



Note from the Department for Education

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)

1. To provide supporting information for Parliament's consideration of the draft Special Educational Needs Code of Practice: 0 to 25 years. This note sets out further information on how the Department for Education intends to use powers in section 137 of the Children and Families Act 2014 to support the transition to the new system of support for children and young people with special educational needs (SEN).

Background

2. *Support and aspiration: A new approach to special educational needs and disability*, published in March 2011, set out the Government's intention to introduce by 2014:
 - an integrated assessment process, which is more streamlined, better involves children, young people and families and is completed quickly;
 - Education, Health and Care (EHC) plans, which bring services together and are focused on improving outcomes; and
 - the offer of a personal budget for families with an EHC plan who want one.
3. On 31 March 2014 the Parliamentary Under Secretary of State for Children and Families made an order to commence the provisions within Part 3 the Children and Families Act, with the exception of those relating to detained children and young people, from 1 September 2014. To allow more time for local authorities to prepare for implementation of provisions relating to detained children and young people, Government intends to commence these provisions from 1 April 2015.
4. In 2012, 29,565 children were assessed for SEN and 28,635 were issued with a statement of special educational needs for the first time. Approximately a quarter of a million children and young people in England have statements or receive support in further education or training as a result of a Learning Difficulty Assessment (LDA)¹ at any one time.
5. The Government wants all children and young people with SEN and their families to benefit from the new arrangements as soon as possible. It is the Government's intention that from 1

¹ The term 'Learning Difficulty Assessment (LDA)' is used throughout this document to refer to the assessment itself rather than the report that results from that assessment.

September 2014 it will no longer be possible to request a new SEN assessment under the Education Act 1996 for a child or young person who does not already have a statement, and that no new LDAs under the Learning and Skills Act 2000 can be commenced. From that date, local authorities must consider all requests for an assessment of SEN for children and young people who do not have an existing statement under the new legislation. Those requiring a statutory plan to secure the relevant provision to meet their SEN should be issued with an Education, Health and Care (EHC) plan.

6. Children and young people with statements and young people in further education or training who are receiving provision to meet their special educational needs as a result of a LDA will be gradually transferred over to the new arrangements. To ensure these children and young people continue to receive the support they need, and so their rights and protections are maintained, transitional and saving legislation will be put in place to maintain elements of the Education Act 1996 relating to statements and the Learning and Skills Act 2000 relating to LDAs.
7. The legal test of when a child or young person requires an EHC plan remains the same as that for a statement under the Education Act 1996. Therefore, it is expected that all children and young people who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan – no child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing. Similarly, local authorities have undertaken LDAs for young people either because they had a statement at school or because, in the opinion of the local authority, they are likely to need additional support as part of their further education or training and would benefit from a LDA to identify their learning needs and the provision required to meet those needs. Therefore, the expectation is 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, will be issued with one.
8. We are committed to ensuring that the best service possible is maintained for children and young people with SEN and their families during the transition to the new system. We want to be sure that the changeover to EHC plans happens at a pace that allows for a smooth transition whilst maintaining the quality of existing services. To achieve this, a phased approach to transfer will be adopted.
9. We formally consulted on an approach to transitional arrangements at the end of last year (results available [online](#)). The largest group of respondents agreed with our proposals to transfer young people who receive support as a result of an LDA within two years and children and young people with statements within three years. However, there was concern about the capacity of local authorities to deliver good quality EHC plans within the proposed timeframe and existing resources. To address these concerns, in April we confirmed that the period for phasing out statements would be extended to 1 April 2018. We are also providing a comprehensive package of support to local authorities to ensure they will have the resource to prepare for and implement these changes. This includes the £70 million SEN reform grant and an additional £45.2 million SEND implementation grant in 2014-15 (with an indicative amount of £31.7 million for 2015-16).
10. Following the formal consultation, we have continued to consult informally on transitional arrangements. We are currently undertaking a short technical consultation with key interested parties (e.g. representative of local authorities, parent groups, health organisations) on a draft order and accompanying draft guidance. To help local authorities and others plan for

implementation of the reforms, we have published the [draft guidance](#) on our website. We will finalise the Order and guidance and publish them in the coming weeks. The following section sets out a summary of our proposed approach to transition.

Summary of proposed approach to transitional arrangements

Assessments under the current systems in progress on 1 September 2014

11. Although many local authorities are already conducting SEN assessments in a way that anticipates the new arrangements, they are not required to comply with the new legislation until 1 September 2014. Local authorities may be considering assessments or conducting an assessment for children and young people on 1 September 2014. While we are keen for these children and young people to receive an EHC plan where one is needed, we want there to be confidence that these plans are robust. For this reason, we intend to put transitional arrangements in place to allow for the following:
- where a local authority is considering a request for an assessment on 1 September 2014, the Education Act 1996 (SEN assessment for a statement) applies unless the local authority and the child's parents or the young person agree to treat it as a request for an EHC needs assessment.
 - where a local authority is conducting an assessment on 1 September 2014, the Education Act 1996 applies unless the local authority and the child's parents or the young person agree to treat it as an EHC needs assessment.
 - where a local authority is conducting a Learning Difficulty Assessment on 1 September 2014, the local authority may issue an EHC plan if it is confident that the requirements for an EHC needs assessment have been met.

Arrangements relating to children and young people with statements and young people receiving support as a result of a LDA during the transition period

12. To ensure that children and young people with statements continue to receive the support they require to meet their special educational needs during the transition period, local authorities must continue to comply with the relevant section of Part IV of the Education Act 1996 and accompanying regulations. During the transition period, a child or young person's statement will remain in place until:
- the local authority decides to cease the statement following an annual review;
 - the statement is ceased because the young person leaves education;
 - the child or young person has a transfer review and:
 - an EHC plan is secured for her/him; or
 - a local authority decides that she/he does not require an EHC plan (see paragraph 7).

13. Parents of children and young people with statements will continue to be able to request re-assessments under the 1996 Act rather than the 2014 Act during the transition period. However, where a re-assessment is needed and the local authority is able to, they can conduct an EHC needs assessment and transfer the child/young person to the new system.
14. Parents of children and young people with statements will continue to be able to appeal to the First-tier Tribunal for reasons set out in the 1996 Education Act. However, through transitional arrangements, we intend to allow for the following changes to the possible outcome of an appeal to the Tribunal:
 - in the case of an appeal against a decision not to assess, where the Tribunal upholds the appeal rather than order that an assessment under the 1996 Act is conducted, the Tribunal may decide that the local authority must carry out an EHC needs assessment.
 - in the case of an appeal against a decision not to re-assess (i.e. where the child/young person already has a statement), where the Tribunal upholds the appeal, the local authority can treat this as an EHC needs assessment with the agreement of the child's parents or young person;
 - in the case of an appeal against a decision not to issue a statement, where the Tribunal upholds the appeal, with the parent's or young person's agreement, an EHC plan could be issued.
15. Until 1 September 2016, local authorities must continue to have regard to the statutory Learning Difficulty Assessment guidance in relation to young people who receive support in post-16 education, training or higher education as a result of an LDA.

Transfer process

16. The transfer process needs to result in a robust EHC plan, where one is needed, while minimising additional burdens on families. All young people and parents of children transferred to EHC plans must be offered the opportunity to have a personal budget.
17. To transfer a child or young person from a statement to the new SEN system, local authorities must initiate a 'transfer review'. An EHC needs assessment must be conducted as part of the transfer review. It must allow for outcomes to be established for the EHC plan and for provision to be identified to support the child/young person to achieve those outcomes. However, local authorities must not seek any advice required for this assessment if such advice has been previously provided and it is sufficient for the purposes of an EHC needs assessment. As much of the assessment information within existing statements will, in many cases, be recent and remain relevant, we anticipate transfer reviews will be completed promptly.
17. The transfer review should replace the annual review in the academic year that the child/young person transfers to the new SEN system. To minimise disruption for families, any meeting with the child's parent or young person to either consult or engage them as part of the EHC needs assessment should take place when the annual review meeting would have otherwise happened. The transfer review must be completed within 12 months of the statement being issued or of the previous annual review. Once the transfer process has commenced, appeal rights under the 1996 Act are replaced by those under the 2014 Act.

18. Where a non-statutory EHC plan rather than a statement has been issued in advance of 1 September 2014 (e.g. in some pathfinder areas), the child's parents or the young person will be able to request an EHC needs assessment at any point. To provide assurance to these families, local authorities should notify them that, assuming the information in their plan remains relevant, they will be promptly transferred to the new system by the time of their next annual review², and until that point the provision set out in their non-statutory plan will continue.
19. To move to the new SEN system, young people in further education or training who receive support as a result of a LDA can choose to request an EHC needs assessment at any point during the transition period. Local authorities should inform these young people of their options and provide advice to them about where they can obtain independent advice and support. The local authority will consider their request in the same way as a request from any other young person. Existing assessment information within the LDA report should contribute to the EHC needs assessment.

Transfer timing

21. Following consultation with families and professionals and within the national parameters set out below, local authorities should determine when children and young people will be transferred to the new system. Local authorities should publish a local transition plan by 1 September setting out details about when and how children and young people with statements will be transferred to the new SEN system, and information for young people in further education and training who receive support as a result of a LDA.
22. To ensure momentum through the transition period and to provide some certainty to families, where possible local authorities should transfer children to the new SEN system at points in their education at which a significant review of the statement would have otherwise taken place. Local authorities must transfer children and young people from statements to EHC plans in advance of them transferring to the next phase of education, and at the significant year 9 review point. However, in order not to overwhelm the new system, in 2014/15 local authorities will be able to consider whether to transfer children in year 6 to EHC Plans, but must take into account the wishes of families. Later transition may make for a more stable situation for children whose secondary provision has already been agreed.
23. Specifically, Government intend to require the following:
- Between 1 September 2014 and 1 April 2018, local authorities must transfer children and young people with statements to the new arrangements prior to them transferring from:
 - early years settings to school (including where the child remains at the same institution);
 - an infant to a junior school;
 - primary to middle school;
 - secondary school to post-16 institution or apprenticeship;

² Pathfinder local authorities should treat non-statutory EHC plans issued before 1 September 2014 as if they were a statutory document; so all non-statutory EHC plans should be reviewed at least annually.

- mainstream to a special school or vice versa.
- Between 1 September 2015 and 1 April 2018, local authorities must also transfer children and young people with statements to the new arrangements in year 9 and prior to them transferring from:
 - primary to secondary school;
 - middle to secondary school.

24. In addition to complying with the requirements set out above, local authorities will be expected to transfer:

- the following groups of children and young people each year:
 - all children with statements in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities must take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);
 - all children and young people in year 11, not just those who are moving into further education, and
 - those moving between one local authority and another.
- and the following groups in 2014/15:
 - children with statements in year 9;
 - children and young people with a statement leaving custody between 1 September 2014 and 1 April 2015; and
 - children and young people issued with non-statutory EHC plans before 1 September 2014.

25. All children and young people with statements will be transferred to the new system by 1 April 2018.

26. 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.