



Department
for Education

Special educational needs and disability: managing the September 2014 changes to the system

**Advice for local authorities and their
partners**

Fourth edition: October 2016

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Summary

About this advice

1.1 This is advice from the Department for Education. This advice is non-statutory and has been produced to help local authorities, their partners and families understand the provisions of The Children and Families Act 2014 (Transitional and Saving Provisions) (No. 2) Order 2014, as amended. (This legislation is referred to in this document as the 'Transitional and Saving Provisions Order 2014'.) Where the word **must** is used this refers to requirements set out in legislation. The word 'should' reflects the Government's expectations of how local authorities and other organisations will go about transferring all children and young people with special educational needs (SEN) to the new system. Local authorities may be asked to explain any departure from these expectations.

1.2 This is the fourth edition of this advice. It covers how legislation relating to children and young people with SEN in England will operate from 1 September 2015 to 31 March 2018; and how and when the new SEN and disability system will be made available to all children and young people in England by the end of that period. A 'young person' in this context is a person over compulsory school age and under 25. Compulsory school age ends on the last Friday of June in the academic year in which the person becomes 16.

1.3 The secondary legislation that underpins this document is available online:

- [The Children and Families Act 2014 \(Transitional and Saving Provisions\) \(No. 2\) Order 2014](#)

as amended by:

- [The Children and Families Act 2014 \(Transitional and Saving Provisions\) \(Amendment\) Order 2015](#); and
- [The Children and Families Act 2014 \(Transitional and Saving Provisions\) \(Amendment\) \(No. 2\) Order 2015](#).

1.4 Enquiries about this document should be sent to sen.implementation@education.gov.uk.

Expiry or review date

1.5 This document will be reviewed periodically during the remainder of the transition period (to 1 April 2018).

1.6 This is the fourth edition of this document, following on from the:

- original version (August 2014); and
- second edition (March 2015), that contained amendments to reflect new requirements relating to those aged under 19 in youth custody needing or possibly needing special educational provision. The advice in the second edition will apply until 31 August 2015.

The principal changes from the third edition are as follows:

- the maximum time for a local authority to conclude a Transfer Review to consider replacing a statement of SEN with an Education, Health and Care (EHC) plan has been extended from 14 weeks to 18, to follow on from an unchanged notice period of at least two weeks; and
- material relating to the transition arrangements for the commencement of the Children and Families Act 2014 (referred to in this document as the '2014 Act') on 1 September 2014 has been reviewed, updated or removed, as appropriate. (As part of this, material describing the requirements and expectations of setting-based SEN support in relevant early years and post-16 settings from 1 September 2014 has been removed.) Various other changes have been made so as to clarify requirements and expectations over transition to the new SEN and disability system, and generally to meet the needs of users of this document.

The advice in this new edition applies from 1 October 2016.

Which primary legislation does this document refer to?

- [Education Act 1996](#)
- [Learning and Skills Act 2000](#)
- [Children and Families Act 2014](#)

Who is this document for?

1.7 This document is intended primarily for local authorities. It will also be of interest to other education, health and care organisations involved in statutory assessments of SEN and the provision of services for children and young people with SEN; and to children and young people with SEN and their parents.

Main points

1.8 By 1 April 2018, local authorities **must** have transferred all children and young people with statements of SEN to the new SEN and disability system who meet the criteria for an EHC plan. Local authorities must conduct a Transfer Review – that is an EHC needs assessment in accordance with The Special Educational Needs and Disability Regulations 2014 (referred to in this document as the 'SEND Regulations 2014'). We expect that all those who have a statement of SEN and who would have continued to have one under the current system will be transferred to an EHC plan – no-one should lose their statement and not have it replaced with an EHC plan simply because the system is changing. To ensure children and young people with statements of SEN continue to receive the support they need during the transition period (1 September 2014 to 1 April 2018), local authorities **must** continue to comply with the 1996 SEN framework. This includes:

- Part IV of the Education Act 1996 (including Schedules 26 and 27) – referred to in this document as the '1996 Act';
- [The Education \(Special Educational Needs\) \(England\) \(Consolidation\) Regulations 2001](#);
- the [Special Educational Needs Code of Practice, 2001](#) (referred to in this document as the '2001 Code'); and
- [Inclusive Schooling: children with special educational needs](#), 2001

as applicable, in relation to children and young people with statements of SEN.

1.9 Young people in further education and training who receive support as a result of a Learning Difficulty Assessment (LDA) can choose to request an EHC needs assessment under the 2014 Act. All young people who receive support as a result of an LDA who will continue in further education or training beyond 1 September 2016 **must** have an EHC plan by that date where one is needed. Until that point, local authorities should usually continue to maintain special educational provision in relation to young people who are receiving support as a result of an LDA.

1.10 Local authorities were expected to consult with parents, young people and relevant professionals as they developed initial local Transition Plans. Each Plan sets out when and how children and young people with statements of SEN and young people who receive support as a result of an LDA will transfer to the new system; including the order in which they will be transferred. To ensure that momentum is maintained across all areas, all local authorities **must** ensure that some groups of children and young people are transferred to the new system by particular points during the transition period and are expected to transfer other groups at particular points too. The local Transition Plan helps to ensure that parents and young people can access information about the transfer process. The local authority should keep the Plan under review.

1.11 New provisions for children and young people aged under 19 in youth custody commenced on 1 April 2015. For those entering or already in youth custody with a statement of SEN, the special educational provision in the statement will be deemed as if it is made in an EHC plan. Local authorities will be under a duty to arrange appropriate support. They **must** conduct a Transfer Review on release if they have not conducted one in youth custody. Local authorities should take reasonable steps to inform those in youth custody with LDAs of their right to request an EHC needs assessment. For young people with LDAs who request an EHC needs assessment, where the local authority believes it may have to make special educational provision on release it **must** carry out an EHC needs assessment.

2. Introduction

2.1 The 2014 Act provides for new statutory assessment and planning arrangements for children and young people with SEN. Since 1 September 2014, it has no longer been possible to request an assessment of SEN under the 1996 Act for a child or young person who did not already have a statement of SEN. Nor can new LDAs be commenced under the Learning and Skills Act 2000 (referred to in this document as the '2000 Act'). Since that date local authorities have had to consider under the 2014 Act all new requests for an assessment of SEN for children and young people who do not have an existing statement of SEN. Those requiring a statutory plan to secure the relevant provision to meet their SEN **must** be issued with an EHC plan.

2.2 There is a transition period during which children and young people with statements of SEN and young people who receive support as a result of an LDA will - where they meet the criteria for an EHC plan - be transferred over to the new arrangements. To help ensure these children and young people continue to receive the support they need, and to maintain their rights and protections, transitional arrangements are in place. The Transitional and Saving Provisions Order 2014 maintains during the transitional phase elements of the 1996 Act and the 2000 Act, relating to statements of SEN and LDAs respectively.

2.3 The legal test of when a child or young person requires an EHC plan remains the same as that for a statement of SEN under the 1996 Act. Therefore, it is expected that all children and young people who have a statement of SEN and who would have continued to have one under the 1996 Act will be transferred to an EHC plan. No child or young person should lose their statement of SEN and not have it replaced with an EHC plan simply because the system is changing.

2.4 Local authorities undertook LDAs for young people either because:

- they had a statement of SEN at school; or
- in their opinion these young people were likely to need additional support as part of their future education or training and would benefit from an LDA to identify their learning needs and the provision required to meet those needs.

Young people who are currently receiving support as a result of an LDA and remain in further education or training during the transition period, who request and need an EHC plan, **must** be issued with one.

2.5 This document provides advice to local authorities and their partners involved in providing services to children and young people with SEN on:

- arrangements relating to statements of SEN and LDAs during the transition period (section 3);
- the timing of transfers to the new system (section 4);

- the process for transferring the following groups of children and young people to the new SEN and disability system:
 - children and young people with statements of SEN, and
 - young people in further education and training who receive provision as a result of an LDA

(section 5); and

- arrangements relating to statements of SEN and LDAs for children and young people aged under 19 in youth custody during the transition period (section 6).

3. Arrangements relating to statements of SEN and Learning Difficulty Assessments during the transition period

3.1 Local authorities **must** make the new SEN and disability system available to all children and young people with SEN in their area before the end of the transition period. To ensure that children and young people with statements of SEN and young people who receive support as a result of an LDA continue to receive the support they need, and to maintain their rights and protections, transitional arrangements are in place. These maintain elements of the 1996 Act and the 2000 Act, relating to statements of SEN and LDAs respectively. This section sets out the specific elements that will remain in force.

3.2 Statutory processes relating to assessments of special educational needs under the 1996 Act and LDAs under the 2000 Act that were in progress on 1 September 2014 had to be completed under those arrangements; unless the local authority and the child's parents or the young person agreed to treat the assessments as being under the 2014 Act. The transitional arrangements that allowed for these assessments to be treated in this way are set out in Articles 5-7, 23 and 27 of the Transitional and Saving Provisions Order 2014.

Statements of SEN

3.3 Until 1 April 2018, the 1996 SEN framework will continue to have effect in relation to children and young people with statements of SEN. During the transition period, a child or young person's statement of SEN **must** remain in place until:

- after the period within which a parent can register an appeal with the First-tier Tribunal (SEN and Disability) (called in this document 'the Tribunal') following a local authority's decision to cease the statement of SEN; or, if an appeal is registered, after the appeal has been determined;
- the statement of SEN is ceased because the young person leaves school;
- a Transfer Review has been completed for the child or young person (see section 5 of this document) and an EHC plan has been issued; or
- after the period within which a child's parent or young person can register an appeal following a local authority's decision not to secure an EHC plan and to cease to maintain the statement of SEN following a Transfer Review; or, if an appeal is registered, after a determination that an EHC plan is not required.

3.4 During the transition period local authorities **must** continue:

- where necessary, to maintain statements of SEN;
- to review statements of SEN at least annually;
- beginning at year 9, to draw up a Transition Plan for a child (see paragraph 9:51 of the 2001 Code); and review it at least annually;
- to have regard to the 2001 Code in fulfilling their duties to arrange provision for those with statements of SEN and maintaining those statements; and
- to make information, advice and support services and disagreement resolution arrangements available to the parents of children and of young people who have statements of SEN.

3.5 During the transition period the parents of children and of young people with statements of SEN **must** continue to be:

- invited to provide evidence for annual reviews, sent copies of the evidence that others have provided for the reviews and be invited to the annual review meeting in the statutory timescales;
- provided with a proposal to amend, or draft amended statement of SEN with an amendment notice, where the local authority proposes to amend a statement; with the content of the notice being as prescribed; and
- advised of their rights to appeal to the Tribunal in relation to various local authority decisions over statements of SEN. (In contrast to the new SEN system, for appeals relating to statements of SEN there will continue to be no requirement for parents to consider mediation in advance of registering an appeal.) 3.6 Local authorities cannot commence an EHC needs assessment if an appeal has been brought under section 326 of, or paragraph 8 of Schedule 27 to, the 1996 Act and there has yet to be a determination.

3.7 Parents of children and young people can continue to exercise pre-existing rights of appeal under the 1996 Act, as detailed in paragraphs 3.11-3.14 below.

Requests for re-assessments of children and young people with statements of SEN made after 1 September 2014

(Article 23 of the Transitional and Saving Provisions Order 2014)

3.8 A parent of a child or of a young person with a statement of SEN will continue to be able to request a re-assessment under Part IV of the 1996 Act during the transition period. If he or she requests that the local authority conduct an EHC needs assessment instead, the authority will need to decide whether it is appropriate to do so.

3.9 Within six weeks of receiving the request for a re-assessment of a statement of SEN, local authorities **must** inform the parents of the child or of the young person whether they intend to go ahead with the re-assessment. A local authority is not required to carry out a re-assessment if a re-assessment is not needed or where it has carried out an assessment or a re-assessment in the previous six months. If a re-assessment does go ahead it will be conducted under the arrangements set out in the 1996 Act and result, as appropriate, in a revised statement of SEN. However, the local authority may choose to transfer the child or young person to the new SEN and disability system at this point by initiating a Transfer Review instead and conducting an EHC needs assessment. The decision to switch to an EHC needs assessment must be made with the agreement of the child's parents or the young person. Local authorities are encouraged to use this power where they can. This will allow children, young people and their parents to benefit from the new arrangements earlier than otherwise planned. It will also help to reduce the outstanding burden of transfers to the new system.

3.10 Where the needs of a child or young person have changed and the provision required to meet those needs has changed and it is necessary to carry out an assessment, then the local authority **must** carry one out: whether as a re-assessment under the 1996 Act or an EHC assessment under the 2014 Act. If these considerations do not apply, then the child or young person will not need a re-assessment and will be considered for an EHC plan in due course in accordance with the local authority's Transition Plan (see section 4 of this document).

Appeals to the First-tier Tribunal (SEN and Disability) about assessments and statements of SEN during the transition period

(Articles 8-10 and 19 of the Transitional and Saving Provisions Order 2014)

3.11 Unless the local authority has provided notification that it is conducting a Transfer Review (see section 5 of this document), parents of children and young people with statements of SEN (or parents of children and of young people who requested statements of SEN prior to 1 September 2014) can appeal to the Tribunal under the 1996 Act in the following circumstances:

- over the description of the SEN of a child or young person in Part 2 of the statement of SEN (section 326(1A)(a));
 - over the special educational provision specified in Part 3 (section 326(1A)(b));
 - the school named in Part 4 of the statement of SEN (section 326(1A)(b));
 - if no school is named in Part 4 of the statement of SEN (section 326(1A)(c));
 - if the local authority refuses to change the name of the school named on a statement of SEN, where that statement of SEN is at least one year old (paragraph 8(3)(b) of Schedule 27);
 - where the local authority refuses to re-assess the SEN of a child with a statement of SEN, provided an assessment has not taken place in the last six months (section 328(3)(b));
 - where the local authority decides not to amend the statement of SEN following a re-assessment (section 326(1)(c));
 - where the local authority decides not to amend the statement of SEN following an annual or other review (section 328A(3)); or
 - where the local authority decides to cease to maintain a statement of SEN (paragraph 11(2)(b) of Schedule 27).
- 3.12 The Tribunal makes a particular effort to hear and decide appeals about a child's school placement before the beginning of the academic year.
- 3.13 Case law has established that in appeals under paragraph 8 of Schedule 27 to the 1996 Act, the name of the school can only be changed to another school of the same type: for example a mainstream school to another maintained mainstream school or a maintained special school to another maintained special school.
- 3.14 For further details of appeals to the Tribunal under the 1996 Act, see the 2001 Code. Transitional provisions are set out in Articles 8-10 and 19 of the Transitional and Saving Provisions Order 2014.

Learning Difficulty Assessments

(Article 29 of the Transitional and Saving Provisions Order 2014)

3.15 From 1 September 2016, all young people who had received support as a result of an LDA in further education and training who continue in further education or training beyond that point and who need an EHC plan **must** have one.

3.16 In the meantime, Article 29 of the Transitional and Saving Provisions Order 2014 places a duty on local authorities to anticipate their duty in relation to young persons with LDAs who will continue in education or training. This Article reads as follows:

After 31st August 2015 a local authority must have regard to the fact that it may be under a duty on or after 1st September 2016 to secure an EHC needs assessment for a young person to whom Article 28 applies [i.e. a young person with an LDA] and who attends a post-16 institution on or after that date.

3.17 Until 31 August 2016 where a Transfer Review has not taken place, local authorities should, in line with the [Learning Difficulty Assessments Statutory Guidance](#), 2013:

- continue to support young people with LDAs up to the age of 25 if they stay in further education or training (provided they still have learning difficulties);
- use the evidence from a young person's LDA to make consistent, effective and robust decisions that will support the young person to move towards positive outcomes;
- regularly review the LDA to ensure it continues to meet the needs of the young person. LDA reports completed or reviewed after the age of 19 should continue to reflect the individual needs of students. LDAs for older students may include a greater emphasis on pathways to independent living and links to job seeking such as Jobcentre Plus and adult social services;
- once the student's education and training needs have been clearly identified, make placement decisions in the light of the overall budget available. Consideration should include the total cost implications such as the additional social and health care costs that might be needed; and
- where a young person does not agree with the placement decision of the local authority following an LDA, the local authority should undertake an initial review of the decision, most usually by a senior officer not involved in the original consideration. This initial review needs to be undertaken in a timely manner to enable later stages of the challenge process to be undertaken. If the original decision is upheld and the young person remains dissatisfied, access to the local authority mediation service could be considered. Local authorities may want to consider using independent mediation services to support this process. Having complained to a local authority, parents or young persons - if they remain dissatisfied - may raise the issue with the Local Government Ombudsman or seek a judicial review.

4. Timing of transfers to the new SEN and disability system

4.1 As noted above, since 1 September 2014 it has no longer been possible to request an assessment of SEN under the 1996 Act for a child or young person who does not already have a statement of SEN. Similarly no new LDAs under the 2000 Act can be commenced. From that date local authorities have had to consider all requests for an assessment of SEN for children and young people under the new legislation. Those requiring a statutory plan to secure the relevant provision to meet their SEN **must** be issued with an EHC plan.

4.2 Children and young people with statements of SEN and young people who receive support as a result of an LDA **must** be transferred over to the new SEN and disability system by the end of the transition period. This section and the grid at Annex A set out when transfers to the new system **must** or are expected to take place.

Overall timeframe for transition to the new SEN and disability system

4.3 All children and young people with SEN should be able 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 plans offer is a significant undertaking for local authorities. We want this transition to happen at a pace that is achievable; and which at least maintains the quality of assessment and support to children and young people making the transition and those still on the previous system. Local authorities should aim to make the new arrangements available to all children and young people as quickly as they can. By 1 April 2018, all statements of SEN **must** have been reviewed with a view to being replaced with EHC plans. In advance of that date, local authorities **must** ensure that children and young people who currently receive support as a result of a statement of SEN are transferred to the new system in accordance with the Transfer Review process (see section 5 of this document).

4.4 Young people in further education and training who currently receive their provision as a result of an LDA have fewer rights and protections than their peers in the school system with statements of SEN. 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** - where on review they meet the eligibility criteria for an EHC plan - be transferred to the new system by 1 September 2016.

Local Transition Plans

4.5 Within the national requirements set out below, it is for local authorities to determine when children and young people will be transferred to the new SEN and disability system during the transition period. Consistent with the duty in [section 19 of the 2014 Act](#), local authorities should consult young people with SEN and the parents of children with SEN (including through the local parent carer forums) 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.

4.6 To ensure parents and young people know when their child or they will be transferred to the new system, local authorities should develop, publish and keep under review a local Transition Plan, the content of which should include:

- the groups that were consulted in developing the plan;
- the number of children and young people with statements of SEN and the number of young people receiving support as a result of an LDA for which the local authority is responsible and plans to transfer (where appropriate) to the new system in each year of the transition period;
- the order in which children and young people with statements of SEN in the area will be transferred to the new system (within the national parameters set out in paragraphs 4.9-4.27 below);
- how and when parents of children with SEN and young people with SEN, and their educational institution, will be made aware of the arrangements for the transfer of a child or young person;
- details of the Transfer Review (EHC needs assessment) process;
- the arrangements for the transfer of young people who receive support as a result of an LDA;
- sources of impartial SEN information and advice; and
- who parents and young people can contact if they have queries about transition to the new system or if their child or they have not been transferred to the new system in accordance with the local Transition Plan.

4.7 To help families understand how the new SEN and disability system applies to them, the Transition Plan should be published on the local authority's website alongside the local offer (see chapter 4 of the [Special educational needs and disability code of practice: 0 to 25 Years](#), 2015 – referred to in this document as the '2015 Code'). The local authority should publish its arrangements for enabling people without access to the internet and different groups, including people with SEN or a disability, to obtain a copy of the Transition Plan.

4.8 The local authority is expected to publish a report on progress against the Transition Plan; and publish a revised Plan at least annually. Where the local authority is considering changes to its Transition Plan as a result of reviewing progress, it should do so in consultation - including with the groups that were consulted in developing the original Plan.

Requirements and expectations relating to the timing of transfers from statements of SEN to the new SEN and disability system

(Articles 12-17 of the Transitional and Saving Provisions Order 2014)

4.9 To ensure momentum through the transition period and to help local authorities manage their workloads and burdens on families, local authorities should aim to transfer children and young people with statements of SEN to the new SEN and disability system at points in their education at which a significant review of the statement would otherwise have taken place.

4.10 There are two categories of children and young people with statements of SEN whose needs **must** be reviewed with a view to the issue of EHC plans:

- those leaving youth custody; and
- those transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship. (In 2014/15 this had to be done by 31 May 2015.) See also paragraph 4.16 below.

4.11 Local authorities should have transferred children and young people in the following groups in the academic year 2014/15:

- children and young people with statements of SEN issued with non-statutory EHC plans before 1 September 2014 (see also paragraphs 4.18-4.19 below);
- those moving from relevant early years settings to school (including where the child remains at the same institution);
- those moving from infant to junior school;
- those moving from primary to middle school;
- those moving from primary to secondary school;
- those moving from middle to secondary school;
- those moving from mainstream school to special school;
- those moving from special school to mainstream school;
- children in year 9 (including those who are in youth custody);
- all children in year 6, not just those who are transferring from one institution to another. (Local authorities **must** take account of the wishes of the child or the child's parent 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 or training (including those who are in youth custody);
- 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 of SEN or LDA. (These children and young people will need to be transferred to EHC plans by 30 September 2015 if their direct payments are to continue.)

4.12 Between 1 September 2015 and 31 March 2018, local authorities **must** transfer children and young people with statements of SEN to the new arrangements:

- in year 9;
- when leaving youth custody; and
- prior to them moving from:
 - relevant early years settings to school (including where the child remains at the same institution),
 - infant to junior school,
 - primary to middle school,
 - primary to secondary school,
 - middle to secondary school,
 - school (including school sixth forms) to a post-16 institution or an apprenticeship,
 - mainstream school to special school, or
 - special school to mainstream school.

4.13 In addition to complying with the requirements set out in paragraph 4.12 above, local authorities should aim to transfer the following groups of children and young people between 1 September 2016 and 31 March 2018:

- all children with statements of SEN in year 6, not just those who are transferring from one institution to another – in 2016/17 local authorities must consult the child's parents on whether to secure an EHC assessment;
- all children and young people in year 11, not just those who are moving into further education;
- children and young people with statements of SEN issued with non-statutory EHC plans before 1 September 2014 (where this expectation has not been met in 2014/15); and
- those moving between one local authority and another.

4.14 Local authorities **must have regard to** the overarching principles set out in section 19 of the 2014 Act in determining the point within the year that a Transfer Review takes place. Local authorities need not comply with their statutory duties over the timing of individual transfers set out above if it is impractical to do so because certain exceptional personal circumstances affect the child, the child's parents or the young person.

4.15 In the academic year within which the local authority intends to transfer the child or young person from a statement of SEN to the new SEN and disability system, the Transfer Review (see section 5 of this document) should replace the annual review of the statement. Where the Transfer Review does replace the annual review it **must** be completed within 12 months of the date the statement of SEN was issued or of the previous annual review of the child or young person's statement. The only exceptions to this are where a local authority:

- is prevented from commencing a Transfer Review because of an on-going appeal to the Tribunal in relation to a statement of SEN; or
- is unable to complete the Transfer Review for any of the reasons set out in paragraph 5.15 of this document. 4.16 In accordance with regulation 18 of the SEND Regulations 2014, where a Transfer Review is conducted within 12 months of a forthcoming transfer between phases of education, the local authority **must** complete the Transfer Review before:
 - 31 March¹ in the calendar year of the child or young person's transfer from secondary school to a post-16 institution; and
 - 15 February in the calendar year of the child's transfer in any other case. 4.17 Where a Transfer Review (EHC needs assessment) cannot be carried out before 1 April 2018 or there is an on-going appeal in relation to a statement of SEN: • the special educational provision in a statement of SEN will be regarded as if it were specified in an EHC plan; and
 - the local authority **must** ensure that an EHC assessment is carried out and concluded as soon as is reasonably practicable.

Timing of transfer to EHC plans for children and young people with non-statutory EHC plans issued before 1 September 2014

4.18 To test the provisions set out in what was then the Children and Families Bill the Department for Education funded 20 'Pathfinders' covering 31 local authority areas and associated Clinical Commissioning Groups (CCGs). Over 2,500 non-statutory EHC plans were drawn up for children and young people by the Pathfinder local authorities.

Although Pathfinder local authorities should treat non-statutory EHC plans issued before 1 September 2014 as if they were a statutory document, these non-statutory EHC plans do not have the same duties and rights associated with them as an EHC plan issued on or after 1 September 2014.

4.19 Some children and young people who have been issued with non-statutory EHC plans before 1 September 2014 also have statements of SEN. Local authorities should conduct

¹ This deadline was 31 May 2015 for children or young people transferring from secondary school to post-16 institution on 1 September 2015.

Transfer Reviews for these children and young people in accordance with the dates set out in paragraphs 4.11-4.13.

4.20 Where a non-statutory EHC plan was issued in place of a statement of SEN, the local authority became responsible for the child or young person under the 2014 Act from 1 September 2014. Local authorities, therefore, had to determine whether a statutory EHC needs assessment is necessary for these children and young people.

Timing of transfer to EHC plans for young people in further education and training who receive support as a result of an LDA

(Articles 28-29 of the Transitional and Saving Provisions Order 2014)

4.21 Until 31 August 2016 a young person up to the age of 25 in further education or training who receives support to meet his or her SEN as a result of an LDA and who does not intend to continue in further education or training beyond that period can choose either to:

- continue to receive support as a result of the LDA (where it is still required) until the end of his or her time in further education or training or until 1 September 2016, whichever comes first; or
- request an EHC needs assessment.

4.22 Local authorities will have undertaken LDAs for young people either because:

- they had a statement of SEN at school; or
- in the opinion of the local authority, they were likely to need additional support as part of their future education or training and would benefit from an LDA to identify their learning needs and the provision required to meet those needs.

Young people who are currently receiving support as a result of an LDA and remain in further education or training during the transition period to 31 August 2016, who request and need an EHC plan, **must** be issued with one.

4.23 Young people in further education or training who receive support to meet their SEN as a result of an LDA and who intend to continue in education beyond 31 August 2016 can choose either to:

- continue for the time being to receive their support as a result of their LDA (where it is still required); or
- request an EHC needs assessment.

4.24 During academic year 2015/16 local authorities **must** consider whether an EHC needs assessment is required for those young people who continue to receive their support as a result of their LDAs and that they believe will remain in further education or training beyond 31 August 2016.

4.25 A request for an EHC needs assessment for a young person who receives support as a result of an LDA may also be made by a person acting on behalf of the post-16 institution. Alternatively, the local authority may choose to determine whether it may be necessary for special educational provision to be made in accordance with an EHC plan for a young person in further education or training who is receiving support to meet their SEN as a result of an LDA.

4.26 Local authorities should take all reasonable steps to inform young people in further education or training who receive support as a result of an LDA of their option to request an EHC needs assessment and how this could benefit them. (Examples of the benefits include planning focused on outcomes, social care and health input, personal budgets and new rights of appeal). This could be done, for example, through further education and training providers; or by the local authority directly when notifying the young person about a forthcoming review of his or her LDA.

4.27 Further education and training providers should support local authorities by making sure their students are aware of their right to request an EHC plan.

5. The Transfer Review process

5.1 Realising the benefits of the new EHC plans for children and young people who already have statements of SEN or young people who receive support as a result of an LDA will require their transfer to the new system to be more than simply a re-badging of their existing statement or LDA. To ensure that EHC plans are person-centred and focused on outcomes, an EHC plan **must** only be issued following a Transfer Review – an EHC needs assessment. However, families should not be unnecessarily burdened by this process. The EHC assessment process will allow local authorities and families to work together to consider existing assessment information within the statement or LDA and what, if any, further assessment information is required.

5.2 The process of EHC assessment and EHC plan development **must** be carried out in a timely manner. The time limits set out below are the maximum time allowed. However, steps **must** be completed as soon as practicable. In order to ease pressure on local authorities from the volume of Transfer Reviews and to ensure the quality of individual assessments, the timescale for the completion of the transfer of a statement of SEN to an EHC plan has been extended to 20 weeks for Transfer Reviews commenced² on or after 1 September 2015: a minimum of two weeks' notice period, followed by a maximum of 18 weeks for the Transfer Review itself. The timescales for transfers of statements of SEN where Transfer Reviews commenced before 1 September 2015 have not changed, remaining at a maximum of 16 weeks (a maximum of 14 weeks for the Transfer Review itself, after a notice period of at least two weeks). The timescales for both are set out below.

5.3 This section sets out the process by which children and young people with statements of SEN and young people who receive support through an LDA **must** be transferred to an EHC plan, where they meet the eligibility criteria.

5.4 In conducting Transfer Reviews, local authorities **must have regard to** the 2015 Code, including the content as appropriate of chapter 9.

5.5 Local authorities should ensure that at appropriate points in the Transfer Review process they inform the parents of children and young people about the local impartial information, advice and support service and independent supporters.

The process for transferring children and young people with statements of SEN to the new SEN and disability system (Transfer Review)

(Articles 18–22 of the Transitional and Saving Provisions Order 2014)

5.6 To transfer a child or young person from a statement of SEN to an EHC plan, a local authority **must** undertake a Transfer Review. This will require them to undertake an EHC needs assessment under section 36 of the 2014 Act. The Transfer Review will allow for outcomes to be developed for inclusion in an EHC plan and provision identified to support the child or young person to achieve those outcomes. Until the Transfer Review is completed the local authority will remain under a duty to maintain the statement of SEN and arrange the special educational provision set out in the statement.

² From the point where the local authority has given notice that it is carrying out an EHC needs assessment.

5.7 In order to initiate a Transfer Review, the local authority **must** notify the child's parents or the young person and the head teacher (or equivalent) of the school attended by the child or young person of the commencement date of the Transfer Review at least two weeks before it is due to start. A local authority **must** not commence a Transfer Review if there is an appeal in progress under the 1996 Act against any of the matters relating to a statement of SEN. Where local authorities have issued a notice of their intent to carry out an EHC needs assessment, appeals cannot be made under the following sections of the 1996 Act: sections 326 (appeal against contents of a statement), 328 (reviews of educational needs), 328A (appeal against determination of local authority in England not to amend statement following a review) and 329A (review or assessment of educational needs at request of a school (or other responsible body)).

5.8 To conduct a Transfer Review, the local authority:

- **must** give at least two weeks' notice of the Transfer Review;
- **must** undertake an EHC needs assessment in accordance with Part 5 of the Transitional and Saving Provisions Order 2014;
- **must have regard to** the 2015 Code in undertaking the EHC needs assessment; and
- **must** ensure that the child's parents or the young person are invited to a meeting to contribute to the Transfer Review, in advance of the EHC plan being finalised.

5.9 The meeting should be used to consult or engage the child's parents or the young person as part of the Transfer Review. The precise purpose of the meeting will vary depending on the point during the Transfer Review that it takes place. It is for local authorities to determine who should attend the meeting to ensure it achieves its purpose. For example, the meeting may take the format of an annual review meeting which contributes to the EHC needs assessment, to which a range of relevant professionals are invited to consider the progress of the child or young person and the future provision required. Alternatively, the meeting may take place between the local authority and the child's parents or the young person to discuss the draft EHC plan. In accordance with regulation 7(e) of the SEND Regulations 2014, in arranging the meeting the local authority **must** minimise disruption for the child, the child's parents, the young person and their family.

5.10 The local authority **must not** seek any advice required for an EHC needs assessment if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parents or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment. To allow local authorities sufficient time to ensure that additional assessments can be conducted where needed, and a robust EHC plan developed where needed local authorities **must** give parents or young people at least two weeks' notice before they begin a Transfer Review (an EHC needs assessment). In deciding whether existing advice is sufficient, it is likely that the following will be considered:

- how recently advice was provided;
- whether and how far the needs of the child or young person have changed since it was given; and
- whether it is sufficiently focused on the outcomes sought for the child or young person.

5.11 A local authority should give some consideration to the sufficiency of existing advice before starting a Transfer Review and giving formal notice of an EHC needs assessment to the parents or young person.

5.12 Where local authorities have an early conversation with parents or young people about which existing advice is likely to be sufficient for an EHC needs assessment, they should be well placed to request any new advice when starting the assessment. This approach also gives local authorities the maximum time to carry out the EHC needs assessment and draft the EHC plan within the overall statutory timescale.

5.13 For Transfer Reviews commenced before 1 September 2015 (i.e. where the local authority has given notice that it is carrying out an EHC needs assessment), the local authority **must** carry out an EHC needs assessment and finalise an EHC plan, where one is needed, within 14 weeks from the end of the notice period (which must be at least two weeks' long).

5.14 For Transfer Reviews commenced on or after 1 September 2015 (i.e. again, where the local authority has given notice that it is carrying out an EHC needs assessment), the timescales for the two phases are as follows:

- Notification period - The local authority **must** provide a minimum of two weeks' notice of the date of the start of the Transfer Review process.
- Transfer Review process – There is a maximum period of 18 weeks from the notified start date.

5.15 Local authorities need not comply with the time limits related to assessments if it is impractical to do so because:

- the local authority has requested advice from a school or post-16 institution during a period beginning one week before any date on which that institution was closed for a continuous period of not less than four weeks from that date and ending one week before the date on which it re-opens;
- exceptional personal circumstances affect the child, the child's parents or the young person during that time period; or
- the child, the child's parents or the young person are absent from the local authority area for a continuous period of four weeks or more during that period.

5.16 To conclude a Transfer Review, a local authority **must**:

- send a copy of the finalised EHC plan to the parents of the child or the young person and the governing body, proprietor or principal of any school or other institution named in the plan and the responsible commissioning body for health care provision. (From that point, the statement of SEN is ceased and replaced by the EHC plan); or
- notify the child's parents or young person of its decision that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan and that it is proposing to cease to maintain the statement of SEN for the child or young person.

5.17 From the point that the Transfer Review commences, parents and young people will have appeal rights under the new system. Appeal rights relating to statements of SEN under the 1996 Act will no longer be available to parents.

5.18 For Transfer Reviews commenced before 1 September 2015, where a local authority decides not to replace a statement of SEN with an EHC plan for a child or young person, the local authority **must** notify the child's parents or the young person within 10 weeks of the start of the Transfer Review (following the end of the notice period of two weeks or more). For Transfer Reviews commenced on or after 1 September 2015 the timescale is 14 weeks (plus the notice period of two weeks or more). Where such notices have been issued, the

statement of SEN will not be ceased until the end of the period that a parent of a child or young person can consider mediation and register an appeal with the Tribunal, or if an appeal is registered:

- until the Tribunal upholds the local authority's decision; or
- until an EHC plan is secured following an order by the Tribunal.

5.19 Some children and young people with statements of SEN will move between local authority areas while a Transfer Review is in progress. It is for the new local authority to decide whether to continue the Review at that time, having regard to its statutory duties and the priorities set out in its Transition Plan. The new authority in such cases should when it decides to proceed use any additional information gathered as part of the Transfer Review to date. Depending on how far the Transfer Review had progressed, this information should help the new authority complete the transfer more quickly than it would otherwise have done.

5.20 Local disagreement resolution arrangements will be in place for those aspects of the Transfer Review process that are not covered by mediation and appeals to the Tribunal.

Process for transferring young people who receive support as a result of LDAs to EHC plans

(Articles 27-29 of the Transitional and Saving Provisions Order 2014)

5.21 Local authorities **must** consider requests for an EHC needs assessment under the 2014 Act for a young person who receives support as a result of an LDA.

5.22 Under the timescales set out in the SEND Regulations 2014 local authorities have six weeks following a request within which to consider whether it is necessary to carry out an assessment. The 2015 Code (paragraphs 9.11-9.19) sets out the evidence local authorities should take into account in considering whether an EHC needs assessment is necessary. This includes evidence of the action already being taken by the post-16 institution to meet the young person's SEN. Where a young person is aged over 18, the local authority **must** consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.

5.23 Where necessary, an EHC needs assessment **must** be carried out and an EHC plan drawn up in accordance with the 2014 Act. A request for an assessment from a young person to a local authority should result in an EHC plan, where one is required, within 20 weeks from when the local authority received the request or became responsible for the young person. However, a local authority **must** use assessment information contained within the LDA report, where it remains accurate, to contribute to the EHC needs assessment. This should help local authorities to conclude Transfer Reviews more rapidly than if they were considering a young person's needs for the first time.

5.24 Where a local authority decides not to conduct an EHC needs assessment or not to secure an EHC plan, a young person has the right to appeal that decision.

5.25 For those young people who receive support as a result of an LDA and for whom local authorities are required to consider an EHC needs assessment in 2015/16, the local authority

should liaise with the young person and the post-16 education provider to identify the most appropriate time within the year for that assessment to take place. For example, it may be at the point the review of the LDA would have otherwise taken place.

5.26 Some young people with an LDA will move between local authority areas while they are being assessed for an EHC plan. It is for the new local authority to decide whether to continue the Review at that time, having regard to its statutory duties and the priorities set out in its Transition Plan. The new authority in such cases should when it decides to proceed use any additional information gathered as part of the Transfer Review to date. Depending on how far the Transfer Review had progressed, this information should help the new authority complete the transfer more quickly than it would otherwise have done.

Personal budgets

5.27 Under section 49 of the 2014 Act and [The Special Educational Needs \(Personal Budgets\) Regulations 2014](#), parents of children and young people themselves who are either transferred from statements of SEN, LDAs or non-statutory EHC plans to statutory EHC plans or those for whom EHC plans are drawn up have the right to request a personal budget.

5.28 The local offer **must** include information about the option of having a personal budget. This should include a local policy on personal budgets, co-produced with parents and young people, providing information on:

- the types of services across education, health and social care that lend themselves to use of personal budgets;
- how families can take control of those budgets;
- the eligibility criteria and decision-making processes for personal budgets; and
- the support available to help families manage a personal budget.

5.29 The SEN Direct Payments Pilot Scheme for Pathfinder and former Individual Budgets for Disabled Children Pilot authorities will cease on 30 September 2015. Any parents or young people receiving direct payments under the scheme for SEN provision in a statement of SEN or following an LDA will need to be transferred to EHC plans by this date if their direct payments are to continue. The pilot scheme is closed to new entrants.

6. Arrangements relating to statements of SEN and Learning Difficulty Assessments for those aged under 19 in youth custody during the transition period

6.1 New provisions for children and young people under 19 ('detained persons') who have been sentenced or remanded by the Courts to relevant youth accommodation (Young Offender Institution, Secure Training Centre or Secure Children's Home) commenced on 1 April 2015. The duties in relation to detained persons with EHC plans and rights to request a detained person's EHC assessment and plan are set out in Chapter 10 of the 2015 Code. As with the Code, all references to local authority in this section refer to the home authority: for children and young people in relevant youth accommodation this is the local authority that maintained the statement of SEN or prepared the LDA.

Children and young people entering or detained in relevant youth accommodation with a statement of SEN

(Articles 14A, 30, 31 and 36 of the Transitional and Saving Provisions Order 2014)

6.2 Local authorities **must not** cease a statement of SEN because a child or young person enters custody. Local authorities **must** promote the fulfilment of the detained person's learning potential while he or she is in custody and on release. For a child or young person entering or detained in custody, any special educational provision specified in a statement of SEN will be deemed as if it were specified in an EHC plan. The local authority **must** arrange appropriate special educational provision for the detained person while he or she is detained. Appropriate special educational provision is the provision specified in the statement of SEN. If it is not practicable to arrange the provision specified in the statement of SEN, special educational provision corresponding as closely as possible to that in the statement of SEN **must** be arranged. If it appears to the local authority that the special educational provision in the statement of SEN is no longer appropriate, the local authority **must** arrange provision it considers appropriate and this should also trigger a Transfer Review. (Further information on arranging special educational provision while in custody is set out in paragraphs 10.74-10.77 of the 2015 Code.)

6.3 The local authority **must** consider a request for a detained person's EHC needs assessment from: • the 'appropriate person' (either the detained person's parents where the detained person is a child, or the young person); or

- the person in charge of the relevant youth accommodation (the Governor, Director or Principal in charge of the accommodation), while they are detained.

The local authority should carry out a Transfer Review (EHC needs assessment) in custody where this has been requested, to make the best use of the time in detention and so that appropriate support can be put in place as soon as possible on release.

6.4 The local authority may carry out an EHC needs assessment at any time while the detained person is detained. It should do this at key points in the detained person's education, in line with the local Transition Plan. If this has not been carried out during custody, the local authority **must** carry out an EHC needs assessment as soon as possible on release.

6.5 All Transfer Reviews for detained persons **must** be completed by 1 April 2018. Where this has not taken place, the local authority **must** carry out a detained person's needs

assessment as soon as is reasonably practicable, and the special educational provision in the statement is treated as if it were contained within an EHC plan.

Young people with an LDA entering or in relevant youth accommodation

(Articles 29A and 29B of the Transitional and Saving Provisions Order 2014)

6.6 Local authorities **must** promote the fulfilment of the detained person's learning potential while he or she is in custody and on release. If the young person had an LDA immediately before entering custody, the local authority **must** consider any request for a detained person's EHC needs assessment from:

- the young person while they are detained; or
- from the person in charge of the relevant youth accommodation or a post-16 institution. (In this scenario, a detained person's EHC needs assessment should only proceed with the young person's agreement).

The local authority **must** carry out the detained person's EHC needs assessment where:

- this has been requested and it may be necessary for special educational provision to be made in accordance with an EHC plan; and
- where the young person will return to further education or training on release.

6.7 The local authority may carry out a detained person's EHC needs assessment at any time up to 1 September 2016 while the detained person is detained and where it believes the detained person will return to further education or training on release. The local authority should take reasonable steps to inform those with LDAs of their right to request an EHC needs assessment.

6.8 From 1 September 2016 all detained persons who have an LDA who need an EHC plan and who will return to further education and training on release **must** have one where it is appropriate. All transfers from LDAs to EHC plans **must** take place by 1 September 2016 and, where a transfer has not taken place by this date, the local authority should carry out a detained person's EHC needs assessment as soon as possible.

The process for transferring detained persons to the new SEN and disability system

(Articles 32-35 of the Transitional and Saving Provisions Order 2014)

6.9 To transfer a detained person from a statement of SEN to an EHC plan a local authority **must** undertake a Transfer Review. The process is broadly similar to that set out in paragraphs 5.6-5.20 above; but it will require a detained person's EHC needs assessment. Local authorities **must have regard to** the 2015 Code (including Chapter 10) when carrying out the assessment. Local authorities **must** give a minimum of two weeks' notice of the Transfer Review to:

- the 'appropriate person' (see definition at paragraph 6.3 above);
- the person in charge of the relevant youth accommodation;

- the home Clinical Commissioning Group (CCG) (i.e. the CCG with responsibility for commissioning the detained person's health services before he or she entered the relevant youth accommodation);
- NHS England (since it has commissioning responsibility for health services for detained persons while they are in the relevant youth accommodation);
- local authority officers responsible for social care for children or young people with SEN;
- where a detained person is registered at a school, the head teacher (or equivalent);
- where the detained young person is registered at a post-16 institution, the principal (or equivalent);
- where a detained person is registered at a Pupil Referral Unit, the principal (or equivalent); and
- the youth offending team responsible for the detained person. 6.10 As with reviews in the community, the process **must** involve a meeting with the 'appropriate person'. This meeting should take place in the relevant youth accommodation and in some cases it may be appropriate for this to take place via video link. In such cases, careful consideration should be given as to whether participation in this way is accessible for the detained person. The local authority may invite any other person that it thinks appropriate to attend the meeting. A meeting can only take place in the relevant youth accommodation with the consent of the person in charge of that accommodation.

6.11 To conclude a Transfer Review for a detained person, the local authority **must**:

- send a copy of the finalised EHC plan to the 'appropriate person', the person in charge of the relevant youth accommodation, the youth offending team responsible for the detained person, the governing body, proprietor or principal of any school or other institution named in the plan, the home commissioning body for health care provision and the detained person's health services commissioner within:
 - 14 weeks (following expiry of the notice period of two weeks or more), where notice of an EHC needs assessment was given before 1 September 2015; or
 - 18 weeks (following the expiry of the notice period of two weeks or more), where the notice of an EHC needs assessment is given on or after 1 September 2015 and **must** cease the statement of SEN; or
- notify the 'appropriate person', the person in charge of the relevant youth accommodation, the home commissioning body for health services, the detained person's health service commissioner, the youth offending team and the head teacher or principal of any school or college principal where the detained person is registered, of its decision that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan and that it is proposing to cease the statement of SEN.

From the point that the Transfer Review (detained person's EHC needs assessment) commences, the 'appropriate person' will have appeal rights under the new system.

6.12 Where a local authority decides not to secure an EHC plan for a detained person transferring from a statement of SEN, it **must** notify the 'appropriate person' within:

- 10 weeks of the start of the Transfer Review (following expiry of the notice period of two weeks or more), in cases where notice of an EHC needs assessment was given before 1 September 2015; or

- 14 weeks (following the expiry of the notice period of two weeks or more), in cases where notice of an EHC needs assessment is given on or after 1 September 2015.

Under this circumstance, any statement of SEN will not be ceased until the end of the period that the 'appropriate person' can consider mediation and register an appeal with the Tribunal, or if an appeal is registered until:

- the Tribunal upholds the local authority's decision; or
- an EHC plan is secured following an order by the Tribunal.

In any case, regardless of whether an EHC plan is issued, the local authority **must** continue to promote the fulfilment of the detained person's learning potential while he or she is in custody and on release.

Partial transfers on entry to or exit from custody, on moving between places of relevant youth accommodation and on moving to a new local authority on release

6.13 Where a detained person is part way through a Transfer Review on entry to custody, the local authority **must** continue and complete the process following the guidance on detained persons' EHC needs assessments set out in paragraphs 10.111-10.114 of the 2015 Code.

6.14 Most children and young people in custody will be serving short sentences. The transfer process will typically not have been completed before the detained person is released. The local authority **must** continue and complete the transfer process in the community as per section 5 of this document.

6.15 The timeframes and process for completing an incomplete assessment do not start afresh because a detained person is released or a child or young person is detained. A local authority may treat steps taken in respect of an EHC needs assessment (a Transfer Review) in the community as satisfying steps which are required to be taken for a detained person's EHC needs assessment and vice versa. (See regulation 15(2) and (5) of [The Special Educational Needs and Disability \(Detained Persons\) Regulations 2015](#)). The regulations refer to these steps as 'comparable requirements'.

6.16 Similarly, if the detained person is part way through a Transfer Review and he or she moves from one place of relevant youth accommodation to another, the local authority and the appropriate CCG **must** continue and complete the process following the guidance set out in Chapter 10 of the 2015 Code. The timeframes and process for completing an incomplete assessment do not start afresh. Anything already completed in relation to a Transfer Review by the person in charge of the relevant youth accommodation, including advice received, may be treated as having been completed in relation to the new relevant youth accommodation.

6.17 If the detained person is released to a new local authority while he or she is part way through a Transfer Review, the new local authority in such cases should use any additional information gathered as part of the Transfer Review to date. Depending on how far the Transfer Review had progressed, this information should help the new authority complete the transfer more quickly than it would otherwise have done. The new local authority should draw on the expertise and knowledge of the youth offending team to continue the assessment process.

Annex A - Requirements and expectations relating to the transfer of different groups of children and young people to the new SEN and disability system

The table below sets out statutory requirements (R) and non-statutory expectations (E) relating to the transfer of different groups of children and young people to the new SEN and disability system from: statements of SEN; non-statutory EHC plans issued before 1 September 2014; and receiving support as a result of an LDA.

The academic year given is the latest academic year in which that group of children or young people would be transferred to the new system. Following consultation with parents, young people and relevant professionals, local authorities may decide to transfer children and young people in these groups earlier than the academic year shown in the table.

In all cases, the requirement is to conduct a Transition Review: this may or may not lead to the issue of an EHC plan, depending on the need of the child or young person.



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