Special Educational Needs reform – Children and Families Act

What you need to know

Key contacts

- If you have any questions that are not answered in this factsheet, or have any comments on the factsheet please contact Victoria Edwards, Information Officer on vedwards@ambitiousaboutautism.org.uk
- If you have any views you want to share about the Act or any queries on the work Ambitious about Autism are doing regarding policy and campaigns please contact Clare Bull, Policy and Public Affairs Officer on cbull@ambitiousaboutautism.org.uk

We will update this factsheet as more information becomes available.

Last updated on 05 August 2014
Introduction

This factsheet has been prepared by Ambitious about Autism for parents of children and young people with autism to provide information on the upcoming Special Educational Needs and disability reforms in England.

Ambitious about Autism always pushes for the best possible outcome for young people with autism, so if you have any views please contact Clare Bull, Policy and Public Affairs Officer on cbull@ambitiousaboutautism.org.uk or visit our online community, Talk about Autism (http://www.talkaboutautism.org.uk/page/index.cfm).

Summary

The Government is transforming the system for children and young people with SEN or disability. The Children and Families Act received Royal Assent on 13 March 2014 and will start coming into force from September 2014. It will be phased in to give time for current Statements of SEN and Learning Difficulty Assessments to be converted into Education, Health and Care Plans.

The transition timetable the Government has published is:

**Between 1 September 2014 and 1 September 2015**, local authorities must transfer children and young people with statements to the new arrangements prior to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship.

**Between 1 September 2014 and 1 September 2015**, local authorities are expected to prioritise transfer for the following groups of children and young people with statements:

- those transferring from early years settings to school (including where the child remains at the same institution);
- those transferring from an infant to a junior school;
- those transferring from primary to middle school;
- those transferring from primary to secondary school;
- those transferring from middle to secondary school;
- those transferring from mainstream to a special school or vice versa;
- children in year 9;
- all children in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities must take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014;
- those moving between one local authority and another; and
- those who receive direct payments, under the SEN Direct Payments Pilot Scheme, for SEN provision in their statement or Learning Difficulties Assessment (they must be transferred to EHC plans by 30 September 2015 if their direct payments are to continue).

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

Local authorities are expected to prioritise transfer for the following groups of children and young people from 1 September 2016 to 31 March 2018:

- all children with statements in year 6, not just those who are transferring from one institution to another;
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014, and
- those moving between one local authority and another.

Young people in further education and training who receive provision as a result of a LDA must be transferred to the new SEN system by 1 September 2016 if they are continuing in further education or training beyond that date.

It is important to remember that until the Act comes into force and the new SEN Code of Practice comes into effect the current legislation and code remain in force. Once the Act and new SEN Code of Practice come into effect there will be sometime that both systems are in force, while transition arrangements are in place.

The key changes for children with SEN and their families are:

- replacing Statements of Special Educational Needs with a single assessment process and an Education, Health and Care Plan from 2014
- placing a requirement on health services and local authorities to jointly commission and plan services for children, young people and families
- providing statutory protection comparable to those in Statements of Special Educational Needs for young people who are in education or training up to the age of 25.
- giving parents or young people the right to a personal budget for their support.
**SEND Pathfinders**

**What are the pathfinders?**

The pathfinder programme was commissioned by the Department for Education and the Department of Health. It began in September 2011, it was due to run until September 2014 but has been extended until March 2015. There are 20 pathfinders in England, each a partnership between 31 local authorities and the health service. Its purpose is to trial the proposed SEN and disability reforms and see what impact they have on children with SEN and disabilities and their families.

All pathfinders have produced factsheets and some areas have a dedicated website for further information. This can be found at [http://www.sendpathfinder.co.uk/thepathfinderprogramme/](http://www.sendpathfinder.co.uk/thepathfinderprogramme/). SEND pathfinder information packs and resources can be found at [http://www.sendpathfinder.co.uk/infopacks/](http://www.sendpathfinder.co.uk/infopacks/).

**Am I in a pathfinder area?**

The following are pathfinder areas:

**South East:**
South East (made up of Brighton and Hove, East Sussex, Hampshire, Kent, Medway, Surrey, West Sussex)
Southampton

**South West:**
Devon
Cornwall and Isles of Scilly
Wiltshire

**London:**
Greenwich
Bromley and Bexley
Lewisham

**East of England:**
Hertfordshire

**East and West Midlands:**
Northamptonshire and Leicestershire
Nottingham County Council
Solihull

**North West:**
Trafford
Oldham/Rochdale
Manchester
Wigan

**North East:**
Gateshead
Hartlepool and Darlington
Yorkshire and Humber:
Calderdale
North Yorkshire
**Education, Health and Care (EHC) Plans**

**What is an EHC Plan?**

An EHC Plan will replace current Statements of SEN and Learning Difficulty Assessments. The plan will be a legal document and is similar in format to a Statement, as it will describe your child’s needs, the provision to meet those needs and the suitable educational placement. It must be focused on outcomes for the child/young person. This means that it must focus on the needs, provision and placement for your child rather than being generic for all children with autism, for example.

**Who will have an EHC Plan?**

The Department for Education has announced that a child or young person who currently has a Statement of SEN will have an EHC Plan. Guidance says that EHC Plans should be issued when the local authority considers the special educational needs of the child or young person cannot be reasonably provided from within the resources normally available to mainstream early years provision, school and post 16 institutions, which is the same as the current threshold for a statement of special educational needs to be issued.

Education is the focus for having a plan issued. Children or young people with primarily health or care needs will not be issued with a plan, unless these needs impact their education.

**Can young people aged 19-25 have an EHC Plan?**

**Young people who remain in education beyond the age of 18 will retain their EHC plan**

The local authority should continue to maintain an EHC plan for a 19-25 year old where all of the following conditions apply:

- The education and training outcomes set out in their plan have not yet been achieved
- The young person wants to remain in education or training so they can complete or consolidate their learning, including accessing provision that will help them prepare for adulthood
- Special educational provision is still needed
- Remaining in education or training would enable the young person to progress and achieve those outcomes

This is an issue of the Act that was subject to much debate but the position is now that young people aged 19-25 or their parents have the right to request an assessment of their special educational needs at any point and it will be possible for them to have an EHC plan. There is no automatic right of education up to 25 years.

Young people going to higher education, university or into employment will not be eligible for a plan. However, the new SEN Code of Practice sets out how these young people should be supported to move into higher education or employment, and what support they will retain in terms of access to social care, health and other services. We expect regulations that will accompany the Care Act to set out how young people at university will access social care.
What is the assessment process and will it be different to the current statutory assessment process?

The new SEN Code of Practice sets out how assessments should be carried out. Some of the key points include:

- Children, young people and families should experience well-co-ordinated assessment and planning leading to timely, well-informed decisions
- Children, young people and their parents are key partners in the process and their views must be taken into account
- Local authorities, health agencies and other agencies must work with parents and young people to understand how best to minimise disruption to the child, young person and their family
- Local authorities must provide all parents, children and young people with impartial information, advice and support in relation to SEN, including the statutory assessment process, EHC plans and personal budgets
- Information sharing is vital to support an effective assessment and planning process which fully identifies needs and outcomes and the education, health and care provision needed by the child or young person
- The EHC planning and assessment process must be carried out in a timely manner. The whole assessment and planning process, from the point an assessment is requested or that a child or young person is brought to the LA’s attention until the final EHC plan is issued, must take no more than 20 weeks

Who drafts the EHC Plan and what will it look like?

The local authority must draft the EHC Plan.

The new SEN Code of Practice advises the exact format of the EHC Plans will be determined locally, so there is no standard format, as there is for Statements. There are some sections that must be covered in all plans:

Section A: The views, interests and aspirations of the child and his or her parents or the young person.

Section B: The child or young person’s special educational needs.

Section C: The child or young person’s health needs which are related to their SEN.

Section D: The child or young person’s social care needs which are related to their SEN. 147

Section E: The outcomes sought for the child or the young person, including outcomes for adult life. The EHC plan should also identify the arrangements for the setting of shorter term targets by the early years provider, school, college or other education or training provider.

Section F: The special educational provision required by the child or the young person.
Section G: Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN, and where an Individual Health Care Plan is made for them, that plan.

Section H1: Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.

Section H2: Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. This will include any adult social care provision being provided to meet a young person’s eligible needs (through a statutory care and support plan) under the Care Act 2014.

Section I: The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution (or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person).

Section J: Where there is a Personal Budget, the details of how the personal budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care.

Section K: The advice and information gathered during the EHC needs assessment must be attached (in appendices). There should be a list of this advice and information.

**Is the EHC Plan enforceable and if so, how?**

The education section of the EHC Plan can be challenged in the same way Statements are currently enforced and challenged. The difference is that parents or the young person themselves (if they are over compulsory school age) can appeal to the First-tier Tribunal about the EHC assessments and EHC plans.

Broadly, parents and young people will have the same right of appeal to the tribunal on the same issues and same deadlines to lodge appeals as they currently do with statements of special educational needs (will still be within two months of the date of the local authority decision letter or letter enclosing the EHC Plan).

Local authorities are required to include in an EHC Plan all social care services assessed as being necessary for a disabled child or young person under 18 (under s.2 Chronically Sick and Disabled Persons Act 1970). Where social care services are identified then there is an absolute duty to deliver them. If services are not delivered it may be possible to challenge this failure by Judicial Review, although this will not be available in all cases and you will need to seek independent legal advice, without delay as there are strict legal time limits to bring a claim.

The responsible commissioning body must make sure that the health care provision specified in the EHC Plan is arranged for the child or young person.

The Government has committed to review the complaints and appeal process and this will include a pilot testing a single point of appeal to the Special Educational Needs and Disability Tribunal,
including health and social care when an appeal is already lodged against the special educational element of the EHC Plan.

**How will Statements of SEN be transferred to EHC Plans?**

The Department for Education have said that children who currently have a Statement will have an EHC Plan. Your child’s Statement remains in force until it is transferred to an EHC Plan, which will be within 3 and a half years.

**Between 1 September 2014 and 1 September 2015**, local authorities **must** transfer children and young people with statements to the new arrangements prior to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship.

**Between 1 September 2014 and 1 September 2015**, local authorities are expected to prioritise transfer for the following groups of children and young people with statements:

- those transferring from early years settings to school (including where the child remains at the same institution);
- those transferring from an infant to a junior school;
- those transferring from primary to middle school;
- those transferring from primary to secondary school;
- those transferring from middle to secondary school;
- those transferring from mainstream to a special school or vice versa;
- children in year 9;
- all children in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities must take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014,
- those moving between one local authority and another; and

those who receive direct payments, under the SEN Direct Payments Pilot Scheme, for SEN provision in their statement or Learning Difficulties Assessment (they must be transferred to EHC plans by 30 September 2015 if their direct payments are to continue). **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:

- early years settings to school (including where the child remains at the same institution);
- an infant to a junior school;
- primary to middle school;
- primary to secondary school;
- middle to secondary school;
- transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship;

主流 to a special school or vice versa.

Local authorities are expected to prioritise transfer for the following groups of children and young people from **1 September 2016 to 31 March 2018**:
How will Learning Difficulty Assessments be transferred to EHC Plans?

Any learning difficulty assessment issued before 1 September 2014 will be valid and will, over a period of 2 years, be transferred to an EHC Plan. After 1 September 2014 no new learning difficulty assessments will be carried out and instead they will be EHC Plans.

Young people in further education and training who receive provision as a result of a LDA must be transferred to the new SEN system by 1 September 2016 if they are continuing in further education or training beyond that date.
Choosing a school or college

Can parents or young people express a preference to name a school or college in the EHC Plan?

Parents of children with an EHC Plan and young people themselves have a right to express a preference for placement at:

- a maintained school (mainstream or special), including Academies and Free Schools
- a special academy or special free school
- a non-maintained special school
- a further education or sixth form college
- an independent special school (not an independent school that does not cater specifically for the needs of children and young people with SEN)
- a post-16 institution.

The local authority must agree to your requested placement unless the placement would be ‘unsuitable for the age, ability, aptitude or SEN of the child or young person; or the attendance of the child or young person there would be incompatible with the efficient education of others; or the efficient use of resources’. Case law has established that the threshold for ‘incompatibility’ is quite high and not merely an impact on the education of other children.

What can I do if my preference is not named?

You, as a parent or your young person, as a pilot scheme, can appeal to the tribunal. There is a requirement for you or your young person to consider mediation, but this is not compulsory. For further information on appealing to the Special Educational Needs Tribunal please visit our [website](#).

New Post-16 choices

- from September 2013, 16 - 19 Study Programmes have been introduced to build on current vocational education. For more information visit the Preparing for Adulthood website, [http://www.preparingforadulthood.org.uk/resources/policy/study-programmes](http://www.preparingforadulthood.org.uk/resources/policy/study-programmes)
- Supported internship is a programme of study based learning primarily at an employer’s premises for young people aged between 16 - 25 years who have complex learning difficulties or disabilities. The goal of this is to help disabled young people move into paid employment. There is a useful factsheet available on the Preparing for Adulthood website: [http://www.preparingforadulthood.org.uk/resources/pfa-resources/factsheet-supported-internships](http://www.preparingforadulthood.org.uk/resources/pfa-resources/factsheet-supported-internships)
**Personal budgets**

**What is a personal budget?**

All families whose child has an EHC Plan, or the young person themselves if over 16 will have a right to request a personal budget. The personal budget will allow young people or parents to buy support identified in the plan directly, rather than relying on the local authority.

Parents or young people will be given a choice of whether they want to take control of the personal budget by an agency managing the funds on their behalf or by receiving direct payments, where they can purchase and manage the provision themselves.

**What can be included in a personal budget?**

The personal budget allows families to buy the support or services specified in their child’s EHC Plan, to meet the outcomes in the plan.

The personal budget can include funding from education, health and social care. The scope of the budget will depend on the needs of the individual, the eligibility criteria for each part and how it will be delivered.

**Who will have a personal budget?**

Only families whose child has an EHC Plan will be given the option of having a personal budget, but it will be optional.

**Will I receive any help in using my personal budget?**

Information on how to request a personal budget and eligibility criteria must be provided as part of the local offer. This information should also include sources of independent advice available.

Ambitious about Autism has lobbied strongly for a key worker to be available for all families with a personal budget and for this to be included in the local offer.

Families can receive help administering the personal budget if they take up the option to have a third party organise and manage the funds.

A useful place to get further information on personal budgets is In Control: [http://www.in-control.org.uk/](http://www.in-control.org.uk/). It has been advising on self-directed support for more than a decade.
Independent Supporters

What is an independent supporter?

Independent supporters will be provided independent of your local authority by private, voluntary and community sector organisations.

The Council for Disabled Children is the Government’s strategic partner on the programme and will ensure that a range of organisations provide this service, independently. The Independent Support Evidence and Build report issued by the Council for Disabled Children, July 2014, advises that “the nature and duration of the Independent Support offer will be based on individual need but is likely to include:

- Helping the parent or young person to transfer a Statement into an EHC plan
- Helping the parent or young person understand the Local Offer
- Acting as a named contact person for the parent or young person throughout the assessment and planning process
- Liaising across a range of agencies with the parent or young person to help gather the information required for an EHC plan
- Providing information to parents and young people on personal budgets
- Supporting the parent or young person in contributing to an EHC plan that is then ready to be signed off by a designated professional that has been agreed as part of a local referral protocol process
- Signposting parents and young people to PPSs or local information advice and support (IAS) services, when the issue is outside the remit of an Independent Supporter”.

The Council for Disabled Children advise that “Independent Supporters will help to build resilience in families by offering a range of time-limited support such as liaison across different agencies and advice on personal budgets. The level and nature of that support will be tailored to the particular needs of individual families”.

How many independent supporters will there be?

It is expected that there will be 1,800 independent supporters across the 150 local authority areas in England, so approximately 12 per area.

When will the independent supporters be in place?

They will be in post by September 2014.
How will independent supporters be funded?

The Government announced a £30 million fund to recruit and train the independent supporters. This will fund the programme until March 2016.

For further information on independent supports look at the question and answer document prepared by the Council for Disabled Children: http://www.ncb.org.uk/media/1102886/independent_support_q_and_a.pdf.
For children and young people without an Education, Health and Care Plan

Will there be help for children without an EHC Plan?

Under the current system there is additional help and support for children at school without a Statement of SEN, through School Action or School Action Plus.

The new SEN Code of Practice has one category for all children needing SEN support called SEN Support. This will replace School Action and School Action Plus.

The New SEN Code of Practice says that “SEN support should take the form of a four-part cycle through which earlier decisions and actions are revisited, refined and revised with a growing understanding of the pupil’s needs and of what supports the pupil in making good progress and securing good outcomes. This is known as the graduated approach” [paragraph 6.44].

Local Offer

What is the local offer?

It is a requirement for the local authority to publish information about what provision it expects will be available for children and young people with SEN or disability aged 0 – 25 years, both within and outside their local area.

What must be included in the local offer?

The Special Educational Needs and Disability Regulations 2014, schedule 2, lists the information to be published by a local authority in its local offer. It can be found at: http://www.legislation.gov.uk/uksi/2014/1530/schedule/2/made

The local offer must include information about:

- education, health and care provision for children and young people with SEN (which should include information about its quality and the destinations/outcomes achieved by those who use it)
- arrangements for identifying and assessing children and young people’s SEN, including arrangements for requesting an EHC needs assessment
- other education provision (educational provision outside of schools or colleges such as sports or arts provision)
- training provision, including Apprenticeships
- arrangements for travel to and from schools, post-16 institutions and early years providers
- support to help children and young people in moving between phases of education (for example from early years to school, from primary to secondary) and to prepare for adulthood
- sources of information, advice and support in the local authority’s area relating to SEN including information provided under clause 32 of the Children and Families Act, forums for parents and carers, support groups, childcare and leisure activities
arrangements for making complaints, for the resolution of disagreements, mediation and parents’ and young people’s right to appeal a decision of the local authority to the tribunal.

Are young people and their families able to get involved with the local offer?

Yes, there is an emphasis on children and young people with SEN or disability and their families having input into the local offer.

The new SEN Code of Practice says that the local offer should be collaborative and local authorities must involve parents, children and young people in developing and reviewing the local offer.

How will the local offer be published?

It is recommended that it is published as a web-based resource, as well as making sure those without access to the web also have access to the information. The local authority should take into account how to publish the information to make it accessible to people with SEN and disabilities.

Is the local offer enforceable?

The local offer will not be enforceable if families or children and young people are not able to access the services outlined in the offer, which is something that Ambitious about Autism has raised as a key concern. Although not legally enforceable we would encourage families to engage with the development of the local offer in their area, to make it as good as it can be.

Local authorities have to publish comments that families and young people make about the local offer, they also have to publish their response to the comments. Local authorities should use feedback to inform future decisions.

If you or your child is not able to access the support you need then you can use your local authority’s complaints procedure and ultimately complain to the Local Government Ombudsman. As part of our Ruled Out campaign we are asking people to write to their Council Leader about their local officer, you can find further details on our website.
Special Educational Needs (SEN) Code of Practice

Will there be a new SEN Code of Practice?

Yes, there is going to be a new SEN and disability Code of Practice, which will replace the current SEN Code of Practice and the learning difficulty assessment guidance and will run from 0 – 25 years. A new SEN Code of Practice has been approved by Parliament and can be found online at:


Ambitious about Autism’s work on SEN reform

Ambitious about Autism has been working hard to make sure the reforms deliver the best possible outcomes for children and young people with autism. Working with parliamentarians and officials we have lobbied for an Act that reflects the following priories:

1. protect current statutory duties
2. extend current statutory duties up to the age of 25
3. support children and young people without an Education Health and Care Plan
4. ensure parents and young people have access to support in managing personal budgets
5. create stronger rights to health and social care support
6. allow Education Health and Care Plans to be portable across local authorities
7. ensure smooth transition between Statements and Education Health and Care Plans

If you have questions that are not yet answered in this factsheet, or you have views you want to share about the Act, please let us know by emailing Victoria Edwards, Information Officer on vedwards@ambitiousaboutautism.org.uk
Useful organisations and links

**Finished at School**: Our Finished at School campaign aims to secure more and better educational options for all young people with autism aged 16 – 25 to enable them to develop skills, gain employment, live more independently, and ultimately to live the life they choose.

**Independent Panel of Special Education Advice (IPSEA)**: Provides advice and representation for parents of children with special educational needs and disabilities. They have a range of advice sheets for parents to help parents get the special education provision that their child is legally entitled to. They have also published a useful checklist on what must be included in EHC plan. Advice line: **0800 018 4016**

**Preparing for Adulthood**: Factsheet on the links between the Children and Families Act 2014 and the Care Act 2014.

**Ruled Out campaign**: In February 2014 we launched Ruled Out, a national campaign to stop children with autism from missing out on education. Our research found that children with autism are disproportionately affected by both formal and illegal school exclusion. We need to act now to stop children with autism missing out on education and in ensure that all children with autism access a good quality full time education. We need your support to make this happen.

**Talk about Autism**, the online community provided by Ambitious about Autism, has a discussion on the Children and Families Act.

**The Young Person’s Guide to the Children and Families Bill**