



## BRIEFING PAPER

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# Special Educational Needs: support in England

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## Introduction

The [Children and Families Act 2014](#) provided for an major reform of the system for identifying children and young people in England with special educational needs (SEN), assessing their needs and making provision for them.

This briefing provides an overview of the system introduced in 2014, and also includes, in an annex, a brief history of the movement towards reform that took place in the years preceding the 2014 Act.

The 2014 reforms began to be implemented in September 2014, in a phased process due to be completed by April 2018.

The Government has also reformed the funding system for SEN, alongside wider changes to the school funding system. A national funding formula has been introduced to allocate 'high needs' funding to local authorities – largely, this is for special educational provision. From 2018-19, local authorities are cannot transfer more than 0.5% of their wider 'schools block' funding into their high needs budget, although requests to transfer more may be made to the Secretary of State.

Inspections by Ofsted and the Care Quality Commission of local arrangements to support children and young people with special educational needs and disabilities began in May 2016.

This briefing applies to England only.

# 1. Support for children and young people with Special Educational Needs (SEN)

## 1.1 Definition of SEN

The statutory SEND<sup>1</sup> [Code of Practice](#) sets out the definition of special educational needs used in England:

xiii. A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

xiv. A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

xv. For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, mainstream post-16 institutions or by relevant early years providers. For a child under two years of age, special educational provision means educational provision of any kind.<sup>2</sup>

## 1.2 Levels of support

The type of support that children and young people with SEN receive may vary widely, as the types of SEN that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

### SEN Support

This will be support given to a child or young person in their pre-school, school or college. In schools, it has replaced the previously existing 'School Action' and 'School Action Plus' systems.

The [gov.uk website](http://gov.uk) sets out that SEN support for children under 5 includes:

- a written progress check when your child is 2 years old
- a child health visitor carrying out a health check for your child if they're aged 2 to 3

<sup>1</sup> The Code of Practice refers to SEND, Special Educational Needs and Disability, whereas this briefing is focused on children and young people with SEN. While many children with SEN will also have disabilities, this is not uniformly the case. This briefing focuses on educational support.

<sup>2</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), January 2015, p15-16

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- a written assessment in the summer term of your child's first year of primary school
- making reasonable adjustments for disabled children, e.g. providing aids like tactile signs

For children of compulsory school age, the following indicative [list](#) is provided of the type of help a child might receive:

- a special learning programme
- extra help from a teacher or assistant
- to work in a smaller group
- observation in class or at break
- help taking part in class activities
- extra encouragement in their learning, e.g. to ask questions or to try something they find difficult
- help communicating with other children
- support with physical or personal care difficulties, e.g. eating, getting around school safely or using the toilet

A young person of 16-25 in further education would need to contact their school or college before starting a course, to ensure their needs can be met.

### Education, Health and Care Plans

Education, Health and Care Plans are for children and young people aged up to 25 who need more support than is available through SEN support. They are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

The [gov.uk website](#) makes clear that parents can ask their local authority to carry out an assessment if they think their child needs an EHC Plan.

A request can also be made by:

- anyone at the child's school
- a doctor
- a health visitor
- a nursery worker

A local authority has 6 weeks to decide whether or not to carry out an EHC assessment.

## 1.3 Key aspects of the system

### The local offer

Since September 2014, local authorities have been required to have published a 'local offer' to clearly set out the services available for children and young people with SEND. The offer must have been developed in partnership with children and young people with SEN or Disability and their parents, and education, health and care partners. It

should cover the support available for those with and without EHC Plans and from birth to 25 years, including SEN Support.

The Code of Practice states:

Local authorities must publish a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans. In setting out what they 'expect to be available', local authorities should include provision which they believe will actually be available.<sup>3</sup>

The Code makes clear that this initial offer is intended to be the start of an ongoing process, with local offers developed and revised over time through regular review and consultation.

## Education, Health and Care Plans: requirements on authorities

Education, Health and Care (EHC) Plans are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). The SEN Code of Practice states that because the legal test of when a child required an EHC Plan is the same as for a statement under the *Education Act 1996*, nobody should lose support received under a SEN statement as a result of these changes.<sup>4</sup>

While most children and young people with SEN will have their needs met by early years settings, schools, or colleges, some will need more substantial support. Where in the past a child in school, for example, might have been assessed for an SEN statement, they would now be assessed for an EHC plan which would seek to secure the best possible outcomes for them across education, health and social care.

- In conducting an EHC assessment, a local authority would be required to:
- establish and record the views, interests and aspirations of the parents and child or young person
- provide a full description of the child or young person's special educational needs and any health and social care needs
- establish outcomes across education, health and social care based on the child or young person's needs and aspirations
- specify the provision required and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes<sup>5</sup>

The Code of Practice sets out a further expectation that young people who are currently receiving support as a result of a LDA and remain in further education or training during the transition period, who request and need an EHC Plan, would be issued with one, since they have already been assessed as requiring SEN support.<sup>6</sup>

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<sup>3</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p59

<sup>4</sup> *Ibid.*, p15

<sup>5</sup> *Ibid.*, p142

<sup>6</sup> *Ibid.*, p15

## EHC plans for 19-25 year olds with SEN

Under the reformed system, EHC Plans will cover eligible students up to the age of 25. However, [DfE guidance](#) makes it clear that this does not mean that students have an automatic entitlement to education up to the age of 25:

Young people with SEND are not automatically entitled to maintain their EHC (education, health and care) plans after they turn 19.

Reforms to the SEND system should mean that children and young people are better prepared for adulthood. Therefore we expect the majority of young people with EHC plans to complete further education with their peers by age 19. However we recognise that some young people with SEND need longer to complete and consolidate their education and training. The length of time will vary according to each young person.<sup>7</sup>

Nonetheless, 19 to 25 year olds with a learning difficulty or disability have the right to request an EHC needs assessment (unless one has been carried out in the last 6 months), and may appeal if a request is rejected.<sup>8</sup>

## Personal budgets

Young people and parents of children who have EHC Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC Plan where the parent or young person is involved in securing that provision. Local authorities must provide information on Personal Budgets as part of the local offer. Personal Budgets are optional for the child's parent or the young person but local authorities are under a duty to prepare a budget when requested.<sup>9</sup>

A local policy should be available that includes:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets
- the mechanisms of control for funding available to parents and young people including:
  - direct payments – where individuals receive the cash to contract, purchase and manage services themselves
  - an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
  - third party arrangements – where funds (direct payments) are paid to and managed by an individual

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<sup>7</sup> Department for Education, [SEND: 19- to 25-year-olds' entitlement to EHC plans](#), February 2017

<sup>8</sup> Ibid.,

<sup>9</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p178

- or organisation on behalf of the child’s parent or the young person
- a combination of the above
- clear and simple statements of eligibility criteria and the decision-making processes that underpin them<sup>10</sup>

## Requirement for consultation with children, young people, and their parents

The [Code of Practice](#) provides information on the requirements on local authorities to consult with children and young people with SEN, as well as their parents, in carrying out all of its duties relating to SEN:

Local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with special educational needs (SEN), must have regard to:

- the views, wishes and feelings of the child or young person, and the child’s parents
- the importance of the child or young person, and the child’s parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions
- the need to support the child or young person, and the child’s parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood<sup>11</sup>

The Code states that these principles are designed to support:

- the participation of children, their parents and young people in decision-making
- the early identification of children and young people’s needs and early intervention to support them
- greater choice and control for young people and parents over support
- collaboration between education, health and social care services to provide support
- high quality provision to meet the needs of children and young people with SEN
- a focus on inclusive practice and removing barriers to learning
- successful preparation for adulthood, including independent living and employment<sup>12</sup>

The Code of Practice sets out what these principles are intended to mean in practice, and how it is intended that they will be implemented.<sup>13</sup>

<sup>10</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years.](#), p48

<sup>11</sup> *Ibid.*, p19

<sup>12</sup> *Ibid.*, p19-20

<sup>13</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years.](#) p20-29



## 2. Funding system

### 2.1 Background

Funding for SEN in England is not allocated as a separate amount per pupil. SEN funding is part of the overall Dedicated Schools Grant allocated to each local authority to fund their schools budget. It is for local authorities, in consultation with their schools forums, to determine the individual allocation to schools.

The following PQ response provides information on SEN funding for maintained schools:

**Steve McCabe:** To ask the Secretary of State for Education whether special educational needs coordinators are able to request funds from his Department for extra assistance with SEN students in maintained schools. [201299]

**Mr Timpson:** The Department for Education does not give funds directly to local authority maintained schools. Funds for extra assistance with students with special educational needs (SEN) come from schools' budgets and, if the extra cost is more than £6,000 per year for an individual student, from local authorities in the form of top-up funding for the school. Local authorities can also give extra funding to schools with a disproportionate number of pupils with SEN. Special educational needs coordinators should therefore seek any additional funds required from the relevant local authority.<sup>14</sup>

Mainstream academies are in a similar position, as the [gov.uk website](http://gov.uk) sets out alongside funding information for special academies:

Mainstream academies (leaving aside any special units within them) are expected to contribute towards the cost of the additional educational support provision for high needs pupils and students, up to £6,000 from their school budget share. Their notional SEN budget is indicated in table A of their funding allocation pack.

If your academy receives a post-16 funding allocation, your statement will show how much of the formula funding the LA has attributed to meeting SEN support costs. [...]

Top-up funding above these levels, based on the assessed needs of the pupil and the cost of meeting these, should be agreed between the commissioning LA and the academy. Top-up funding is paid on a per-pupil basis, in or close to the real-time movement of the pupil. It is paid directly to academies by the LA. Top-up funding for pupils in AP can be paid directly by other academies and schools if they commission the places for those pupils.

The charity Independent Parental Special Education Advice (IPSEA), have produced a [helpful briefing](#) on changes to SEN funding that were introduced from April 2013, which provides more background on SEN funding.<sup>15</sup>

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<sup>14</sup> [HC Deb 23 Jun 2014 c83W](#)

<sup>15</sup> IPSEA, [School Funding Reform: SEN Funding](#), May 2013

## 2.2 Reform: a national funding formula

The Government is undertaking major reforms to the way schools in England are funded. As part of this, the Government proposed the introduction of a national funding formula to allocate 'high needs' funding to local authorities – largely, this is for special educational provision.

On 7 March 2016, the then Education Secretary Nicky Morgan announced initial consultations on funding reform, with further consultations to follow later in the spring. The first of these proposed a national school funding formula to include a basic per-pupil amount, and factors reflecting pupil characteristics, school and areas costs. The Library briefing [Implementation of the national funding formula for schools in England](#), CBP 8106, provides up-to-date information on the progress of these reforms.

Separate [consultations](#) were conducted on high needs funding. [The national funding formula for schools and high needs](#), published by the Department for Education in September 2017, described how the Government intended to proceed following those consultations.

Local authorities would receive high needs funding through a national formula derived from, among other factors, a basic unit of per-pupil funding for pupils in specialist SEN provision, historic spend, and also proxy measures such as population, school attainment, and numbers of children in bad health. More detail is provided in chapter 4 of the [Policy Document](#).

In July 2017, the Government [announced](#) £1.3bn of additional funding for schools, including high needs, over 2018-19 and 2019-20.<sup>16</sup> The subsequently published funding [consultation response](#) stated that this had the effect maintaining the schools and high needs blocks of the Dedicated Schools Grant in real terms per pupil up to 2019-20.<sup>17</sup> A further £350million in funding for SEN [was announced](#) in December 2018.<sup>18</sup>

### Transferring funding between blocks

Prior to 2018-19, the Dedicated Schools Grant has been split into 3 blocks: the schools block, the high needs block and the early years block. These blocks were notional, with local authorities are free to move funds between them.<sup>19</sup>

Following the formula changes, this position is now more restricted:

131. The second stage of the consultation recognised that a degree of flexibility between the DSG funding blocks would be needed to ensure that local authorities could manage their high needs budget. Local authorities will therefore be able to transfer

<sup>16</sup> Department for Education, [£1.3bn for core schools budget delivers rise in per pupil funding](#), 17 July 2017

<sup>17</sup> Department for Education, [The national funding formula for schools and high needs Executive summary](#), September 2017, p35

<sup>18</sup> Department for Education, [New funding to support children with special educational needs](#), 16 December 2018

<sup>19</sup> Department for Education, [School revenue funding: Current funding arrangements](#), March 2016, p4

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up to 0.5% of their schools block funding into their high needs budget, with the agreement of their schools forum.[...] [T]here will be a process for considering any reasonable requests for exceptions to these rules.<sup>20</sup>

These formula arrangements apply in 2018-19 and 2019-20, with future spending decision subject to future Spending Reviews.

The Library briefing [School funding reform in England from 2018-19: Implementation of the national funding formula](#), CBP 08106, provides more information on the reforms.

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<sup>20</sup> Department for Education, [The national funding formula for schools and high needs Policy document](#), September 2017, p38

## 3. Statistics: tribunals, funding, children and young people with SEND

### 3.1 SEND Tribunals

Parents and, in some cases, young people themselves, have statutory appeal rights to the First Tier Tribunal (Special Educational Needs and Disabilities).

In the period 1 September 2017 to 31 August 2018, of the **2,298** cases that were decided by the Tribunal, **2,035**, or around **89%** were decided in favour of the appellant. This doesn't necessarily mean that all aspects of the decision were in the appellant's favour.<sup>21</sup>

The Department for Justice publishes further breakdowns on appeals, including on appeal outcome by type of decision being appealed, by special educational need, and by pupil characteristics:

- [Tribunals statistical collection, Ministry of Justice](#)

### 3.2 Funding

As noted in section 2, the high needs block of the Dedicated Schools Grant (DSG) is largely intended for special educational needs provision.

Information on individual local authorities' provisional high needs block allocations for 2019-20 can be found on the Department for Education's website, although these are subject to later updating:

- Department for Education, [Dedicated schools grant \(DSG\): 2019 to 2020](#)

The table below provides high need funding allocations figures for each financial year since 2014-15, but needs to be understood in context. The figures are total allocations; the DfE does not publish the data at a per-pupil (or per-place) level, as such. There have also been changes to the way high needs funding is allocated over the years covered.

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<sup>21</sup> [Tribunals and gender recognition certificate statistics quarterly: July to September 2018](#), Ministry of Justice, Table SEND 1, 17 December 2018.

<b>TOTAL HIGH NEEDS BLOCK ALLOCATIONS</b>		
England		
	£, cash, millions	£, real (2018-19 prices), millions
2014 -15	5,184	5,550
2015 - 16	5,247	5,572
2016 - 17	5,300	5,504
2017 - 18	5,827	5,933
2018 - 19	6,114	6,114
2019 - 20 <sup>(a)</sup>	6,269	6,159
<i>Change 2014 to15 to 2019-20 (a)</i>	+20.9%	+11.0%

Notes:  
 Figures for all years are total high needs block funding, i.e., prior to deductions.

Owing to changes in funding methodologies and the scope of the high needs block, care should be taken when comparing between years.

<sup>(a)</sup> 2019-20 funding allocations are provisional, and subject to later updating.

HM Treasury GDP deflators, December 2018.

[Source: DSG allocations, Department for Education, various years](#)

### 3.3 Children and young people with SEND, statements and EHC plans

The table below shows recent trends in identified SEN incidence in all schools in England, and the proportion of children and young people that have EHC plans or statements. The proportion of children with SEND that have statements (now EHC plans) remains low, relative to the overall proportion of pupils with SEND.

<b>NUMBER AND PROPORTION <sup>(a)</sup> OF PUPILS WITH IDENTIFIED SPECIAL EDUCATIONAL NEEDS</b> England, all schools <sup>(b)</sup>						
	2013	2014	2015	2016	2017	2018
Pupils with SEN (millions)	1.55	1.49	1.30	1.23	1.24	1.28
As proportion of all pupils on roll (%)	18.7%	17.9%	15.4%	14.4%	14.4%	14.6%
Pupils with statements or EHC plans (millions)	0.23	0.23	0.24	0.24	0.24	0.25
As proportion of all pupils on roll (%)	2.8%	2.8%	2.0%	2.8%	2.8%	2.9%
Pupils with SEN without statements or EHC plans (millions)	1.32	1.26	1.07	0.99	1.00	1.02
As proportion of all pupils on roll (%)	16.0%	15.1%	12.6%	11.6%	11.6%	11.7%
Notes:						
<sup>(a)</sup> Expressed as a proportion of all pupils on roll.						
<sup>(b)</sup> Includes all academies including free schools, state-funded and non-maintained special schools, middle schools as deemed, all-through schools, city technology colleges, university technology colleges, studio schools, direct grant nursery schools, pupil referral units and general hospital schools.						

Source: [Special Educational Needs in England, Department for Education, January 2018](#)

## 4. Accountability: Ofsted and CQC inspections from May 2016

Over five years from May 2016, Ofsted and the Care Quality Commission (CQC) are carrying out inspections of all local authority SEND support provision in England.

Under the [Local area special educational needs and disabilities inspection framework](#), inspectors review how local areas meet their responsibilities to children and young people (from birth to age 25) who have special educational needs or disabilities (or both).

An [overview of the inspections](#), and what inspectors look for, has been published by the two inspectorates:

Over the course of the 5-day inspection, inspectors will meet managers and leaders from the area's education, health and social care services and look at young people's case files.

They will review the support provided by the local area for some individual children and young people to better understand how well the local area meets its responsibilities overall.

They will also visit early years settings, schools, further education providers and specialist services.

During these visits, inspectors will also spend time speaking to children, young people and their parents or carers.

Inspectors will look for evidence of how children and young people with special educational needs or disabilities (or both) are identified, how their needs are assessed and met, and how they are supported to move on to their next stage of education, the world of work and wider preparation for adulthood.<sup>22</sup>

Inspectors do not carry out inspections of individual education, social care or health services or providers.

Separate [information for families](#) about the inspections has also been published.

The relevant reports [are published](#) on the Ofsted and CQC websites.

A [report](#) summarising the findings from the first year of inspections was published in October 2017.

### Background: proposals for inspections

In March 2015, the Department for Education published [Special educational needs and disability: supporting local and national accountability](#), which provided a framework for monitoring the performance of the reformed SEND support system. The document indicated that the Government would develop a set of key indicators to monitor the progress and impact of the reforms locally and nationally,<sup>23</sup>

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<sup>22</sup> Ofsted and CQC [Joint inspections of local area special educational needs or disabilities \(or both\) provision](#), 7 January 2019

<sup>23</sup> Department for Education, [Special educational needs and disability: supporting local and national accountability](#), March 2015, p6

and included information about new arrangements for independent assessment, including proposed inspections by Ofsted and the CQC.<sup>24</sup>

A [consultation](#) on the proposed inspections by Ofsted and the CQC was launched in October 2015 and ran until January 2016. It set out that, starting in May 2016, inspectors from these two bodies would inspect the provision of support for children and young people with SEND across the responsible local bodies in health, social services and education. The full [consultation document](#) provides more detail.<sup>25</sup>

### **Government Response and next steps: inspections began May 2016**

Ofsted and the CQC published a [response to the consultation](#) on 10 March 2016. The response set out how Ofsted and the CQC would develop their approach, informed by consultative pilot inspections.

Ofsted and the CQC stated that there was “considerable agreement” with the proposals and that inspections would begin in May 2016.

The [Local area SEND inspection framework](#) was published in April 2016, alongside [guidance for inspectors](#) and [information for families](#).

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<sup>24</sup> Ibid., p14-15

<sup>25</sup> Ofsted, [Local area SEND consultation: The inspection of local areas' effectiveness in identifying and meeting the needs of disabled children and young people and those who have special educational needs](#), October 2015



## 5. Reports on the effectiveness of SEN support

### 5.1 Education Committee inquiry

In April 2018, the House of Commons Education Committee announced an [inquiry into the 2014 SEND reforms and their implementation](#).<sup>26</sup>

The announcement stated that the Committee would investigate:

- Assessment of and support for children and young people with SEND
- The transition from statements of special educational needs and Learning Disability Assessments to Education, Health and Care Plans
- The level and distribution of funding for SEND provision
- The roles of and co-operation between education, health and social care sectors
- Provision for 19-25-year olds including support for independent living; transition to adult services; and access to education, apprenticeships and work

The inquiry is still ongoing. The [written and oral evidence](#) provided to the Committee to date is available on the Committee's website.

### 5.2 Ofsted annual report 2017/18

Ofsted published its [annual report for 2017/18](#) in December 2018. The report found that "the gap in performance and outcomes for children with SEND is widening between the best and the worst local areas."<sup>27</sup>

In her [announcement of the report](#), Amanda Spielman, Her Majesty's Chief Inspector, said that local area SEND reports (see section 4.4) had found provision for young people with SEND to be "too disjointed and too inconsistent," and identified patchy implementation of EHC plans as a key concern:

the quality of education, health and care plans remains too variable and the contributions from certain partners too weak. Some areas have led the way in showing what can be done with these plans to support better outcomes for children. But too many have not. The result is, to return to my analogy of the slope, the gradient for some young people with SEND is getting steeper, not shallower. Identification of SEND is often inaccurate or late, and the gap in outcomes for children with SEND is widening, which in turn places even greater strain on services.<sup>28</sup>

Ms Spielman also highlighted the difficulties parents have in accessing support: "Something is deeply wrong when parents repeatedly tell

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<sup>26</sup> Education Committee, [Special educational needs and disabilities inquiry launched](#), 18 April 2018

<sup>27</sup> Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2017/18](#), December 2018, p7

<sup>28</sup> Ofsted, [Amanda Spielman launches Ofsted's Annual Report 2017/18](#), 4 December 2018

inspectors that they have to fight to get the help and support that their child needs.”<sup>29</sup>

[The report](#) itself commented on a sharp increase in recent years in demand for EHC assessments to be carried out, as well as refusals by local authorities to do so, and raised concerns about increasing numbers of children awaiting provision despite having a plan in place:

6. The level of demand for local authorities to undertake EHC needs assessments has increased by over 50% since 2015. In 2017, 45,200 children and young people were assessed and a decision taken to whether they need an EHC plan. The number of requests for EHC plans that are either refused or delayed is also increasing. LAs can refuse to carry out an EHC needs assessment if they believe it has not met the required threshold of needs. In 2017, there were around 14,600 refusals to carry out an assessment. This is a third more than in 2015. Once a child has been assessed, they may still struggle to access the services they need. In 2018, 2,060 children with a statement or EHC plan were awaiting provision, which is almost three times more than in 2010.<sup>30</sup>

The report also raised concerns that children with SEN are more likely to have a fixed-term exclusion, a permanent exclusion or to be off-rolled:

We are concerned that in secondary schools:

- pupils with SEN support are five times more likely to have a permanent exclusion than pupils with no SEND
- 27% of pupils with SEN support had a fixed-term exclusion last year – 93,800 pupils
- nearly 5,800 pupils with SEND left their school between Years 10 and 11 and some of them may have been ‘off-rolled’; pupils with SEND account for 13% of all pupils but 30% of those who leave their school
- it is not clear where these Year 10 pupils move on to; half do not reappear in another state-funded school, more than a quarter go to state-funded alternative provision/pupil referral units, but only a small proportion move to a state-funded special school.<sup>31</sup>

The Library briefing on [Off-rolling in English schools](#), CBP 8444, discusses that issue more widely.

## 5.3 Ofsted and CQC inspections: Findings on the system

### 2018: Ofsted Annual report

Ofsted’s [annual report for 2017/18](#) stated that as of the end of July 2018, Ofsted and the CQC had inspected SEND provision in 68 out of 152 local areas (see section 3 for information on these inspections’

<sup>29</sup> As above

<sup>30</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2017/18](#), December 2018, p53

<sup>31</sup> As above.

introduction). Of these, 30 areas were required to provide a 'written statement of action', an indication of serious failings.<sup>32</sup>

### 2017 report

In October 2017 Ofsted and the CQC published a [report](#) based on their first year of local area SEND inspections.

The report offered some findings on the system as a whole, taken from its inspections of 30 local authorities' SEND support systems. Some of the most important findings were:

- Children and young people identified as needing SEND support had not benefited from the implementation of the Code of Practice well enough. These children and young people had a much poorer experience of the education system than their peers. Too often, local area leaders were not clear how their actions were improving outcomes for those children and young people identified as needing SEND support.
- Children and young people who have SEND were found to be excluded, absent or missing from school much more frequently than other pupils nationally.
- School leaders had used unofficial exclusions too readily to cope with children and young people who have SEND.
- Access to therapy services was a weakness in half of the local areas inspected, while access to child and adolescent mental health services (CAMHS) was poor in over a third of local areas
- There had not been enough progress in implementing a coordinated 0– 25 service for children and young people who have SEND. In particular, the commissioning of health services for up to 25 was inconsistent. In the most effective local areas, strong strategic leadership had led to established joint working between education, health and care services.
- Children's and young people's SEND were identified well in the early years, particularly for those with complex needs
- In over a third of the local areas inspected, leaders across education, health and care did not involve children and young people or their parents sufficiently in planning and reviewing their provision.
- Many local area leaders were unaware of the depth of frustration among local parents and what their concerns were about
- A large proportion of parents in the local areas inspected lacked confidence in the ability of mainstream schools to meet their child's needs
- Local offers were not effective in helping parents to access information and services in over half of the local areas inspected
- The statutory assessment process was not working well enough in just over two thirds of local areas inspected
- Local area leaders have had varied success in securing the use of personal budgets
- The proportions of young people who have SEND who are not in education, employment and training were low, particularly for those who had an EHC plan.

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<sup>32</sup> Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2017/18](#), December 2018, p53

- Children and young people who have SEND and their families typically had good access to high-quality short breaks.

## 5.4 DfE survey on EHC plans

In March 2017, the Department for Education published the findings of a survey of parents and young people on their [experiences of EHC plans](#). The following issues were listed among the report's key findings:

- Two thirds of parents and young people were satisfied with the overall process of getting an EHC plan and a similar proportion agreed that it would achieve the outcomes agreed for the child or young person (over one in ten were dissatisfied and just under one in ten disagreed respectively)
- Half found that starting the EHC plan process was easy, whereas almost one quarter found this to be difficult
- Two thirds of parents and young people were informed about the information, advice and support available
- The majority (80%) of parents agreed that their own wishes and opinions were included in the EHC plan. It was less common to report that the wishes and opinions of the child or young person were included (55%)
- Three quarters said that the nursery, school or college named in their EHC plan was the one they asked for in the drafting process
- More respondents thought that their EHC plan had been provided after the 20-week target had passed than before (62-38%). Official statistics show the majority of new plans were provided by 20 weeks. The report suggested that the difference may reflect respondents timing the process from an earlier point, imprecisions in respondents' estimates, and plans exempt from the 20-week timeframe being included in the survey data
- Almost three quarters agreed that their EHC plan led to the child or young person getting the help and support that they need; over two-thirds agreed it has improved the child/young person's experience of education. Respondents were more likely to agree (for both measures) the longer the plan had been in place<sup>33</sup>

## 5.5 DfE Review of arrangements for disagreement resolution

Also in March 2017, the Department for Education published a [review of the arrangements for SEND disagreement resolution](#), and a [Government response](#) to the review.

The report urged some caution on its findings in terms of sample size, but found wide variations in approaches by local authorities to SEND dispute resolution, as well as that:

- 'Person-centred' EHC needs assessment and plan development was successful in fostering agreement
- The time disagreements took to resolve was important for the impact on the child or young person involved

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<sup>33</sup> Department for Education, [Experiences of Education, Health and Care Plans: research report](#), March 2017, p11

- Mediation proved to be a cost-effective route for disagreement resolution
- Information, advice and support services varied in quality and quantity
- Disagreement resolution services were generally not understood or used
- Parents interviewed had three main concerns about SEND complaints processes:
  - when the complaint was ignored or not taken seriously
  - when the response to the complaint took too long to emerge
  - when the response did not help to put right the issue/s complained about

Full 'headlines' are available on pages 22-23 of [the report](#), with an expanded summary on the following pages.<sup>34</sup>

The [Government response](#) set out steps that the Government intended to take as a result of the review:

- To publish good practice guidance developed as part of the review to share with local areas through regional networks and delivery support partnerships
- Supporting continuous professional development for LA staff
- Considering how best to channel Government support for families from April 2018 (when transition to EHC plans will be complete)
- Supporting the mediation sector to introduce voluntary standards and accreditation of training programmes for SEND mediation;
- Producing accessible guidance for families on the available routes for complaint and disagreement resolution
- Introducing a two-year national trial of the expansion of the First-tier Tribunal SEND powers to make non-binding recommendations on the health and social care elements of EHC plans.<sup>35</sup>

### 5.6 Lee Scott report: Experiences of the system

In November 2016, the Department for Education published a report by Lee Scott, a former Conservative MP, on the [experiences of children, young people and parents](#) of the SEND system, based on interviews and evidence from across the country.

The report contained mixed experiences of the system, for instance examples of good local authority communication with parents, and poor communication between authorities. It raised a number of areas (rather than formal recommendations) to improve the operation system as it stands:

- Improving Communication across all agencies and in every area, including capturing and replicating good practice in this area. Mr

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<sup>34</sup> Department for Education, [Review of arrangements for disagreement resolution \(SEND\)](#), March 2017

<sup>35</sup> Department for Education, [Special Educational Needs and Disabilities: Disagreement Resolution Arrangements in England](#), March 2017, p7

Scott also stated that it was important that the Government, and other leadership agencies, sent out strong messages about the need to improve.

- More training for all staff working with children and young people, for example on identifying SEND, and understanding the particular needs of adoptive children;
- The importance of staff access to training, and that leaders both allow and encourage staff to undertake training to improve awareness and expertise in SEND, and also the “impact of loss and trauma on a child’s ability to learn”
- Greater transparency over funding
- Application of the legislation, and the SEND Code of Practice, in a way that demonstrably led to culture change, and reducing a ‘postcode lottery’ where the standard of provision varies widely in different areas
- Whether more could be done in schools and colleges to do more to support children and young people with medical needs
- Whether more could be done to encourage local areas to develop expertise, discussions and strategies to ensure more young adults with SEND have access to training and employment opportunities

## 5.7 National Autistic Society and APPG report

In November 2017 the National Autistic Society (NAS) and the All-Party Parliamentary Group on Autism published its latest [survey of children with autism and their parents](#), including the following findings:

- Seven in ten children and young people said that their peers do not understand them and five in ten said that their teachers do not know how to support them
- 70% of parents said they more than six months for support for their child, with 50% waiting more than a year
- 42% of parents said their request for a SEN assessment was refused on the first time of asking
- 40% of parents said that their child’s school place does not fully meet their needs
- Fewer than five in ten teachers were confident about supporting a child on the autism spectrum<sup>36</sup>

## 5.8 Driver Youth Trust report

In October 2015, the Driver Youth Trust published a report, [Joining the Dots](#), which analysed the impact of the reforms in the year since their introduction. The report stated that:

Many examples of high-quality provision have emerged in response [to the reforms]. These are often driven by strong partnerships, well-managed change and skilled, impassioned leadership. However, at present provision is ‘fragmented’ leading to difficulties in sharing information and knowledge. As a result, many children and young people do not receive the support they deserve and gaps in the system lead to wasted resources as well as disconnected or duplicated services. Ultimately students, parents, schools and sector organisations are finding it difficult to

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<sup>36</sup> All-Party Parliamentary Group on Autism and the National Autistic Society, [Autism and education in England 2017](#), November 2017, p4

navigate the new system and this is standing in the way of the reforms' success.<sup>37</sup>

The report cited Local Offers as an example of some of the difficulties faced, describing them as a "huge distraction; in many cases they are of little or no value and many parents are unaware that they even exist."<sup>38</sup>

In a BBC article on the report, a DfE spokesman was quoted as saying the reforms were "already [making] a real difference, with parents telling us the process is much more straightforward - but we want these experiences to continue improving."<sup>39</sup>

### 5.9 Bath Spa University research

[Articles](#) published in September 2015 cited research from a survey carried out by Helen Curran, a lecturer at Bath Spa University, which stated that 63 per cent of special educational needs coordinators (SENCOs) surveyed had said that the number of children on their school's SEN and disabilities register had fallen as a result of the government's SEN reforms, raising the question of whether the relevant children had previously been misidentified as having SEN, or whether other pressures were reducing their numbers.<sup>40</sup>

### 5.10 Press comment

The following recent press articles discuss a range of issues relating to SEN:

- Guardian, [Parents in England seek legal action over special needs funding cuts](#), 26 September 2018
- Guardian, ['Devastating' cuts hit special educational needs](#), 10 November 2018
- Times, [Councils put illegal blocks on help for special needs pupils](#), 15 December 2018
- Guardian, [Children in special needs education face £1.6bn cash shortfall](#), 16 December 2018
- Independent, [Parents to take government to High Court over special needs funding cuts](#), 19 December 2018
- BBC News, [Families waiting too long for special needs support in England](#), 7 January 2019
- TES, ['Extreme concern' over schools rejecting vulnerable pupils](#), 18 January 2019

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<sup>37</sup> Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND](#), October 2015, p3

<sup>38</sup> Ibid.

<sup>39</sup> BBC News Online, [Special needs pupils in 'fragmented' system](#), 14 October 2015

<sup>40</sup> See SecEd, [Concern for pupils who have lost their SEN recognition](#), 23 September 2015; NAHT, [SEN reforms and SENCOs](#), 25 September 2015. Research available at Bath Spa University, [SEND reforms 2014 and the narrative of the SENCO: early impact on children and young people with SEND, the SENCO and the school](#), 21 September 2015 [subscription required]

# Annex: The previous system for children and young people with SEN and the process of reform

## A brief overview of the previous system

The previous system for children with SEN was provided for in Part 4 of the *Education Act 1996*, as amended, and with associated regulations.

The 2001 [statutory code of practice](#) set out a graduated approach to SEN that recognised a continuum of SEN which might require increasing action by a school. There were three levels of intervention for pupils with SEN.

**School Action** – where the teacher or the school Special Educational Needs Coordinator (SENCO) decides to provide something for the child additional to or different from the school's usual differentiated approach to help children learn. In January 2010, 11.4 per cent of the school population were identified at School Action level, approximately 916,000 pupils;

**School Action Plus** – where the school consults specialists and requests help from external services. In January 2010, 6.2 per cent of the school population were at School Action Plus level, approximately 496,000 pupils; and

**Statement** – where the child requires support beyond that which the school can provide and the local authority arranges appropriate provision. In January 2010, 2.7 per cent of the school population or 221,000 pupils had a statement of SEN.<sup>41</sup>

Provisions were in place for children younger than school age, but most statements were made for school-aged children. The governing bodies of maintained schools were required to use their best endeavours to secure appropriate SEN provision for any pupil with SEN, and had to appoint a member of the school staff to be a Special Educational Needs Coordinator (SENCO).<sup>42</sup>

Each local authority was responsible for identifying the children in their area who had SEN of a kind that may call for SEN provision.<sup>43</sup> Having identified a child with SEN, the local authority was required to notify the parent that considering whether to make a formal (statutory) assessment of the child's needs. After a statutory assessment the local authority would decide whether it was necessary to make a statement of SEN. A parent could also request a local authority to arrange a statutory assessment of a child for whom the authority was responsible and for whom no statement had already been made.

A statement of SEN described, in six parts, the child's needs and the special provision needed. Provision was also in place for statements to be reviewed.

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<sup>41</sup> Department for Education, [Support and aspiration: a new approach to special educational needs and disability](#), March 2011, paragraph 25

<sup>42</sup> *Education Act 1996*, section 317; *Education and Inspections Act 2006*, section 173

<sup>43</sup> *Education Act 1996*, section 321



The local authority was obliged to enable parents to express a preference for a school, and was required to name the preferred school on the statement unless it was unsuitable for the child's age, aptitude, ability or his/her SEN, or the placement would be incompatible with the efficient education of other children with whom the child would be educated or with the efficient use of resources.<sup>44</sup> The local authority was also responsible for arranging the provision in the statement.

### Academies and SEN

Academies operate in accordance with their individual funding agreement. Those academies that had been established since the *Academies Act 2010* were required to comply with section 1(7) of the Act, which imposed obligations on them equivalent to those contained in Part 4 of the *Education Act 1996*. The requirements on academies established before the 2010 Act depended upon the exact terms of an individual academy's funding agreement.

### Post-16 provision

Under the previous system, a statement of SEN stopped if a young person left school at 16. However, if the person remained at school, the local authority could maintain a statement until s/he reached 19 or until the end of the school year when s/he finished the course. If the young person left school for further education, his/her SEN was assessed under a different process, the Learning Difficulty Assessment (LDA). Section 139a of the *Learning and Skills Act 2000* placed local authorities under a duty to arrange a LDA for students in their last year of compulsory education who had a statement of SEN and who were expected to continue in post-16 education. Local authorities also had the power to undertake LDAs for young people who did not have a statement but who appeared to have learning difficulties and were receiving, or were likely to receive post-16 education. LDAs however did not have the statutory rights and protections associated with statements of SEN.

### Concerns about the operation of the existing system

During the later period of the 1997-2010 Labour Government, concerns were raised about the operation of the SEN system. In July 2006, the then Commons Education and Skills Select Committee reported on special educational needs, and highlighted strong concerns about parents' confidence in the SEN system. The [report](#) raised issues about the statementing process and the issuing of statements; transfer of statements; placement decisions; the role of local authorities; school admissions and fair access for children with SEN; and parental choice in relation to academies.<sup>45</sup>

Part of the Labour Government's response to the issues raised by the Select Committee was to ask Brian Lamb, the chair of the Special Educational Consortium, to carry out an inquiry into how parental

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<sup>44</sup> *Education Act 1996*, Schedule 27

<sup>45</sup> Education and Skills Committee, [Special Educational Needs](#), HC 478-I, Third Report of Session 2005-06

confidence in the SEN assessment process might be improved. A series of [reports](#) were published.<sup>46</sup>

In addition, a number of reports looked at specific aspects of SEN provision<sup>47</sup> and an Ofsted review of SEN, [Special educational needs and disability review – a statement is not enough](#), commissioned by the Labour Government, was published in September 2010.<sup>48</sup>

## Green Paper on a reformed system

In July 2010, speaking at an Every Disabled Child Matters event, Sarah Teather, the then Children’s Minister, said that the new Government would publish a green paper on SEN.

A [Call for Views](#) on the planned Green Paper was published in September 2010, and set out that the Government was considering a range of options including how to

- give parents a choice of educational settings that can meet their child’s needs
- transform funding for children with SEN and disabilities and their families, making the system more transparent and cost-effective while maintaining a high quality of service
- prevent the unnecessary closure of special schools, and involve parents in any decisions about the future of special schools
- support young people with SEN and disabilities post-16 to help them succeed after education
- improve diagnosis and assessment to identify children with additional needs earlier<sup>49</sup>

The Green Paper, [Support and aspiration: a new approach to special educational needs and disability](#) was published in March 2011, and contained wide-ranging proposals to reform the system. The then Education Secretary, Michael Gove, announced the detailed proposals in a [Written Ministerial Statement](#) on 9 March 2011.<sup>50</sup>

The Green Paper said that the Government would “remove the bias towards inclusion” and improve the range and diversity of schools so as to:

- give parents a real choice of school, either a mainstream or special school. We will remove the bias towards inclusion and propose to strengthen parental choice by improving the range and diversity of schools from which parents can choose, making sure they are aware of the options available to them and by changing statutory guidance for local authorities. Parents of children with statements of SEN will be able to express a preference for any state-funded school – including special schools, Academies and Free Schools – and have their preference met unless it would not meet the needs of the child, be incompatible with the efficient education of other children, or be an inefficient use of resources. We will also prevent

<sup>46</sup> These are currently available on the [National Archives](#) website.

<sup>47</sup> See [Library Standard Note SN/SP/5781](#)

<sup>48</sup> See [Library Standard Note SN/SP/5781](#) for further background on the Ofsted review.

<sup>49</sup> Department for Education, [Children’s Minister unveils plans for education of SEN pupils](#), 10 September 2010

<sup>50</sup> [HC Deb 9 March 2011 cc63-5WS](#)

the unnecessary closure of special schools by giving parents and community groups the power to take them over<sup>51</sup>

A consultation on the Green Paper was conducted between March and June 2011.

## Developing Legislation

The transition from the Green Paper to legislation was lengthy. This section provides a brief overview of the various stages. More detailed information is provided in the following Library notes; these papers were written contemporaneously and so reflect the then-current position:

- *The green paper on special educational needs and disability*, [SN/SP/5917](#), July 2012
- *Draft legislation on provision for children and young people with special educational needs*, [SN/SP/6420](#), September 2012

In May 2012, the Government published its detailed response to the formal public consultation on the Green Paper: [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#).<sup>52</sup> This announced that a draft Bill for reform would be published in summer 2012, and would be subject to consultation and pre-legislative scrutiny before changes to the law were made. The response stated that the Government wanted to introduce reforms to come into effect in 2014.

Some work had already commenced on proposed changes. Twenty SEN pathfinders had been announced in October 2011.<sup>53</sup> These covered 31 local authorities and their PCT and emerging Clinical Commissioning Group partners. In a [Written Ministerial Statement](#) in May 2012, Michael Gove said that the draft Bill would be informed by early lessons from the SEN pathfinders.

In October 2012, the DFE published an [Interim Evaluation Report](#) of the pathfinder programme. Amongst other things, the report said that the current pace of progress was behind that expected and was unlikely to provide sufficient evidence to inform the evaluation within the original 18-month evaluation. The pathfinders were due to end in March 2013. In evidence to the Education Select Committee in November 2012, Edward Timpson, Under-Secretary of State at the Department for Education, said that the pathfinders would be extended for 18 months, through to September 2014.<sup>54</sup>

Draft provisions relating to SEN reform, along with explanatory notes, were published in September 2012 in [Draft legislation on Reform of provision for children and young people with Special Educational Needs](#).<sup>55</sup> The [Written Ministerial Statement](#) announcing publication of

<sup>51</sup> [Support and aspiration: a new approach to special educational needs and disability](#), Executive summary, paragraph 7

<sup>52</sup> [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#), DFE, 2012

<sup>53</sup> HC Deb 17 October 2011 c609

<sup>54</sup> [Oral evidence taken before the Education Committee, 6 November 2012](#), Q198, HC Paper 631-II, Ev30

<sup>55</sup> Cm 8438

the draft provisions summarised the proposed changes. The draft legislation, which consisted of 51 clauses, provided a framework for the new system and for much of the detail to be contained in regulations.

The Education Select Committee carried out the pre-legislative scrutiny of the draft SEN provisions. Its [report](#) was published on 19 December 2012, and stated that the general thrust of the reforms was sound, but worried that the draft legislation lacked detail, without which a thorough evaluation of the likely success of the Government's proposals was not possible.<sup>56</sup> Alongside the Bill, the Government published the command paper, [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), which included the Government's detailed response to the Committee's report.<sup>57</sup>

## The Children and Families Act 2014

The *Children and Families Bill* had its First Reading in the House of Commons on 4 February 2013.

Part 3 of the Bill, made provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The changes included:

- Definitions and duties to identify children and young people with SEN
- Local integration of education, health and care provision and joint commissioning
- Inclusion in mainstream education
- Personal budgets for young people with an EHC plan
- Appeals, mediation and dispute resolution
- Special educational provision
- The requirement for a SEN Code of Practice

The following Library publications provide further information on the passage of the Bill:

- *Children and Families Bill*, [RP 13/11](#), February 2013 (see section 4)
- *Children and Families Bill Committee Stage Report*, [RP 13/32](#), May 2013 (see section 3)
- *Children and Families Bill: Lords' Amendments to Part 3 (Children and Young People in England with Special Educational Needs or Disabilities)*, [SN/SP/6815](#), February 2014

The [Children and Families Act 2014](#) received Royal Assent on 13 March 2014. The majority of sections on SEN came into force on 1 September 2014.

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<sup>56</sup> [Pre-legislative Scrutiny: Special Educational Needs, House of Commons Education Committee, Sixth Report of Session 2012-13](#), HC Paper 631-I, Vol. 1: Report and formal minutes; HC Paper 631-II, Vol. II: oral and written evidence; and Vol. III: additional written evidence, which is available on the [Committee's website](#).

<sup>57</sup> [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), Cm 8540, published 5 February 2013, Annex C

### **The reformed system: changes from the previous system**

The new 0-25 SEN [Code of Practice](#) set out the main changes from the previous code, published in 2001, reflecting the changes introduced by the *Children and Families Act 2014*:

- The Code of Practice covers the 0-25 age range and includes guidance relating to disabled children and young people as well as those with SEN
- There is a clearer focus on the participation of children and young people and parents in decision-making at individual and strategic levels
- There is a stronger focus on high aspirations and on improving outcomes for children and young people
- It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health and social care
- It includes guidance on publishing a 'local offer' of support for children and young people with SEN or disabilities
- There is new guidance for education and training settings on taking a graduated approach to identifying and supporting pupils and students with SEN (to replace School Action and School Action Plus) – this is called 'SEN Support'
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care Plan (EHC Plan) replace statements and Learning Difficulty Assessments (LDAs)
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood
- Information is provided on relevant duties under the *Equality Act 2010*
- Information is provided on relevant provisions of the *Mental Capacity Act 2005*<sup>58</sup>

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<sup>58</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p13-14

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