

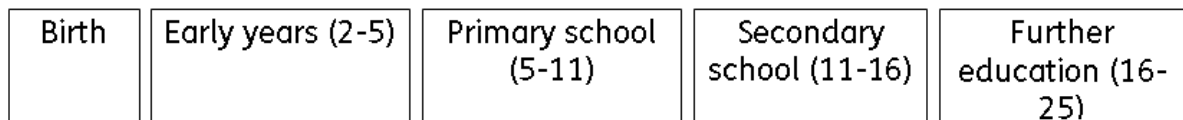
Overview of the reforms

This resource is designed to give you a brief summary of the main changes that are taking place as a result of the reforms to the special educational needs (SEN) system. These reforms are set out in Part 3 of the Children and Families Act 2014 that is due to come into force from September 2014.

Further resources are available to give more detail on key aspects of the reforms should you want them.

For the purposes of this briefing, references to “parents” are those with parental responsibility rather than exclusively being someone’s birth parents. “Young people” are those over compulsory school age, currently 16.

A new system



Currently:



New system:



One of the first things to be aware of is that the overall scope of the SEN system is changing. Previously it ran for the length of time someone was in early years education (nursery, for example) to the end of their time in school (which can be up until the age of 19 in special schools), and then there was a separate system for those who moved into further education that was based on whether someone had Learning Difficulties or Disabilities (LDD).

Now, the SEN system will run from the time someone is born, all the way through to further education or training and potentially until someone reaches the age of 25. This creates a single system throughout someone’s time in education.

In order to support this range of individuals, local authorities must identify all children and young people who have, or may have, SEN or Disabilities.

This is set out in Section 22 of the Children and Families Act 2014

Core principle of the reforms

The reforms have one key principle at their centre: to place children and young people with SEN and their parents at the heart of the system. The changes set out that, when supporting children and young people with SEN, local authorities must pay particular attention to:

- The views, wishes and feelings of children, young people and their parents;
- The importance of them participating “as fully as possible” in decisions and supporting them to do so; and
- Supporting children and young people’s development so they can achieve the best possible outcomes.

This is set out in Section 19 of the Children and Families Act 2014

The main aims of these principles are to support the participation of children, young people and parents in decisions, to enable better early identification of someone’s needs, and to enable greater choice and control for families over support.

In practice, this will be interpreted differently by different local authorities, but they must now show that they have taken into account the need to involve children, young people and parents in decisions and to take their views into account.

More information about SEN support available

In order to help children and young people with SEN and parents be more involved in decisions, the new legislation provides that information is more readily available and accessible to families who need it.

Information, Advice and Support

First, a local authority must provide an Information, Advice and Support (IAS) service for children and young people with SEN and Disabilities. This must be impartial and is likely to build on existing sources of support, such as Parent Partnership Services. The information and advice provided could include local policy and practice, the law on SEN, help to interpret information given to families, and advice on things like using a personal budget.

Support must also be provided as part of this service, and this could include things like:

- individual casework to help support people directly or to signpost them to other organisations who could help
- an ‘independent supporter’ from the private or voluntary sector who will provide help to any family going through the process of assessing and planning needs to develop an Education, Health and Care Plan (more details of these plans later)
- a key worker to provide a single point of contact and support across a range of functions including emotional and practical support, facilitating meetings, and advocating on behalf of a child, young person or their family.

This is set out in Section 32 of the Children and Families Act 2014

The Local Offer

Second, a local authority must produce something called a 'local offer' which gives information on the education, health and social care provision in its area and provision outside of its area that people from the authority area may access (such as specialist support services). This includes information to help children and young people prepare for adulthood, such as finding employment or accommodation. It will also contain information such as eligibility criteria, schools' arrangements for meeting the needs of pupils with SEN (such as how they might differentiate the curriculum), and details about how to complain in the event of any disagreements with, for example, the local authority.

A local offer should also help to identify any gaps in local provision and will be reviewed to see if this local support is meeting local need. Parents should be involved in developing the local offer by identifying where services are in place and where new ones need to be developed to meet local need.

This is set out in Section 30 of the Children and Families Act 2014

Better joint working

Professionals involved in helping to support children and young people will have new expectations on them to work better together.

Early identification

First, health bodies must tell a local authority and a family if they suspect a child under the age of 5 is disabled or probably has SEN. This could be through a referral from a health worker or through a child's physical health check that takes place between ages 2 and 3 as part of what's called the Healthy Child Programme. From 2015, it is proposed that this check will be combined with the progress check that a child receives at the age of 2 from an early years setting.

This is set out in Section 23 of the Children and Families Act 2014

Joint commissioning

Local authorities and other professionals who commission services for children and young people who have SEN (such as health commissioners) must work together to jointly plan and commission services for children and young people with SEN and Disabilities. They must decide (between them) what provision is needed for this group across education, health and social care, agree how someone's needs should be assessed, work out how to deal with complaints about this provision, and determine how to resolve any disagreements as quickly as possible. Each local area will have its own way of doing this.

This is set out in Section 26 of the Children and Families Act 2014

Working with local authorities

Local authorities must work with other partners whose job it is to support children and young people with SEN (such as schools, colleges, and health bodies) and, in turn, these partners must cooperate with the local authority if asked. Furthermore, Health and social care professionals and local authorities are both under a duty to look at how they can integrate their services if it would improve services and/or reduce inequality.

This is set out in Sections 28/29/31 and 25 of the Children and Families Act 2014 respectively

New ways of providing support

Education, Health and Care Plans

The reforms will see statements of SEN being replaced by Education, Health and Care Plans (EHC Plans). This is a plan that can be used to support people from birth to the age of 25, if they still need it, so it applies in early years, school and further education settings.

An EHC Plan will set out not only the special educational provision needed to support someone in education or training, but also the health and social care support they might need in this context. Unlike with a statement of SEN, all education and health support that is listed in a plan must be provided to the individual and all social care support provided under Section 2 of the Chronically Sick and Disabled Persons Act 1970. The eligibility for an EHC Plan is identical to that for a statement of SEN, meaning that those currently receiving a statement of SEN should also be eligible for an EHC Plan. ***For more information about EHC Plans, see our factsheet: 'Getting an Education, Health and Care Plan'.***

EHC Plans will be driven by what outcomes someone wants to achieve in the short, medium and long term. The support someone receives in a plan will be linked to helping the individual achieve the outcomes they have set. ***For more information about setting outcomes for a plan, see our factsheet: 'Setting outcomes: a guide'.***

The reforms also allow parents and young people to request that they receive the support set out in a plan via a personal budget. A local authority only has to provide a personal budget for the provision in a plan if it will not negatively impact on other children and young people – for example, by taking away resources that would otherwise be spent on them. A description of the services that can be obtained through a personal budget must be set out in the local offer.

This is set out in Sections 36-50 of the Children and Families Act 2014 **SEN Support**

The way children and young people with SEN but without an EHC Plan are supported, will also change.

The current categories of support – School Action (SA) and School Action Plus (SA+) – will be replaced by a new, single category called SEN Support. SA and SA+ currently distinguish between the support someone receives that can be provided

in-house by the setting (the former) and support that needs to be brought in from outside of a setting to complement the setting's own support (the latter).

The new SEN Support category will involve settings developing their own policies for deciding on when these need to be increased or when external help needs to be called in.

This is set out on pages 74-76, 87-92, and 101-103 of the draft SEN Code of Practice (see final section of this document)

Pupils with medical conditions in schools

For pupils who have a long term medical conditions (such as diabetes or asthma) or complex health needs which mean they are 'technology dependent' (for example, they may need oxygen or tube feeding), the reforms mean that schools must ensure that they properly support the child or young person to play a full and active role in school life, remain healthy and achieve their academic potential. A school must develop policies for supporting these pupils, how the policies will be implemented and who is responsible for doing this.

Ways of supporting these pupils should include an Individual Healthcare Plan about how the school will support the individual pupil and policies on training and supporting school staff to do this.

This is set out in Section 100 of the Children and Families Act 2014

New routes for appeals or complaints

Families can continue to take steps to oppose decisions made about someone's individual support arrangements, or if they feel there has been discrimination against someone on the grounds of their disability.

However, before an appeal or a complaint can be made, a family must be provided with information about available independent mediation options and receive a certificate to indicate that they have considered it. Mediation seeks to resolve matters by allowing families and local authorities to discuss issues rather than go through a judicial decision. Mediation is not compulsory, but families must be made aware of their right to access it and to pursue it if they wish to.

If a decision is made to appeal a decision about someone's SEN support (either instead of, or following, mediation), then a parent or a young person can appeal to the First-tier (SEND) Tribunal. However, if the appeal or complaint is in relation to health or social care provision, they must seek redress through the various routes set up for health or social care appeals or complaints. For social care, this means the local authority complaints process or the Local Government Ombudsman, and for health, this means the NHS complaints process or the Parliamentary and Health Service Ombudsman.

The government has, however, committed to a review to look at how all these different routes can be brought together in future, but this is at least 2 years away.

This is set out in Sections 52-56 of the Children and Families Act 2014

What else do you need to know?

Young people decision making

Young people with SEN over the age of 16 will take over primary decision making rights as long as they have 'mental capacity' to make the decision in question (in line with the Mental Capacity Act 2005). This means that their views will be sought before their parents' about, for example, what support they want, what college setting they want to go to, or whether they want to appeal a decision about their support.

The legislation means that parents should be involved in decisions as far as possible, but if they disagree with a decision by a young person who has capacity to make decisions, the young person's views will be given precedence.

This is set out in Section 83 (2) of the Children and Families Act 2014

Social care continuation

If a young person receives children's social care services before the transition to adult services, they can continue to receive these services beyond the age of 18 until it is decided that it would be in their best interests to move into the adult system. This is designed to ensure that young people are able to avoid key dates such as exams when undertaking the move to adult services.

This is set out in Section 50 of the Children and Families Act 2014

SEND Code of Practice

This document sets out how the reforms to the SEN system will look on the ground when it comes to implementing them and sets out what is expected of professionals who work with children and young people with SEN. Early years settings, schools, colleges, training providers, local authorities, health bodies, youth offending teams and the First-tier (SEND) Tribunal must all give consideration to what the Code says. It is also an important tool for families as it shows them what support they can expect their child to receive as well as who is accountable for delivering it.

The SEND Code of Practice can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318926/Code_of_Practice-Final-10June2014-2.pdf.

Timetable for implementation

The new law comes into force from September 2014, but some of the measures will be brought in over a longer period of time. Most of these arrangements are yet to be finalised.

From September 2014, local authorities will no longer be able to accept applications for statements of SEN (statements) or Learning Difficulty Assessments (LDAs) for children and young people who do not currently have one. For these new claimants, councils will only be able to issue EHC Plans.

However, those who currently have a statement or an LDA do not have to be transferred to an EHC Plan immediately. The government has said that it wants to transfer all children and young people with a statement to an EHC Plan within 3 and a half years (by April 2018), and all young people with an LDA to an EHC Plan within 2 years (by September 2016). Exactly when this happens will depend on what works best for the child or young person in question. For example, it might be that they are nearing a move from primary to secondary school and so this might be the most natural point for someone to transfer to an EHC Plan.