

The Children and Families Act 2014

Part 3: Children and young people with special educational needs and disabilities

A briefing from the Council for Disabled Children



About this guide

This is an overview of Part 3 of the Children and Families Act 2014: children and young people with special educational needs and disabilities. It is not intended to provide a complete description of every section in the Act, but to highlight and explain the most significant requirements of the new legislation. More of the detail of exactly how the Act should be interpreted will be set out in the SEN and disability Code of Practice, subject to its approval by Parliament, and this briefing cannot substitute for statutory guidance.



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1. Core principles of the legislation

Section 19 of the Act sets out the general principles that local authorities must have regard to when supporting disabled children and young people and those with SEN under Part 3 of the Act. Local authorities must pay particular attention to:

- the views, wishes and feelings of children and their parents, and young people;
- the importance of them participating as fully as possible in decision-making and providing the information and support to enable them to do so; and
- supporting children and young people's development and helping them to achieve the best possible educational and other outcomes.

2. Definitions and scope

Disabled children and young people and those with SEN

Part 3 of the Children and Families Act 2014 is entitled *Children and Young People In England with Special Educational Needs and Disabilities*. Part 3 places duties on local authorities and other services in relation to both disabled children and young people and those with SEN, although not all the sections of the Act apply to both groups:

- The strategic planning duties generally apply to all disabled children and young people and those with SEN;
- The individual duties generally apply only to children and young people with SEN. Individual duties to disabled people are contained in the Equality Act 2010.

When a child or young person has 'special educational needs'

A child or young person has special educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for them (Section 20). Special educational provision is provision that is additional to or different from that which would normally be provided for children or young people of the same age in a mainstream education setting (Section 21). This definition of SEN is the same as the definition of SEN in the Education Act 1996.

When a child or young person is 'disabled'

References to disabled children and young people in the Act cover any child or young person who is disabled under the Equality Act 2010.

The difference between 'children' and 'young people'

A child is a person under compulsory school age. A young person is a person over compulsory school age but under 25. A person is no longer of compulsory school age after the last day of summer term during the year in which they become 16 (Section 83(2)). This distinction is important because once a child becomes a young person they are entitled to take decisions in relation to the Act on their own behalf, rather than having their parents take the decisions for them. This is subject to a young person 'having capacity' to take a decision under the Mental Capacity Act 2005.

Children and young people with SEN who are detained in youth custody

Part 3 of the Children and Families Act places significant new responsibilities on local authorities and other services in relation to children and young people with SEN who are detained in youth custody. These provisions will not be commenced until April 2015. CDC will be producing further material to support implementation of these sections of the Act and therefore are not included in this briefing.



3. Identification and responsibility

Duty to identify all disabled children and young people and those with special educational needs

Section 22 of the Act places a duty on local authorities to identify all the disabled children and young people in their area and all the children and young people their area who have or may have special educational needs. This is a proactive duty; it will mean that local authorities will need to put in place systems for gathering this information from educational institutions and other services.

Local authority responsibility for all children and young people with SEN in their area

Under Section 23 of the Act, local authorities are responsible for all children and young people with SEN in their area. This has significant implications for the commissioning of services and for the assessment of individual children and young people.

A local authority is responsible for a child or young person if they have been identified by the authority or brought to their attention as someone who has or may have special educational needs. Anyone is able to bring a child or young person to the attention of the local authority.

Duty of health bodies to bring certain children to local authority's attention

If clinical commissioning groups (CCGs), NHS Trusts and NHS Foundation Trusts believe that a child under compulsory school age is disabled, has, or probably has, special educational needs, Section 23 of the Act requires them to:

- tell the child's parents and give them the opportunity to discuss this with an officer of the group or trust; and
- tell the appropriate local authority.

4. Joint working across agencies, services and institutions

Keeping service under review

Section 27 of the Act requires local authorities to keep the education, training and social care provision made for disabled children or young people and those with SEN under review. The views of children, their parents, and young people should be central to the way local authorities review their services and they must be consulted about services currently available (see section on the local offer below). Local authorities must also consider whether the provision is sufficient to meet children and young people's needs (Section 27(2)).



This process of keeping education, training and social care under review should be integrated with the Joint Strategic Needs Assessment undertaken by the local Health and Wellbeing Board. Health and Wellbeing Boards have strategic influence over local commissioning decisions and are responsible for the Joint Strategic Needs Assessment that analyses the health and social care needs of a local community.

Promoting integration and joint commissioning arrangements

Section 25 of the Act places a duty on local authorities to promote integration between educational and training provision, health care provision and social care provision. This duty mirrors the duty placed on CCGs by the Health and Social Care Act 2012. The NHS Mandate also makes clear that NHS England, CCGs and Health and Wellbeing Boards must promote the integration of services if this will improve services and/or reduce inequality.

Section 26 of the Act places a duty on local authorities and 'partner commissioning bodies' to put in place joint commissioning arrangements. 'Partner commissioning bodies' are the NHS Commissioning Board (NHS England) and individual CCGs who provide services to children in that area. The purpose of the joint commissioning arrangements is to plan and jointly commission the education, health and care provision for disabled children or young people and those with SEN.

Sub-sections 26(3) and (4) requires every joint commissioning arrangement to include arrangements for considering and agreeing:

- the education, health and social care provision needed by disabled children and young people and those with SEN, how this provision will be secured and by whom;
- how complaints about education, health and social care provision are dealt with;
- the procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible; and
- how education, health and care assessments should be secured.

Agreements about responsibility for securing particular provision should be reflected in the relevant commissioning strategies for each partner organisation to ensure that this provision is secured.

The local offer

Section 30 requires local authorities to publish and maintain a local offer. The local offer is information that sets out the education, health and social care provision that the local authority expects to be available for disabled children and young people and those with SEN. This specifically includes provision that will help them prepare for adulthood (Section 30(3)). The local offer should be developed by local authorities and their health partners, together with children, their parents and young people.

As well as providing information about services, the local offer should be used as a tool to measure how well services are meeting local need and achieving the outcomes set out in the joint commissioning arrangements. Local authorities have a duty to publish comments from children, their parents, and young people on the local offer and any actions they intend to take in response (Section 30(6)). These views and comments should be used to inform future commissioning decisions.



5. Presumption for mainstream education

Section 33 of the Act places a duty on the local authority to ensure that a child or young person with an EHC plan (see section below) is educated in a mainstream setting. The only exceptions to this rule are if this goes against the wishes of the young person or the child's parent, or would impact on the efficient education of others and there are no reasonable steps that could be taken to overcome this.

Section 34 of the Act confirms the general principle that children and young people with SEN, but who do not have an EHC plan, must be educated in a mainstream setting. The only exceptions to this rule are:

- where it is agreed that they are admitted to a special school or special post-16 institution to be assessed for an EHC plan;
- where it is agreed that they are admitted to a special school or special post-16 institution following a change in their circumstances; they are admitted to a special school which is established in a hospital; or
- where they are admitted to a Special Academy whose Academy arrangements allow it to admit children or young people who do not have an EHC plan.

6. Education, Health and Care assessments and plans

Summary

EHC assessments and plans replace statutory assessments and statements of special educational need. Many of the legal requirements for EHC assessments and plans are the same or similar to those required for statements. There are also some significant differences, including:

- EHC plans do not necessarily cease when a young person leaves school and can be maintained when a young person is in college, undertaking an apprenticeship, or not in education, employment or training;
- EHC plans can be maintained up to the age of 25;
- There are enforceable elements of health and social care that must be recorded in EHC Plans.

Deciding whether to conduct an Education, Health and Care (EHC) assessment

Section 36(3) of the Act requires local authorities to consider whether to carry out an EHC assessment for a child or young person when:

- a request to undertake an assessment is made by, a child's parent, a young person or a representative of a school or post-16 institution;
- a child or young person who has, or may have, SEN is brought to their attention. Anyone is able to bring a child or young person to the attention of the local authority as having or possibly having SEN.



Local authorities must consult the child's parent or the young person when considering whether to carry out an EHC assessment (section 36(4)).

In making a decision about whether to carry out an EHC assessment, the local authority will need to gather evidence from the child, parent or young person concerned, and the relevant education institution. In considering whether it may be necessary for special educational provision to be made in accordance with an EHC plan, a local authority will need to consider whether there is evidence that, despite the educational institution having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, they have not made expected progress.

If they think this may be the case, a local authority may have to carry out an EHC assessment. This decision must be made within six weeks of a request being received or a child or young person being brought to their attention. If a local authority decides not to carry out an EHC assessment, a parent or young person can appeal to the First-Tier (SEND) Tribunal.

Conducting an EHC assessment

An EHC assessment is an assessment of the education, health care and social care needs of a child or young person (Section 36(2)). Local authorities are required to gather evidence from the child, parent and/or young people and also from a range of professionals across education, health and social care. EHC assessments should be built on an understanding of the aspirations of children, parents and young people and the outcomes they want to achieve.

Following an EHC assessment, the local authority must decide whether it is necessary for special educational provision to be made in accordance with an EHC plan (Section 37(1)). This decision will be based on whether the education institution can be reasonably expected to provide the special educational provision that a child or young person needs.

If a local authority decides a plan is not necessary, this decision must be communicated within a maximum of 16 weeks from the original request for assessment. If a local authority decides a plan is not necessary, a parent or young person can appeal to the First-Tier (SEND) Tribunal.

Drawing up an EHC plan

If a local authority decides that it is necessary for special educational provision to be made in accordance with an EHC plan, it must prepare an EHC plan for that child or young person.

EHC plans must include certain information ([Section 37\(2\)](#)) which must be set out in separate sections. The CDC publication *Education, Health and Care Plans: a checklist* sets out all the statutory duties for the content of EHC plans and is not repeated here.

The local authority must send a draft EHC plan to a child's parent or the young person and give them 15 days to comment on the draft. The final special educational content of the EHC plan can be appealed to the First-Tier (SEND) Tribunal. Complaints about the health and social care content of the plan must be made to those service providers.

Naming an education institution in an EHC plan

Once a draft plan has been received, parents or young people can request that a particular education institution is named in the plan. [Section 40](#) of the Act requires local authorities to name the education institution requested unless they believe that the child or young person's attendance would:

- Not meet their special educational needs
- Be incompatible with the efficient education of others or
- Be incompatible with the efficient use of resources.

If it believes that any of these circumstances apply, the local authority must name the school or other institution, or type of institution, that the local authority considers to be most appropriate for the child or young person. Whether local authorities intend to name the education institution requested by a parent or young person, or one they otherwise believe to be most appropriate, they must consult that institution in advance of naming it in a plan.

A copy of the final EHC plan must then be sent to the child's parent or the young person and to the school, college or other institution that has been named in the EHC plan.

A parent or young person can appeal to the First-Tier (SEND) Tribunal if they disagree with the named institution.

[Section 43](#) of the Act require any education institutions named in an EHC plan to admit the child or young person.

Duty to secure the education, health and social care provision specified in an EHC plan

[Section 42\(1\)](#) of the Act requires local authorities to secure the special educational provision specified in an EHC plan.

[Section 42\(2\)](#) requires the responsible commissioning body to arrange the health care provision specified in an EHC plan. The responsible commissioning body will normally be the clinical commissioning group, although could be NHS England in the case of some specialist services. A child or young person must receive any health care provision specified in an EHC plan.

[Section 37\(2\)\(e\)](#) requires local authorities to identify any social care services which must be made for a child or young person under 18 by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970. These services must be included in an EHC plan and any services identified in this section must be provided.

Reviews of EHC plans

[Section 44](#) of the Act requires local authorities to review EHC plans as least once a year. The purpose of the review is to assess whether the provision specified in an EHC plan is still appropriate to meet a child or young person's SEN and whether progress is being made toward achieving the outcomes. All reviews from Year 9 onwards must include a focus on preparing for adulthood.

Ceasing to maintain an EHC plan

[Section 45](#) of the Act allows local authorities to cease an EHC plan where they are no longer responsible for the child or young person or they consider that it is no longer necessary for the EHC plan to be maintained.

An EHC plan can be maintained for a young person up to the age of 25. When deciding whether to cease an EHC



plan for a young person aged 19-25, the local authority must have regard to whether the educational or training outcomes specified in the EHC plan have been achieved (Section 45(3)).

Personal budgets

Section 48 requires local authorities to prepare a personal budget for children and young people who have EHC plans, if the child's parent or young person requests one. A personal budget is an amount identified as available to secure particular provision set out in the EHC plan.

A personal budget can take the form of a direct payment which a family can spend themselves as cash, a notional budget which can be held by the local authority, or a combination of both approaches.

7. Mediation

Mediation seeks to resolve matters through agreement between parents or young people and local authorities rather than through a judicial decision.

When local authorities make decisions about an assessment or a plan, they must inform parents and young people of their right to access mediation (Section 52(2)). If the parent or young person wishes to pursue mediation they must tell the local authority what they want to pursue mediation about. Mediation is arranged by the local authority, unless the issues only relate to health, in which case the responsible commissioning body must arrange the mediation. The mediator must be independent (e.g. not an employee of the local authority).

When a parent or young person wishes to bring an appeal about the special educational needs element of a plan, they may do so only if an independent mediation adviser has provided them with information about mediation and how it might help. Parents or young people can then decide whether to go to mediation before they bring an appeal to the First-tier (SEND) Tribunal. Where they decide against mediation, they will be able to go straight to appeal after receiving a certificate stating that they have considered mediation (Section 55(3)).

8. Responsibilities of school governing bodies and others

Section 66 of the Act requires maintained nursery schools, schools and post-16 institutions to use their best endeavours to meet the special education needs of children and young people who they educate. The SEN and disability Code of Practice will give details of how institutions should fulfil this duty.

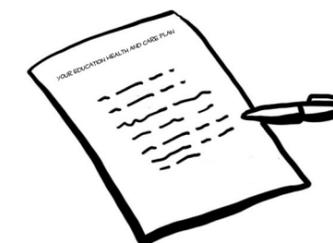
Section 67 of the Act requires schools to have an SEN Coordinator (SENCO) and to ensure that SENCOs have particular qualification and/or experience.

Section 69 of the Act requires all maintained nursery schools, mainstream schools and special schools to publish an SEN information report. This report must include information such as an institution's SEN policy and the arrangements it has for ensuring disabled children and young people are not put at a substantial disadvantage. This information report can be used by local authorities to help them publish their local offer.

9. Code of Practice

Section 77 of the Act requires local authorities, school governing bodies, colleges, clinical commissioning groups, and a range of other bodies listed in Subsection 77(1), to have regard to the Code of Practice. This means they must consider what the Code says, and have legitimate reasons for departing from the guidance.

The First-tier (SEND) Tribunal must consider the Code of Practice when making decisions in relation to Part 3 of the Act.





The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC Council is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contactors provide a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects;

- National Parent Partnership Network
- Special Education Consortium
- Transition Information Network
- Making Ourselves Heard
- Preparing for Adulthood
- Independent Support
- Early Support

and is part of the consortium that delivers the Every Disabled Child Matters campaign.



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