

# CSn POLICY BRIEFING

## SEN and Disability transitional arrangements – draft DfE guidance

Date 23 June 2014  
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### Summary

The new system of assessing, and making educational provision for, children and young people with special educational needs and disabilities under Part 3 of the Children and Families Act will commence on 1 September 2014. The Government has laid before Parliament for approval the SEND Code of Practice to assist local authorities, schools, colleges and others to carry out their functions on the new legislation. The Government has also published [draft guidance](#), the subject of this briefing, on the transitional arrangements covering the rules that govern what happens to children and young people who currently have a statement of special educational needs (SEN) or a learning disability assessment (LDA), and how and when these will be converted to Education, Health and Care (EHC) Plans. This briefing is on the draft guidance on transitional arrangements and not on the Code of Practice.

#### Key points:

- The Government wants local authorities to introduce the new system as soon as possible.
- Local authorities should publish a draft transition plan following consultation by 1 September 2014.
- Children and young people with SEN statements will undergo a 'transitional review' to convert their statements into EHC plans.
- All children and young people with statements who transfer schools and those in year 9 must be a priority for transitional reviews.
- All statements must be converted, or ceased, by 1 April 2018.
- All Learning Disability Assessments must cease, and where appropriate, EHC assessments undertaken, by 1 September 2016.

This briefing will be of interest to all those involved, and with an interest, in the Special Educational Needs and Disabilities reforms as set out in the [Children and Families Act 2014](#) including Service Leads in SEN, health, and social care, officers, and elected members.

### Overview

From September 2014, local authorities will be required to introduce a new system of assessing and meeting the needs of children and young people with SEN and disabilities. The reforms form a key part of the [Children and Families Act 2014](#) and have been trialled through a pathfinder programme over the past two years.

The Government published [Special educational needs and disability code of practice: 0 to 25 years: Statutory guidance for organisations who work with and support children and young people](#)

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# CSN POLICY BRIEFING

[with special educational needs and disabilities](#) on 11 June 2014, and it now awaits Parliamentary approval.

The DfE published on 10 June [Draft Guidance on transition to the new 0 to 25 special educational needs and disability system](#) (the subject of this briefing) to help local authorities and other plan for implementation of the new arrangements. It was not published for formal consultation but it is understood that informal consultation is being undertaken. The following day, the DfE published [Transitional and Saving Provisions \(made under section 137 of the Children and Families Act 2014\) relating to part 3 of the Children and Families Act 2014 \(children and young people in England with special educational needs or disabilities\)](#) to provide supporting information for Parliament's consideration of the draft SEND Code of Practice and the transitional arrangements. This briefing is on the Draft Guidance.

The DfE wants 'all children and young people with SEN to benefit from the new SEN and disability system as soon as possible. Transferring children and young people to EHC plans in a way that maximises the benefits that they offer will be a significant undertaking for local authorities. ... Local authorities should aim to make the new arrangements available to all children and young people as quickly as they are able to. This must be by 1 April 2018 at the latest. In advance of that date, local authorities must ensure that children and young people who currently receive support as a result of a statement are transferred to the new SEN and disability system in accordance with the transfer review process'.

'Improving the preparation of young people for adulthood is a principle aim of the new SEN system. Young people in further education and training who currently receive their provision as a result of a LDA have fewer rights and protections than their peers in the school system with a statement. To address this disparity and ensure young people in further education and training can benefit from the new system as soon as possible, this group of young people must be transferred to the new system by 1 September 2016. Until that date, local authorities must continue to have regard to the statutory guidance for LDAs in relation to young people who receive provision as a result of an LDA and remain in further education or training.'

## Briefing in Full

From September 2014, local authorities will be required to introduce a new system of assessing and meeting the needs of children and young people with SEN and disabilities. The DfE published on 10 June [Draft Guidance on transition to the new 0 to 25 special educational needs and disability system](#) to help local authorities and other plan for implementation of the new arrangements.

## Introduction

From 1 September 2014, all requests for an assessment of Special Educational Needs (SEN) for children and young people must be considered under the new legislation. Those children and young people who require a plan to secure the relevant provision to meet their special educational needs must be issued with an Education, Health and Care (EHC) plan. Transitional arrangements will be put in place to maintain elements of the Education Act 1996 (for SEN statements) and the Learning and Skills Act 2000 (for LDAs) to enable a gradual progression to the new system.

# CSn POLICY BRIEFING

The guidance looks at the four issues: Assessments for SEN statements and Learning Disability Assessment (LDAs) ongoing on 1 September 2014; arrangements during the transition period; transfers to the new system; and arrangements for children and young people in custody.

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

Where the local authority is **considering** a request for an assessment or re-assessment (where the assessment could lead to an SEN statement) on 1 September 2014, then it must consider the request under the 1996 legislation unless the local authority decides to treat the request as being made under the 2014 legislation. The parent or young person must agree to the assessment being made under the 2014 legislation.

Where the assessment or re-assessment for a statement is in progress on 1 September 2014, then the assessment or re-assessment must continue under the 1996 legislation. Local authorities are advised to conduct the assessment with a view to meeting the requirements of the 2014 legislation. 'This will ensure children and young people benefit from the new system as soon as possible, and help reduce the burden on families and local authorities of needing to conduct 'transfer reviews' for these children and young people later.'

If the on-going assessment is treated as an EHC needs assessment, assessments already undertaken must not be repeated, and where an EHC plan is needed, it must be issued within 26 weeks of the original request (although exceptions apply).

LDAs being conducted on 1 September 2014 are where a young person with statement is transferring to further education, or where the young person did not previously have an LDA. The DfE recommends where local authorities are 'ready and able to' in advance of 1 September 2014 to commence the assessment as if it were an EHC needs assessment. This would more than satisfy the legal requirements of an LDA. If the LA decides to treat the assessment as an EHC needs assessment, then the LA must secure the EHC plan if appropriate within 14 weeks of 1 September 2014. This will allow young people to benefit from the new arrangements and reduce future requests for EHC needs assessments.

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

Although the DfE hopes that all local authorities will ensure that the 2014 Act SEN and Disability system will be available at the earliest opportunity, the transitional Order will require all statements to be converted to EHC statements (or otherwise ceased through the annual review process or the child or young person leaving school) by 1 April 2018. Until this date, unless the local authority undertakes a 'transfer review' to the arrangements, the 1996 Act arrangements apply. Parents do not have a right to request a re-assessment under the 2014 Act during the transition period. However, local authorities can choose to do the re-assessment, whether because of a parental request or because the child's or young person's needs have changed, under the 2014 Act by initiating a 'transfer review', and the guidance encourages local authorities to do so.

During the transition period, parents of children with statements can appeal to the First Tier Tribunal under the 1996 Act (and where a decision is made not to carry out an assessment). However, once the parents have been notified that a transition review has commenced then any appeals will be under the 2014 Act. The draft guidance lists the instances when an appeal can be made under the 1996 Act, and the possible Tribunal decisions; the Tribunal will have the power to

# CSN POLICY BRIEFING

decide that although an appeal was made under the 1996 Act, the local authority must carry out the decision under the 2014 Act legislation. No new appeals to the First Tier Tribunal under the 1996 Act can be registered after 1 October 2017.

Local authorities must take account of the existing statutory guidance relating to Learning Disability Assessment until 1 September 2016.

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

The DfE wants the 'transition [to the new system] to happen at a pace that is achievable and which maintains the quality of support both to children and young people making the transition and those still on the previous system'. To support the transition, the DfE is advising all local authorities to publish a local transition plan.

The plan should be drawn up following consultation with 'young people with SEN and the parents of children with SEN as well as organisations such as schools, colleges, and health organisations that will be involved in transferring children and young people to the new system'. The plan should: report on the consultation; state the number of children and young with statements (and young people being supported by an LDA) who will be transferred to the new system each year; the order in which children and young people will be transferred; how parents, children and young people and their educational institutions will be made aware of the transfer process; details of the transfer review process; sources of independent SEN information and advice; and who can answer queries about the local transition plan.

Local authorities should publish the first version of the plan by 1 September 2014. There should be a published annual review of the plan's implementation.

The guidance sets out detailed arrangements for transition which local authorities are expected to implement 'to ensure momentum is maintained during the transition period, and to minimise disruption for families and provide them with some certainty'. A priority must be given to transferring young people at the significant year 9 review, and on transfer to a new phase of education, particularly on transfer to a new school. However, 'in order not to overwhelm the new system, in 2014/15 local authorities will be able to consider whether to transfer children in year 6 to EHC Plans, but must take into account the wishes of families. Later transition may make for a more stable situation for children whose secondary provision has already been agreed.'

The transitional Order, and the Special Educational Needs and Disability Regulations 2014, will give statutory structure to some transfer issues. In the academic year in which the transfer takes place, the transfer review will replace the annual review which must be completed within 12 months of the last annual review (or the making of the statement) although exceptions apply. The transfer review for young people transferring from secondary schools to post-16 education on 1 September 2015 must be completed by 31 May 2015, and 31 March in subsequent years. Where a child is otherwise transferring between schools, the review must be completed by 15 February. And all transfers must be completed by 1 April 2018 after which statements will cease to have legal status.

Young people with an LDA must be advised to transfer to the new system by requesting an EHC needs assessment as the current LDA arrangements will come to an end on 1 September 2016.

# CSN POLICY BRIEFING

## The transfer process

'To transfer a child or young person from a statement to an EHC plan, a local authority **must** undertake a "transfer review". The transition review will allow outcomes for the child or young person to be included in the EHC Plan along with a description of the provision that the child or young person will need to achieve the outcomes. The parent or young person must be notified of the local authority's intention to initiate the transfer review. In undertaking the needs assessment, the local authority must have regard to the SEN Code of Practice, but must not seek advice required for an EHC needs assessment if such advice has previously been provided for any purpose providing all parties are satisfied that the advice is sufficient. The EHC plan must be finalised, where one is needed, within 14 weeks of the start of the transfer process. If a decision is made not to make an EHC Plan, notification must be made with 10 weeks of the start of the transfer review process.

'Local authorities **must** treat any request for an assessment under the Children and Families Act 2014 from a young person in further education or training who has had an LDA as a request from a new entrant into the system. Where necessary, a full assessment **must** be carried out and an EHC plan drawn-up in accordance with the process described in the new 0-25 SEN and disability Code of Practice. This means that a request from a young person should result in an EHC plan, where one is required, within 20 weeks.' If a decision is taken not to confirm an EHC Plan then the LDA should continue as planned.

Over 2,500 non-statutory EHC plans have been drawn up in the 20 pathfinders covering 31 local authority areas. 'While some of these non-statutory EHC plans may be suitable to be transferred to statutory EHC plans without significant changes, others may require additional assessment information and/or restructuring to comply with the 2014 Act and Regulations.' Local authorities are advised to transfer these children and young people to statutory EHC plans in 2014/15. 'In many cases much of the assessment information contained within the non-statutory EHC plan will be recent and relevant, and local authorities will be able to complete the issue a statutory plan promptly, where one is needed.' Advice is given as what should be communicated to parents and young people.

Local authorities are reminded that parents of children and young people for whom an EHC plan is drawn up must be offered the opportunity to have a personal budget. The separate regulations on personal budgets were agreed by Parliament on 16 June.

## Interim arrangements for detained children and young people

It is expected that arrangements for children and young people who are in detention will commence on 1 April 2015. An EHC Plan completed before 1 April 2015 for a child who enters custody will be treated as though it were a statement under the 1996 Act.

## Comment

The is gradually getting in place the legislative arrangements to implement the new arrangements for assessing, and making education provision for, children and young people with special educational needs and disabilities. That it has not been completed by the date of publication of this briefing – less than four weeks away from when most schools will break for their Summer holidays, can be viewed as a measure of the Government's ambition to implement the new system for the

# CSN POLICY BRIEFING

benefit of children and young people with special educational needs and disabilities or foolhardiness given the very short timescale to implement the new arrangements. The Government has provided local authorities with additional specific grants to help with the transition although local government has been mute about whether these grants are sufficient to meet the scale of the changes required.

The Government though is confident that local authorities are ready to implement the new system. Lord Nash, Parliamentary Under-Secretary of State for Schools, speaking in the House of Lords on the draft Personal Budgets regulations observed that “in May 90% of local authorities said they were ready to implement the reforms” (Lords Hansard, col GC6, 16 June 2014). He detailed the “comprehensive package of support we have in place for local authorities to help them meet the complexities of implementation ... This package includes an ever increasing portfolio of materials, including practical advice, case studies, checklists, programmes for workforce development and frameworks for implementation available on the SEN pathfinder website, all developed with expert support from local authorities, their partners and VCS groups working in this area including those representing parents” (col GC2).

The LGiU is able to help on policy matters to do with implementing the reforms, and may be able to put local authorities in contact with support if they are finding themselves in difficulties with implementing the new system. Please contact John Fowler, [john.fowler@lgiu.org.uk](mailto:john.fowler@lgiu.org.uk).

## External downloads

DfE [Draft Guidance on transition to the new 0 to 25 special educational needs and disability system](#) (June 2014) – the subject of this briefing

Children and Families Act 2014 (Transitional and Saving Provisions) (No.2) Order 2014 – not yet published – not yet published. This provides the legislative basis of the transitional arrangements.

DfE: [Transitional and Saving Provisions \(made under section 137 of the Children and Families Act 2014\) relating to part 3 of the Children and Families Act 2014 \(children and young people in England with special educational needs or disabilities\)](#) (June 2014) – an explanation of the transitional provisions for Parliamentarians considering the Order (and the SEN Code of Practice).

UK Parliament: [Children and Families Act 2014](#)

[The Children and Families Act 2014 \(Commencement No. 2\) Order 2014](#) (SI 2014 No. 889) – the Order commencing most of Part 3 on 1 September 2014


Draft [Special Educational Needs \(Personal Budgets\) Regulations 2014](#) (April 2014). These regulations required an affirmative resolution of both Houses. The regulations were approved on 16 June 2014.

[Special Educational Needs and Disability Regulations 2014](#) (SI 2014 No.1530)

[Special educational needs and disability code of practice: 0 to 25 years: Statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities](#): Draft presented for Parliamentary approval (June 2014)

[Special educational needs and disability code of practice: 0 to 25 years: Government consultation response](#) (June 2014)

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# CSn POLICY BRIEFING

## Related briefings

[SEN and Disability Reform: readiness - DfE research](#) (May 2014)

[Children and Families Act 2014 \(No.2\)](#) (April 2014)

[Special Educational Needs: preparing for the future – LGO report](#) (April 2014)

[Children and Families Act \(provisional\)](#) (February 2014)

[Implementing the 0-25 special educational needs system: Government advice](#) (January 2014)

[Impact Evaluation of the SEND pathfinder programme](#) (December 2013)

[Draft SEN Code of Practice: processes and children in specific circumstances](#) (November 2013)

[Support and Aspiration: Introducing Personal Budgets](#) (November 2013)

[Evaluation of the SEND pathfinder programme: Process and implementation: Research Report](#) (July 2013)

[SEN Code of Practice: Indicative Draft](#), (April 2013)

[SEND Pathfinder Programme – March 2013 Report](#) (March 2013)

[SEND Pathfinder Projects: Early Experience](#), (September 2012)

[Support and aspiration: a new approach to SEN and disability – progress and next steps](#) (May 2012)

[SEN and disability Green Paper: Support and Aspiration](#) (March 2011)

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