



Department  
for Education

# **Special Educational Needs and Disability (Detained Persons) Regulations 2015 and SEN and disability code of practice: 0 to 25 years**

**Government consultation response**

**January 2015**

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## Introduction

1. The Department for Education launched a public consultation on the draft Special Education Needs and Disability (Detained Persons) Regulations 2015 (the draft Regulations) and revised draft Special educational needs and disability code of practice: 0-25 (the draft Code) in the autumn of 2014. The Department for Education, Ministry of Justice and Department of Health worked together with interested parties and partners, including NHS England, the Youth Justice Board and the National Offender Management Service, to develop the legislation and statutory guidance. The consultation opened on 22 October and closed on 19 November 2014; 40 responses were received. Views were also received from two focussed consultation events with professionals from local authorities, youth offending teams, clinical commissioning groups (CCGs) and the secure estate and from meetings with the Special Educational Consortium, sector bodies and Governors/senior leaders from the Young People's Estate.
2. There are large numbers of detained children and young people with special educational needs; approximately 18%<sup>1</sup> of children and young people in custody have a statement and over 60%<sup>2</sup> have speech, language and communication needs. The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (the Regulations) and Special educational needs and disability code of practice: 0-25 (the Code) are needed to ensure that children and young people with SEN have their educational, health and care needs met whilst they are in youth custody and are fully supported to re-engage in education where appropriate upon their release.
3. The Regulations and the Code clarify the legal framework and requirements introduced through Section 70-75 of the [Children and Families Act 2014](#). In particular, these focus on effective provision through assessment and planning including Education, Health and Care (EHC) plans for those who have the most complex needs.
4. The Regulations are available on the [gov.uk legislation website](#). The Code is available on [the gov.uk SEN and disability site](#) .

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<sup>1</sup> [Ministry of Justice: Transforming Youth Custody consultation 2013](#) citing [Jacobson, J., Bhardwa, B., Gyateng, T., Hunter, G., & Hough, M. \(2010\) Punishing Disadvantage: a profile of children in custody. London: Prison Reform Trust](#)

<sup>2</sup> [Bryan K, F J \(2007\). Language and communication difficulties in juvenile offenders. IJDLC, IJDLC, 42, 505–520](#)

## Main findings from the consultation

5. From 22 October to 19 November we sought views on the draft Regulations in relation to detained children and young people with special educational needs and a draft Code of Practice through a [consultation](#). Below is a table summarising who responded.

Type of Respondent	Total	Percent
Local Authority	10	25%
Other (mostly sector bodies)	10	25%
Youth Offending Teams	5	13%
Voluntary Organisations	4	10%
Professional Association/Unions	2	5%
School Headteacher/Teachers	2	5%
Educational Psychologists	2	5%
Health Commissioners	2	5%
Health Professionals	2	5%
Further Education Principal/Teachers	1	2%
<b>Total:</b>	<b>40</b>	<b>100%</b>

## Summary of responses received

6. The largest categories of respondents were local authorities and sector bodies working with young offenders and their families. The latter were organisations that specialise in special educational needs, work with or represent children and young people, parents, rights organisations or bodies that work with the secure estate. The next largest group of respondents were youth offending teams.
7. In addition to the 40 responses to the consultation we undertook two focussed consultation events with professionals from local authorities, youth offending teams, CCGs and the secure estate and from meetings with the Special Educational Consortium, sector bodies and Governors/senior leaders from the Young People's Estate.
8. Respondents were asked to respond 'Yes', 'No' or 'Not Sure' to five consultation questions. In addition, respondents could respond in free text to the questions posed or provide any additional comments under question 6. To analyse these free text responses we identified the key themes and issues emerging from each

question. This summary reflects the most substantive views received during the consultation, largely those where over 10% of respondents to a question raised the same issue or concern. However, as the overall number of respondents was low and the range of responses diverse, we have also included some minority views where these were of particular relevance.

9. The majority of respondents found both the draft Regulations and the draft Code were clear on the duties and requirements placed on local authorities, youth offending teams and other bodies responsible for meeting the needs of detained children and young people with special educational needs. Some respondents offered suggestions to improve the clarity of the documents. The government's response is set out below. It describes the amendments made to the Regulations and the Code which, in summary, further clarify the roles and responsibilities of accountable bodies, set out clearer timeframes and give greater emphasis to the requirement for continuity of provision in custody and on release.

## **Summary of Government response following the consultation**

### **Main changes to the Regulations**

10. A number of changes have been made to the Regulations since the consultation, many of these are in direct response to the suggestions of respondents. The main changes in response to the consultation are listed below in paragraphs 11 to 14. More detail is given in later sections of this document relating to specific consultation questions.
11. Introduction of a requirement for local authorities to finalise incomplete assessments for EHC plans within 20 weeks, including when the assessment started in detention and the child or young person is released and when the assessment started in the community and the child or young person is detained, to help ensure support is put in place as soon as possible (for more detail see regulation 15).
12. Clarification that the EHC assessment is to have regard to achieving the best educational and other outcomes (for more detail on how the local authority should secure the detained person's EHC needs assessment see regulation 7).
13. Local authorities are now required to send the EHC plan within 5 working days of the local authority first keeping the EHC plan or when the local authority became aware of the detention, to the child or young person's health commissioner in addition to the other responsible bodies already listed. This is to ensure that the child or young person's health needs identified in the EHC plan are met as soon as possible (more detail is provided in regulation 17).
14. Where a school (or place of education) has deleted a detained child or young

person from their admission register (when they are aware that the child or young person is to be detained) they will nevertheless be notified when a local authority considers whether an EHC assessment may be appropriate so that they will be invited to contribute advice and information to the assessment (see regulation 4 for more detail).

## **Main changes to the Code**

15. We have made changes to the Code which take account of feedback from this consultation as described in paragraphs 16 to 20 below. More detail is given in later sections of this document relating to specific consultation questions.
16. We have strengthened chapter 10 of the Code to clarify the roles and responsibilities to support integrated working in the best interests of detained children and young people with special educational needs. We have set out the need for accurate and timely sharing of records. This enables the local authority to manage the EHC needs assessment and implementation of support. It also ensures a smooth handover and continuity of support when the child or young person moves in or out of custody.
17. We have clarified the roles and responsibilities for continuing EHC needs assessments when children and young people move into or out of custody, move to a new custodial establishment or are released to a new local authority,
18. Continuity is especially important in supporting detained children and young people as they move between custody and the community. The Code has therefore been strengthened to reflect the responsibilities of each body to arrange the provision specified in the EHC plan, so that they, working with the local authority, collaborate and deliver effective education, health and care (depending on the needs identified in the plan). We have clarified how provision should be monitored during detention as well as the review process on release.
19. We recognise that 'looked after children' with special educational needs in custody are especially vulnerable and often subject to complex arrangements. We have therefore added a section to Chapter 10 of the Code, "Looked after children remanded or sentenced to custody".
20. Putting children and young people at the centre of EHC assessment and planning is at the heart of the reform process and the Code reflects that. We have increased the references in chapter 10 accordingly. We have added an introduction section which sets out this and other principles that underpin action in respect of detained children and young people with special educational needs.

## Question 1 – clarity of the Regulations?

**Do the draft Regulations set out clearly what local authorities, youth offending teams, persons in charge of relevant youth accommodation, custodial education providers and health commissioners are required to do regarding children and young people with special educational needs who are in youth custody?**

There were 35 responses to this question.

Options	Total	Percent
Yes	21	60%
No	7	20%
Not Sure	7	20%

### Analysis

21. We received 35 responses to this question on the clarity of the draft Regulations. Most respondents (60%) agreed that the draft Regulations clearly set out the requirements for those involved in providing for detained children and young people who have special educational needs. However, 40% answered 'No' or 'Not Sure' to this question, indicating that they thought that one or more draft regulation(s) could be clearer.
22. There were comments from 13 respondents, 10 of which thought the draft Regulations were unclear on one or more issues or were unsure. No respondents opposed the Regulations in principle.
23. Five respondents raised concerns about the need for the draft Regulations to underpin continuity of assessment and support as movement into and out of custody is often rapid and the average custodial sentence for a child or young person is only 85 days<sup>3</sup>. Several raised the vulnerability of 'looked after children' as they often move between local authorities. (See paragraphs 29, 47 and 48 below for the government response).
24. Two respondents were concerned about who local authorities should notify when determining whether special educational provision may be necessary and when deciding whether to conduct an EHC needs assessment when a child or young person was removed from their last school's admission register. (See paragraph

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<sup>3</sup> [Youth Justice Statistics 2012/13 England and Wales Youth Justice Board /Ministry of Justice statistical bulletin 30 January 2014](#)

30 below for the government response.)

25. Some respondents requested that the education provider's roles and responsibilities should be set out in Regulations to help the local authority and the Youth Offending Team (YOT) work with them to plan and arrange provision. (See paragraph 31 below for the government response.)
26. Two respondents, under question 3 of the consultation, wanted clarity on the health commissioner for the detained child or young person's involvement in the EHC needs assessment and provision of support. (See paragraph 32 for the government response on how this is being met by amendment of the Regulations.)
27. One respondent wanted to see the Regulations and the Code make reference to the overall aim of improving educational, health and care outcomes for detained children and young people. (See paragraph 33 below for the government response.)
28. A number of additional technical changes were recommended by respondents to clarify who must be involved in EHC plan assessments or in EHC plan development, the duty to cooperate with requests for information from the local authority and to meet timeframes. All these recommendations were to improve the effectiveness of EHC planning. (See paragraph 34 for the list of changes to the regulations 'other' than those listed in paragraphs 29-33 below.)

## **Government response**

29. In response to concerns that the Regulations should ensure continuity and that EHC plans should be finalised as soon as possible, we have strengthened regulation 15. Regardless of children or young people's movements into or out of custody and whether or not the needs assessment or plan were completed, the decision on whether to have an EHC plan or not must be made within 6 weeks, and EHC plans must be finalised within 20 weeks of the local authority receiving a request for an EHC needs assessment. If a decision is made following an assessment, not to secure an EHC plan, the decision must be finalised within 16 weeks.
30. We have amended regulation 4 to stipulate that when the child or young person has been deleted from the admission register (in accordance with regulation 8(1)(i) of the Education (Pupil Registration) (England) Regulations 2006), these schools and educational institutions will also be notified when determining whether special educational provision may be necessary and when deciding whether to conduct an EHC needs assessment. They will also be asked to provide educational advice to help local authorities understand the needs of

children and young people when they are released from detention.

31. We have given greater clarity in the Code on the expectations on education providers in relevant youth accommodation in relation to the assessment process and provision of appropriate special educational provision.
32. The detained person's health commissioner is involved throughout the assessment process and is responsible for arranging the healthcare provision specified in the Plan. Regulation 17 (in relation to who must be sent a copy of the EHC plan) has therefore been strengthened to include the detained child or young person's health commissioner. We have also stipulated that the EHC plan must be sent to them (alongside the person in charge of the relevant youth accommodation and the YOT) within 5 working days of the local authority first keeping the EHC plan or when the local authority first became aware of the detention.
33. The government wants to reflect the aspirations set out in the Children and Families Act 2014, by adding to regulation 7 (which concerns what local authorities need to consider when undertaking an EHC needs assessment) that local authorities must have regard to facilitating children and young people's development to "help them to achieve their best educational and other outcomes." We have complemented this by adding a new introduction section in the Code which sets out the principles underpinning the section of the Code in chapter 10 'Children and young people with SEN who are in youth custody'. (See paragraph 50 below.)
34. In addition to the above changes we have made changes to Regulations 2; 3; 5; 6; 8; 14; and included a new regulation clarifying the process for sending plans when detained children and young people are released to a new local authority. Changes were also made to Regulations 25; 28 and 29 and an additional Part added to the Regulations to cover "Appropriate persons lacking capacity" has been added. The final Regulations are available on the [gov.uk legislation website](http://gov.uk/legislation-website).
35. Not all the changes recommended in respect of roles and responsibilities were made in the Regulations, however, we have addressed many of the concerns raised by amending the Code – see Question 2 below.

## Question 2 – does the Code clearly set out the duties?

**Does the draft text on detained children and young people in chapter 10 (paragraphs 10.53 to 10.120 of the draft revised code of practice) clearly explain the duties set out in sections 70–75 of the Children and Families Act 2014 and the draft SEN and Disability (Detained Persons) Regulations 2015?**

There were 32 responses to this question.

Options	Total	Percent
Yes	18	56%
No	7	22%
Not Sure	7	22%

### Analysis

36. 32 responses were received to this question on the clarity of chapter 10 of the draft Code in setting out the duties of the Children and Families Act 2014. Most respondents (56%) agreed that the draft Code clearly explains the duties for those involved in providing for detained children and young people who have special educational needs. However, 44% answered 'No' or 'Not Sure' to this question, indicating that they found one or more paragraphs of the draft Code could be clearer.

37. Local authorities were most likely to find Chapter 10 was clear. Several sector representative bodies thought that the draft Code was easy to read and set out clearly the duties of the bodies involved in commissioning and supporting detained children and young people with helpful references to the relevant legislation.

38. There were comments from 11 respondents, 8 of which thought the draft Code was unclear for one or more paragraphs or were unsure. No respondents opposed the content of chapter 10 in principle.

39. A number of respondents thought that chapter 10 could be clearer on the roles and responsibilities of the local authority and the other named agencies in order to avoid delays and secure continuous support. Respondents who commented thought that the draft Code should be clear that support should start as soon as possible in detention as well as on release from detention. In particular respondents thought the roles of the bodies responsible for health needed to be clearer. (See paragraph 43 and 44 below for the government response.)

40. As well as clarifying roles, integrated services need to share data effectively; the

most recent EHC plans and assessments must be shared among the responsible bodies so that detained children and young people receive continuous support even when they transfer into or out of custody. (See paragraph 44, 45 & 46 below for the government response.)

41. The need to clarify the support for 'looked after children' who additionally face transition problems if they move to a new local authority or out of care in addition to moving in or out of custody was also raised. (See paragraphs 47 & 48 below for the government response.)
42. The need for stronger emphasis on personalisation and much more reference to the child or young person's involvement was flagged by several respondents. (See paragraph 49 below for the government response.)

## **Government response**

43. Chapter 10 of the Code has been strengthened to clarify the roles and responsibilities to support integrated working in the best interests of detained children and young people with special educational needs. For instance we have clarified the bodies that must be notified and involved when the local authority is both considering an EHC needs assessment and when it is gathering advice and information for the assessment.
44. The Code now gives greater weight to the need for accurate and timely sharing of both education and health records to enable the local authority to manage the EHC plan assessment and where appropriate, continuity of support when the child or young person moves in or out of custody. The local authority must send the EHC plan to the YOT, person in charge of the relevant youth accommodation and the detained child or young person's health commissioner within 5 days of them becoming aware of a child or young person's detention.
45. Continuity is especially important in supporting detained children and young people as they move between custody and the community or on to other relevant youth accommodation. The Code has therefore been strengthened to reflect the duty to finalise the EHC plan within 20 weeks (or where a decision not to secure an EHC plan is being made, the decision should be announced within 16 weeks) if the detained person is released from custody before the assessment process has been completed. Likewise if the child or young person enters custody before their EHC plan in the community has been finalised, the decision to assess and the completion of the EHC plan must take place within the set timeframes, even if they transfer to new relevant youth accommodation during their detention. This ensures that education, health and care needs are met as soon as possible regardless of further transitions.

46. We have also further expanded on the coordinating role of the YOT when children and young people are first placed in detention to notify the local authority and other key agents so that there is minimal delay to the commencement of the duties to assess and arrange support for detained persons with special educational needs.
47. We recognise that children and young people that were ‘looked after children’ with special educational needs before they entered custody are especially vulnerable in custody and have therefore added a sub-section “Looked after children remanded or sentenced to custody” to chapter 10 of the Code. This sets out the responsibilities of the local authority and CCG where the child is ‘ordinarily resident’ in relation to EHC needs assessments and arranging support.
48. Additionally, to help detained children and young people moving to a new local authority on release, chapter 10 has a new sub-section entitled “Moving to a new local authority on release”. This sets out the requirements in the new Regulation for the old local authority to send the EHC plan to the new local authority and for the new local authority to send the EHC plan to the new CCG.
49. Putting children and young people at the centre of EHC assessment and planning underpins the Code. Participation is featured as one of three underpinning principles set out in the revised ‘Introduction’ section in chapter 10. We have also strengthened the references to personalisation, for instance by making clear that the local authority must ensure that the information they provide to the young person is accessible. It is particularly important that children and young people with special educational needs but no EHC plan, including those who have been refused an EHC Plan, should be made aware of local resources available to them upon release to meet their identified needs, such as those set out in the local offer. Reviews on release must take account of children and young people’s wishes and feelings and should cover their right to a personal budget.
50. The respondents that provided comments and suggestions expressed a strong desire in general to improve the outcomes for detained children and young people. In response, as mentioned above, we have included a set of principles in the Code that underpin this section of chapter 10. As follows:
- “The principles underpinning the Code (see chapter 1) are relevant when supporting detained persons to achieve the best possible educational and other outcomes and to prepare for adulthood and independent living. They support:
- the participation of the detained person and the child’s parents in decisions relating to their individual support. Local authorities **must** have regard to their views, wishes and feelings and **must** provide them with information, advice and support to enable them to participate;

- the timely identification and assessment of special educational needs and provision of high quality support at the earliest opportunity whether they have an EHC plan or not.
- greater collaboration between education, health and social care with a focus on continuity of provision both when a detained person enters custody and after their release. Custodial sentences are often short, it is therefore important for decisions to be made as soon as possible to ensure appropriate provision is put in place without delay.

These reflect the principles described by respondents and the aspirations of the Act and Regulations as well as the principles set out in chapter 1 of the Code.

51. The above summarise the main changes made to chapter 10 in reference to the suggestions of respondents to this question of the consultation. Please refer to the Code for full details of all the changes. The Code is available on [the gov.uk SEN and disability site](https://www.gov.uk/sen-and-disability-site).

## Question 3 – clarity of responsibilities in the Code?

Does the draft text on detained children and young people in chapter 10 make it clear what is required of local authorities, youth offending teams, persons in charge of relevant youth accommodation, custodial education providers and health commissioners in carrying out the statutory duties in relation to detained children and young people?

There were 31 responses to this question.

Options	Total	Percent
Yes	17	55%
No	8	26%
Not Sure	6	19%

### Analysis

52. We received 31 responses to this question on the clarity of chapter 10 of the draft Code with respect to setting out the statutory duties of the responsible bodies.

Most respondents (55%) agreed that the draft Code clearly explain the duties for those involved in providing for detained children and young people who have special educational needs. However, 45% of those answering the question answered 'No' or 'Not Sure', indicating that they found one or more paragraphs of the draft Code that could be clearer.

53. Local authorities were most likely to find the duties set out in Chapter 10 were clear.

54. There were comments from 12 respondents, 8 of which thought the draft Code unclear on one or more paragraphs or were unsure. No respondents opposed the content of chapter 10 in principle.

55. The main concerns raised by the respondents who thought chapter 10 unclear in one or more areas were similar to those raised above under question 2:

- Greater clarity to the roles and responsibilities, in particular the role of the health commissioner and the relationship between NHS England and the CCG. (See paragraph 58 and 59 below for the government response).
- Additionally a number of respondents thought the local authority should support children and young people to participate in the assessment, the development of the plan or if appropriate, an appeal. The advice and information given should be accessible and meet their needs to enable them to participate fully. (See paragraph 49 above for the government response.)

56. Services need to effectively share any relevant education, health and care data when children and young people transfer into or out of custody. Respondents expressed concern over effective sharing of health data in particular. (See paragraphs 44, 58 & 59 for the government response.)
57. Due to the high incidence of speech, language and communication needs among detained children and young people, sector representatives would like detained children and young people to be automatically screened. They also welcomed clarification on the recognition of speech, language and communication needs as a special educational need although speech and language therapy is largely funded and provided by health. (See paragraph 60 below for the government response).

## Government response

58. As well as clarifying the roles and responsibilities of those required to provide education, health and care to detained children and young people (as outlined in paragraph 43 above), we have stressed the need for prompt and thorough data sharing in the Code (paragraph 44 above). We agree that the EHC plan (whether in progress or completed) must move with the child or young person to ensure effective handovers so that the new responsible bodies are informed and able to meet the child or young person's needs. We have, for instance, suggested YOTs should ensure that when children or young people are released from custody, all external agencies are aware of their responsibilities under the proposed release plan, and condition of licence or Notice of Supervision.
59. As detained children and young people are likely to experience transitions between custody and community and often between local authorities or types of secure accommodation, we have recognised the need for agencies to work closely together (see paragraph 44 above). We have for instance increased the references in the Code to meeting health needs in custody and on release. We have referred to the role of the CCG and that of NHS England to work closely together when transferring responsibility so that they can meet children and young people's health needs.
60. The Code now states that all children and young people entering custody will be screened and assessed using the Comprehensive Health Assessment Tool (CHAT) which will include screening for speech, language and communication needs. We have also clarified in the Code that speech and language therapy is usually recorded as education provision in section F of EHC plans and where it is, it **must** be arranged by the local authority. We have made clear that in practice, when undertaking this duty in relevant youth accommodation, the local authority should work with NHS England and any providers of speech and language therapy, who are contracted and funded centrally by NHS England, to deliver it within the framework of services already provided to the establishment.

## Question 4 – clear links to other parts of the Code?

Are the links from the draft text on detained children and young people in chapter 10 to other parts of the code of practice clear?

There were 27 responses to this question.

Options	Total	Percent
Yes	20	74%
No	4	15%
Not Sure	3	11%

### Analysis

61. We received 27 responses to this question on the links from chapter 10 to other parts of the draft Code. Most respondents (74%) agreed that the draft had clear links to the relevant parts of the draft Code. However, 26% (7 respondents) who answered this question answered 'No' or 'Not Sure' to this question, indicating that they wanted to see additional links.
62. All types of respondents, including local authorities, found the links in chapter 10 clear and helpful. Those representing speech and language specialists and health suggested additional links.
63. There were comments from 8 respondents, 3 of which thought the links could be clearer.
64. Five respondents suggested a number of useful additional links that could be made between chapter 10 and other chapters in the Code. These include links to:
- the requirement to provide impartial advice and guidance to children and young people and to their parents as set out in chapter 2;
  - chapter 10 from chapters 6 and 7 which (respectively) set out the responsibilities of schools and FE colleges under the Act and Regulations. This prompts schools and colleges to appreciate their role in supporting children and young people who receive custodial sentences and to work with YOTs;
  - chapter 9, which sets out responsibilities with regard to the assessment and planning process for children and young people with special educational needs in the community, and provides useful links to information on what 'should' and 'must' be provided for young people when

they move out of or back into community provision.

and

- within chapter 10 to the relevant detail within that chapter.

## **Government response**

65. We have added a new section to chapter 2 'Support for children and young people in custody' setting out the requirements on local authorities to provide information, advice and support to those in custody with links to chapter 10. We have added several links from chapter 10 to other chapters in the Code, including chapter 9, and have made it clear that those required to support detained children and young people with special educational needs refer more broadly to the Code and not just the detained children and young people section of chapter 10.
66. Chapters 6 and 7 which set out the responsibilities of schools and colleges under the Children and Families Act 2014, each now refer to chapter 10 and the need for schools and colleges to respond promptly to requests for information to help assess the needs of detained children and young people.
67. We have also increased the links within chapter 10 to relevant paragraphs in the same chapter to help the responsible bodies understand the detail of supporting detained children and young people.

## Question 5 – in custody compared to in the community

**Does the explanation of the assessment and planning duties in the draft text on detained children and young people in chapter 10 clearly set out the similarities and differences in the process for children and young people in custody compared to children and young people in the community (as set out in chapter 9)?**

There were 33 responses to this question.

Options	Total	Percent
Yes	17	52%
No	9	27%
Not Sure	7	21%

### Analysis

68. We received 33 responses to this question on the clarity of how the assessment and planning duties differed or were similar for children and young people in custody in comparison with those in the community (chapters 10 and 9 of the draft Code). Most respondents (52%) agreed that the draft Code clearly explained the differences between supporting young people in custody compared to those in the community. However, 48% of those who responded to this question (16) answered 'No' or 'Not Sure', indicating that they found one or more areas unclear between the two sets of duties.
69. Local authorities were most likely to find the similarities and differences described clear.
70. There were comments from 11 respondents asking for one or more additions to help guide practitioners working with detained children and young people.
71. Respondents noted the difference in the terms used to describe the local authority's duties in respect of special educational provision in chapter 10 where the home local authority must 'arrange' special educational provision and in chapter 9, where it must 'secure' special educational needs provision. They sought clarification. (See paragraph 75 below for the government response).
72. Sector representatives responding to the consultation requested that the draft Code specify that all detained children and young people entering custody should be screened for special educational needs as this group have a high incidence of special needs. (See paragraph 76 below for the government response.)

73. They also thought that the draft chapter 10 lacked the detail and emphasis on the importance of regularly reviewing EHC plans in contrast to chapter 9. (See paragraph 77 below for the government response.)
74. One respondent wanted to see more emphasis on young people progressing to employment, education and training. (See paragraph 78 below and 50 above for the government response.)

## Government response

75. There is a difference in terms between the duty of the local authority in respect of children and young people in the community and those in custody because the local authority can directly secure appropriate educational provision for children and young people with special educational needs in the community. For detained children and young people it arranges appropriate educational provision via a third party. The terms used reflect those used in the legislation.
76. We have set out in chapter 10 of the Code how all children and young people entering custody will have an educational assessment which includes an assessment of literacy and numeracy and where necessary a screening to identify special educational needs. Additionally they will be screened and assessed using the Comprehensive Health Assessment Tool (CHAT) which includes screening for speech, language and communication needs.
77. The Code gives a stronger focus to monitoring progress towards outcomes in the EHC plan and states that local authorities should conduct a monitoring meeting at least every 12 months, following the processes set out in chapter 9. Continuity is essential for children and young people with special educational needs and plans must be reviewed when children and young people are released into the community.
78. The requirement to support “detained persons to achieve the best possible educational and other outcomes and to prepare for adulthood and independent living” is now more clearly set out within the important principles that underpin support for detained children and young people in the Code at the beginning of chapter 10 (see paragraph 50 above). This, alongside principles of effective participation, timely identification of needs, high quality provision, greater collaboration and continuity of support, provide a clear steer to all practitioners working with detained children and young people.

## Question 6 – other comments

**Any other comments on the changes listed in annex A of the ‘Draft Special Educational Needs and Disability (Detained Persons) Regulations 2015 and Draft Revised code of practice’ consultation document?**

There were 20 comments to this question.

### Analysis

79. There were 20 comments in response to this question. Most of these were about provision for detained children and young people and they have been considered in the context of the draft Regulations and the revised section *Children and young people with SEN who are in youth custody* in chapter 10 of the draft Code under questions 1-5 above.
80. The proposal to amend the reference to all children and young people having an ‘entitlement’ to an education that enables them to achieve their best, become confident individuals leading fulfilling lives and make a successful transition to adulthood, to an expectation that they ‘should expect to receive’ such an education, drew comments from some respondents who felt that this could be seen as a weakening of children’s current entitlements.
81. Other comments were received which suggested further changes to improve clarity of the draft Code and these are covered in paragraphs 82 and 83 below.

### Government response

82. We have strengthened paragraph 6.1 to clarify that all children and young people have an entitlement to an appropriate education, one that is appropriate to their needs, promotes high standards and the fulfilment of potential.
83. The following changes have also been made to improve clarity – the list of those who must cooperate with the local authority amended to refer specifically to those most relevant to the local offer (paragraph 4.15); children have been included in the list of those to be provided with information through the local offer on where information and advice may be accessed (paragraphs 4.59 and 4.60); reference has been made to local authorities having a duty to offer information and advice directly to children (paragraph 8.5); the reference in paragraph 11.27 to the mediation adviser issuing a certificate within three days, has been amended to make clear that these are three working days; and the reference in paragraph 11.34 to appeals against health provision has been changed to refer instead to complaints as the appropriate route of redress.

## Next steps

84. Subject to parliamentary approval:

- *The Special Educational Needs and Disability (Detained persons) Regulations 2015* come into force on 1 April 2015; and
- the appointed day for the revised *Special educational needs and disability code of practice: 0 to 25 years* to commence is 1 April 2015.

## Annex A – Full list of respondents to the autumn 2014 Consultation<sup>4</sup>

Organisation
Aycliffe Secure Centre (Phillip Richardson)
Cambridgeshire County Council (Richard Holland)
Cheshire West and Chester Council (Colette Murphy)
Child and Adolescent Psychiatry Faculty/Adolescent Forensic Psychiatry Special Interest Group of the Royal College of Psychiatrists & South West Yorkshire Partnership NHS Foundation Trust (Abdulla & Paula Kraam & Phillips)
Communication Trust, The (Anne Fox)
Core Assets (Steve Ball)
Crossland, Angela (City of York Council)
Essex County Council (Annette Jones)
Hackney Learning Trust (Jacqueline Ross)
Haslam, Jess (City of York Council)
IPSEA (Independent Parental Special Education Advice) (Chris Gravell)
KIRKLEES MC (MANDY CAMERON)
Local Government Association (LGA) (Liz Hobson)
McCartney, Val (responding in a private capacity)
nasen (Jane Friswell)
National Deaf Children's Society (Ian Noon)
NHS England (Dave King)
Nottinghamshire County Council (Linda Wright)
O'Connor, Catherine (Wirral EP Team)
OFSTED (Debbie Jones)
Participation Works (Lisa Payne)
Portsmouth Clinical Commissioning Group (Amanda Waller)
Portsmouth County Council (Kieran Gildea)

<sup>4</sup>Respondents who asked for their details to be kept confidential are not included on this list. This list is a direct download from the Department's online consultation system so respondent's details appear as they have identified themselves when responding to the consultation.

<b>Organisation</b>
Portsmouth County Council (Julia Katherine)
Prendergast, Bren
Ridgeway Infant School (Kinga Toczyska )
Royal College of Speech and Language Therapists (Claire Moser)
Sheffield Youth Justice Service (Carol Fordham)
Shropshire LA (Janice Stackhouse)
Sinson, Jane
Special Educational Consortium and the Standing Committee on Youth Justice (Matthew Dodd)
Tadiesse Pokam, Albert
Tower Hamlets Council (David Carroll)
Turner, William (Childrens' Services)
Voice (Ian Toone)
Warriner, Ian (Bolton.gov)
West Mercia Youth Offending Service (Debbie Stokes)
Youth Justice Board (Rebecca Pryce)



Department  
for Education

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