or young person with a statement thinks that a re-assessment may be required, their rights to request such an assessment under Part IV of the Education Act 1996 will continue. The parents of a child or the young person with a statement do not have the right to request an EHC needs assessment under the Children and Families Act 2014 during the transition period.
- 4.7 Within six weeks of receiving the request for a re-assessment local authorities **must** inform the parents whether they intend to go ahead with the re-assessment. Local authorities are not required to carry out a re-assessment if a re-assessment is not needed or where it has carried out an assessment or a re-assessment in the six months prior to the request. If a re-assessment does go ahead it will be conducted under the arrangements set out in the 1996 Act and result, where necessary, in a revised statement. However, the local authority may choose to transfer the child/young person to the new SEN and disability system at this point by initiating a transfer review instead of conducting a re-assessment under the 1996 Act [(see section 6)]. Local authorities are encouraged to use this power where they are in a position to do so to allow children, young people and their parents to benefit from the new arrangements earlier than was otherwise planned, and to ease the outstanding burden of transfers to the new system.
- 4.8 Where a child's or young person's needs have changed and the provision required to meet those needs has changed and it is necessary to carry out an assessment then the local authority **must** carry one out, whether as a re-assessment under the Education Act 1996 or an assessment under the Children and Families Act 2014. If these considerations do not apply then the child or young person will not need a re-assessment and will be transferred to an EHC plan in accordance with the local authority's transition plan [(see section 5)].

### **Appeals to the First-tier Tribunal (SEN and Disability) about SEN assessments and statements during the transition period**

- 4.9 Unless the local authority has provided notification to commence the transfer review [(see section 6)], during the transition period parents of children with statements can appeal to the Tribunal under the Education Act 1996 in the following circumstances:
- where the local authority decides not to carry out an assessment of the child's SEN (s. 329 (2) (b)) and 329A 8 (b));
  - where the local authority decides not to draw up a statement following an assessment (s. 325 (2));
  - over the description of the child's SEN in Part 2 of the statement (s 326 (1A))

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(a));

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

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

Reason for appeal	Possible Tribunal decisions
Appeal against decision not to assess	Either uphold the local authority's decision not to assess <b>or</b> decide that the local authority must carry out an assessment under the arrangements in Part 3 of the Children and Families Act 2014.
Appeal against decision not to re-assess a child or young person with a statement	Either uphold the local authority's decision <b>or</b> order the local authority to re-assess under the Education Act 1996 but with the option of the local authority assessing the child or young person under the Children and Families Act 2014, with the parents or young person's permission.
Appeal against a decision not to issue a statement	Either uphold the local authority's decision not to issue a statement <b>or</b> decide that the local authority must issue a statement with the option, if the parent and the local authority agree, that the local authority must issue an EHC plan/can assess the child or young person with a view to issuing an EHC plan <b>or</b> remit the case back to the local authority to reconsider (in this case the local authority could decide to carry out an EHC needs assessment).
Appeal concerning the description of a child's SEN and/or the special	Either dismiss the appeal <b>or</b> decide that the local authority must amend parts 2

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<b>Reason for appeal</b>	<b>Possible Tribunal decisions</b>
educational provision specified in the statement (parts 2 and 3)	and/or 3 of the statement.
Appeal against the name of the school or type of school specified in the statement or the fact that no school is named	Either uphold the local authority's decision <b>or</b> order the local authority to name a particular school or type of school on the statement.
Appeal against a decision to amend the descriptions of a child's SEN in a statement (part 2), the special educational provision set out in a statement (part 3), or the name of the school or type of school specified in the statement (part 4)	Either uphold the local authority's decision to amend <b>or</b> order the local authority not to amend the statement.
Appeal against decisions not to amend a statement following reviews or re-assessments	Either uphold the local authority's decision <b>or</b> order the local authority to amend parts 2 and/or 3 and/or 4 of the statement.
Appeal against a decision not to change the name of the school specified in part 4 of the statement	Either uphold the local authority's decision <b>or</b> order the local authority to change the name of the school.
Appeal against decisions to cease to maintain a statement	Either uphold the local authority's decision <b>or</b> order the local authority to continue to maintain the statement.

4.11 In cases of appeals against decisions not to assess or re-assess, or to issue a statement, local authorities are encouraged to use their power to carry out an EHC needs assessment or draw up EHC plan under the Children and Families Act 2014.

## Learning Difficulty Assessments

4.12 With the introduction of EHC needs assessments and EHC plans from 1 September 2014, local authorities will no longer be under a duty to commence new LDAs for young people with a statement who move from school to further education or training, or higher education; nor will they have the power to conduct an LDA for other young people. As explained in [paragraphs 3.5 to 3.7], local authorities should complete LDAs that commenced prior to 1 September 2014 unless an EHC needs assessment is to be undertaken instead.

4.13 Until 1 September 2016, local authorities must continue to have regard to the section 139A [Learning Difficulty Assessments Statutory Guidance](#) in relation to young people who receive support in post-16 education, training or higher education as a result of a LDA. While the LDA guidance mainly provides advice to local authorities about the assessment itself, it also sets out the complaints procedures that should be in place, and provides the following advice on reviewing the LDA:

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*The LDA should be reviewed regularly to ensure it continues to meet the needs of the young person. LDA reports completed or reviewed after the age of 19 should continue to reflect the individual needs of students. LDAs for older students may include a greater emphasis on pathways to independent living and links to job seeking eg Jobcentre Plus and adult social services.<sup>4</sup>*

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<sup>4</sup> Paragraph 13.3, Section 139A Learning Difficulty Assessments Statutory Guidance,  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271397/139a\\_guidance\\_2013 - revised 23-4-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271397/139a_guidance_2013 - revised 23-4-13.pdf)

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

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

- 5.1 We want all children and young people with SEN to benefit from the new SEN and disability system as soon as possible. Transferring children and young people to EHC plans in a way that maximises the benefits that they offer will be a significant undertaking for local authorities. We want this transition to happen at a pace that is achievable and which maintains the quality of support both to children and young people making the transition and those still on the previous system. Local authorities should aim to make the new arrangements available to all children and young people as quickly as they are able to. This must be by **1 April 2018** at the latest. In advance of that date, local authorities must ensure that children and young people who currently receive support as a result of a statement are transferred to the new SEN and disability system in accordance with the transfer review process [(see section 6)].
- 5.2 Improving the preparation of young people for adulthood is a principle aim of the new SEN system. Young people in further education and training who currently receive their provision as a result of a LDA have fewer rights and protections than their peers in the school system with a statement. To address this disparity and ensure young people in further education and training can benefit from the new system as soon as possible, this group of young people must be transferred to the new system by **1 September 2016**. Until that date, local authorities **must** continue to have regard to the statutory guidance for LDAs in relation to young people who receive provision as a result of an LDA and remain in further education or training.

### Local transition plans

- 5.3 Within the national parameters set out below it is for local authorities to determine when children and young people will be transferred to the new SEN and disability system during the transition period. In accordance with the duty to support and involve children and young people, as set out in section 19 of the Children and Families Act 2014, local authorities should consult young people with SEN and the parents of children with SEN as well as organisations such as schools, colleges, and health organisations that will be involved in transferring children and young people to the new system.
- 5.4 To ensure parents and young people know when their child/they will be transferred to the new system, local authorities should develop and publish a local transition plan. The transition plan should include:
- the groups that were consulted in developing the plan;
  - the number of children and young people with statements and the number of young people receiving support as a result of an LDA that the local authority expects to transfer to the new system in each year of the transition period;
  - the order in which children and young people with statements of SEN in the area will be transferred to the new system (within the parameters set out

below);

- how and when parents of children with SEN and young people with SEN, and their educational institution, will be made aware of the arrangements for a child or young person's transfer;
- details of the transfer review process;
- the arrangements for the transfer of young people who receive support as a result of a LDA;
- sources of independent SEN information and advice;
- who parents and young people can contact if they have queries about transition to the new system or if they have not been transferred to the new system in accordance with the local transition plan.

5.5 Local authorities should publish the first version of this plan by 1 September 2014. A report on progress against the transition plan, and a revised transition plan should be published at least annually.

## **Requirements and expectations relating to the timing of transfers from statements to the new SEN and disability system**

5.6 To ensure momentum is maintained during the transition period, and to minimise disruption for families and provide them with some certainty, where possible local authorities should transfer children to the new SEN and disability system at points in their education at which a significant review of the statement would have otherwise taken place. Local authorities are expected to transfer children and young people from statements to EHC plans in advance of them transferring to the next phase of education, and at the significant year 9 review point. However, in order not to overwhelm the new system, in 2014/15 local authorities will be able to consider whether to transfer children in year 6 to EHC Plans, but **must** take into account the wishes of families. Later transition may make for a more stable situation for children whose secondary provision has already been agreed.

5.7 Local authorities **must** transfer children and young people with statements to the new arrangements prior to them transferring from:

- early years settings to school (including where the child remains at the same institution);
- infant to junior school;
- primary to middle school;
- secondary school to post-16 institution or apprenticeship;
- mainstream to a special school or vice versa.

5.8 Between 1 September 2015 and 1 April 2018, local authorities **must** also transfer children and young people with statements to the new arrangements:

- in year 9 and
- prior to them transferring from:
  - primary to secondary school;
  - middle to secondary school.

5.9 In addition to complying with the requirements set out above, local authorities should

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transfer the following groups of children and young people each year:

- all children with statements in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities **must** take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);
- all children and young people in year 11, not just those who are moving into further education, and
- those moving between one local authority and another.

5.10 In 2014/15, local authorities should also transfer the following groups:

- children with statements in year 9 in 2014/15;
- children and young people with a statement leaving custody between 1 September 2014 and 1 April 2015; and
- children and young people issued with non-statutory EHC plans before 1 September 2014.

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

- is prevented from commencing a transfer review because of an ongoing appeal in relation to a statement;
- is unable to complete the transfer review for any of the reasons set out in [paragraph 6.5]; or
- in 2014/15, has insufficient time to complete the transfer review for a child or young person within 12 months of issue/last review of their statement to comply with the requirements set out in [paragraph 5.7]. In these cases, local authorities should complete the transfer review as early as possible and **must** complete it by 1 December 2014.

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

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

5.13 Except where there is an ongoing appeal in relation to a statement/transfer review, all statements will cease to have legal status from 1 April 2018. To ensure that all children and young people are transferred to the new SEN and disability system and continue to receive the provision they need, young people and parents of children with statements **must** be notified by 1 October 2017 that their transfer review will take place in that school year.

## **Timing of transfer to EHC plans for young people in further education and training who receive support as a result of a LDA**

5.14 Between 1 September 2014, young people in further education or training who are receiving additional support to meet their special educational needs as a result of a LDA can choose to either:

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

5.15 From 1 September 2014 local authorities should inform young people in further education or training who have had a LDA of their options. This should set out how the new SEN and disability system can benefit young people. Local authorities must also provide advice to these young people about where they can obtain independent advice and support, including from an independent supporter.

## 6. The transfer process

### The process for transferring children and young people with statements to the new SEN and disability system

- 6.1 To transfer a child or young person from a statement to an EHC plan, a local authority **must** undertake a ‘transfer review’. For children and young people who need an EHC plan, the transfer review will allow for outcomes to be developed for inclusion in their EHC plan along with provision identified to support the child/young person to achieve those outcomes. Until the transfer review is completed the local authority will remain under a duty to maintain the statement and arrange the special educational provision set out in the statement.
- 6.2 To initiate a transfer review, the local authority **must** notify the parent or young person and the head teacher of the school attended by the child or young person at least two weeks before it starts that the transfer review will take place. The notification should also set out the parent’s/young person’s rights of appeal. A local authority cannot commence a transfer review if there is appeal in progress under the Education Act 1996 against any of the matters in relation to a statement.
- 6.3 To conduct a transfer review, the local authority **must** undertake an EHC needs assessment in accordance with [article 5] of *The Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014* (to be added at annex A). Local authorities should have regard to the 0-25 SEN Code of Practice in undertaking the EHC needs assessment.
- 6.4 The local authority **must not** seek any advice required for an EHC needs assessment if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child’s parents or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment. In many cases much of the assessment information contained within the statement will be recent and relevant, and local authorities will be able to complete the transfer review promptly. To allow local authorities sufficient time to ensure that additional assessments can be conducted where needed, and a robust EHC plan developed where needed, subject to exceptions set out at [paragraph 6.5], local authorities **must** finalise an EHC plan, where one is needed, within 14 weeks of the start of the transfer review.
- 6.5 Local authorities need not comply with the time limits set out in [paragraphs 3.4, 5.11 and 6.4] if it is impractical to do so because:
- the local authority has requested advice from an early years provider, school or post-16 institution which is closed for a period of more than four weeks providing the request was made a week or more in advance of it closing;
  - exceptional personal circumstances affect the child, the child’s parents or the young person during that time period;
  - the child, the child’s parents or the young person are absent from the local authority area for a continuous period of four weeks or more during that period.
- 6.6 In accordance with regulation 7(e) of *Special Educational Needs and Disability Regulations 2014*, to minimise disruption for the child, the child’s parents, the young

person and their family, any meeting with the child's parent or young person to either consult or engage them as part of the EHC needs assessment should take place at the point that the annual review meeting would have otherwise taken place.

6.7 To conclude a transfer review, a local authority **must**:

- send a copy of the finalised EHC plan to the child or the young person and the governing body, proprietor or principal of any school or other institution named in the plan; or
- notify the child's parents or young person of its decision that it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan and notifies the child or young person's parents that it is ceasing to maintain the child or young person's statement (see paragraph 2.3).

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

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

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

## **Process for transferring young people who receive support as a result of LDAs to EHC plan**

6.10 Local authorities **must** treat any request for an assessment under the Children and Families Act 2014 from a young person in further education or training who has had an LDA as a request from a new entrant into the system. Where necessary, a full assessment **must** be carried out and an EHC plan drawn-up in accordance with the process described in the new 0-25 SEN and disability Code of Practice. This means that a request from a young person should result in an EHC plan, where one is required, within 20 weeks.

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

6.12 Where a local authority decides not to conduct an EHC needs assessment or not to secure an EHC plan, a young person has the right to appeal that decision. Where an EHC plan is not secured, the provision being made as a result of the young person's LDA should continue as planned.

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

6.13 In order to test the provisions set out in what was the Children and Families Bill the Department of Education has funded 20 'pathfinders' covering 31 local authority areas and associated clinical commissioning groups. Over 2500 non-statutory EHC plans have been drawn up for children and young people by the pathfinder local authorities. Although Pathfinder local authorities should treat non-statutory EHC plans issued before 1 September 2014 as if they were a statutory document, these non-statutory EHC plans do not have the same duties and rights associated with them as an EHC plan issued on or after 1 September 2014. While some of these non-statutory EHC plans may be suitable to be transferred to statutory EHC plans without significant changes, others may require additional assessment information and/or restructuring to comply with the 2014 Act and Regulations.

6.14 Some children and young people who have been issued with non-statutory EHC plans before 1 September 2014 also have statements. Local authorities should transfer these children and young people to statutory EHC plans in 2014/15 in accordance with the transfer review set out above. In these cases parents will continue to have the same rights as other parents of children and young people with statements, and local authorities will have the same duties to arrange the special educational provision set out in those statements until they are transferred to the new system.

6.15 Parents of children and young people who have been issued with a non-statutory EHC plan before 1 September 2014 and do not have a statement can request an EHC needs assessment under Part 3 of the Children and Families Act 2014 from 1 September 2014. In accordance with regulations, the local authority **must not** seek any advice required for an EHC needs assessment if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parents or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment. In many cases much of the assessment information contained within the non-statutory EHC plan will be recent and relevant, and local authorities will be able to complete the issue a statutory plan promptly, where one is needed. To provide assurance to families in this situation and to enable local authorities to manage demand for EHC needs assessments in 2014/15, it is recommended that local authorities:

- contact the parents of children and young people with non-statutory EHC plans issued before 1 September 2014 to inform that they will be transferred to the new system by their next annual review<sup>5</sup>, and that the provision set out in their non-statutory EHC plans will continue to be made until they are transferred to the new system;

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<sup>5</sup> Pathfinder local authorities should treat non-statutory EHC plans issued before 1 September 2014 as if they were a statutory document; so all non-statutory EHC plans should be reviewed at least annually.

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- make clear that, where existing information contained in the non-statutory EHC plan remains recent and relevant (as agreed by parents, young people and relevant professionals), the transfer to a statutory EHC plans should happen quickly.

## Personal budgets

6.16 Under section 49 of the Children and Families Act 2014 and the SEN Regulations 2014 all relevant parents of children and young people themselves who are either transferred from statements, LDAs or non-statutory EHC plans to statutory EHC plans or those for whom EHC plans are drawn up **must** be offered the opportunity to have a personal budget.

## 7. Interim arrangements for detained children and young people

7.1 We expect the provisions in Part 3 of the Children and Families Act 2014 which apply to children and young people in detention to come into effect on 1 April 2015.

However, the duty to have regard to the guidance in the SEN Code of Practice on meeting the special educational needs of children and young people in custody and the cooperation duties under section 28 of the Children and Families Act 2014 in respect of children and young people in custody come into effect on 1 September 2014. This will give local authorities, custodial institutions and youth offending teams time to plan for implementation from 1 April 2015.

7.2 It is possible that EHC plans may be drawn up for children and young people between 1 September 2014 and 1 April 2015 who subsequently enter custody in that period. Until sections 70-75 of the Children and Families Act 2014 are commenced, these EHC plans will be treated as if they were statements and the host local authority will have the responsibilities it would have had were the provision in a statement.

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**Annex A: The Children and Families Act 2014  
(Transitional and Saving Provisions) (No.2) Order  
2014**

[To be added]

## **Further information**

[To be added]



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