

Independent Supporter Factsheets

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Factsheet #1: An Introduction to Part 3 of the Children and Families Act 2014

The Children and Families Act 2014 has been described as the biggest reform to child welfare legislation in 30 years. It includes changes to special educational needs, health and social care and will affect all children and young people with special educational needs under the age of 25.

What is an Education, Health and Care Plan, or EHC Plan?

Under the new Act, statements of special educational needs for children in schools and learning difficulty assessments for young people in further education and training, will be replaced with a single combined Education, Health and Care Plan (EHC plan). An EHC plan will cover children and young people from birth to aged 25 and will include information about health and social care needs as well as special educational needs in one single document.

This will extend the current age of eligibility for those with a statement of SEN and still in education from 16 to 25. EHC plans must be prepared and maintained by the local authority and include annual reviews, re-assessments and education otherwise than at school as before.

What are the other changes under the new system?

Under the new Act there is an emphasis on:

- wishes and feelings and participation in decision-making
- aspirations and goals and improving outcomes for children and young people and transition through to adulthood
- joint planning / commissioning of services

Some of the other key changes include:

- School action and school action plus will be abolished and replaced with SEN support which will extend to colleges and sixth forms.
- The new scheme will cover academies, independent schools and colleges and institutions must admit pupils where named in the EHC plan.
- The timescale for completion of the assessment process for issuing a final EHC plan is 20 weeks instead of the current 24 weeks for a statement.
- The First Tier (Special Educational Needs and Disability) Tribunal can consider appeals up to the age of 25 but mediation must be considered before making an appeal.
- Personal budgets must be made available for SEN education provision along with a right to request direct payments.

In addition, each local authority must publish a Local Offer which sets out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled.

When will the changes be introduced?

From 1 September 2014 no new assessments for statements or learning difficulty assessments will be offered by local authorities. All new requests for an assessment from this date will be considered under the new legislation and those requiring support will receive it through an EHC plan. The reformed mediation and appeals process, and the option of a personal budget for those with an EHC plan will also be available from this date.

Children and young people with existing statements and learning difficulty assessments will begin to transfer to the new system in accordance with the transitional arrangements put in place by each local authority. This will be set out in their Local Transition Plan.

The legal force of statements and learning difficulty assessments will not be withdrawn until all children and young people have completed the transition to EHC plans. This will be September 2016 for learning difficulty assessments and September 2018 for statements.

Factsheet #2: Key Definitions under Part 3 of the Children and Families Act 2014

This factsheet aims to help you understand some of the key definitions under the new Act. It is important to note that many of the definitions, such as “special educational needs” have not changed under the new system. The requirement to have special educational needs remains the gateway to accessing support and services under Part 3 of the new Act.

It is essential that you understand the key legal definitions which will be applied:

- Special educational needs
- Special educational provision
- Disability
- Healthcare provision
- Social care provision
- Young person

Special educational needs

Section 20 of the Children and Families Act 2014 states that a child or young person has Special Educational Needs if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

A child under compulsory school age has special educational needs if he or she is likely to fall within the definition above when they reach compulsory school age or would do so if special educational provision was not made for them.

Difficulties related solely to learning English as an additional language are not SEN. When identifying and assessing SEN for children and young people whose first language is not English, it is important to consider carefully whether any delays in learning or development are related to learning English as an additional language or if it arises from SEN or disability.

Special educational provision

Section 21 of the Act defines Special educational provision for children over two and young people as:

“educational or training provision that is additional to, or different from, that made generally for others of the same age in –

- mainstream schools in England,
- maintained nursery schools in England,
- mainstream post-16 institutions in England, or
- places in England at which relevant early years education is provided.

Special educational provision for a child aged under two means educational provision of any kind.

Disability

The definition of disability is set out in section 6(1) of Equality Act 2010, which states that a person (P) has a disability if:

- a) P has a physical or mental impairment, and
- b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Further detail in relation to this definition of disability is provided in schedule 1 to the EA 2010. Paragraph 6(1) of schedule 1 states 'Cancer, HIV infection and multiple sclerosis are each a disability'. This means that the person with one of these diagnosis is protected by the Act effectively from the point of diagnosis and does not have to demonstrate the impairment has a substantial and long term effect.

Healthcare and Social care provision

Section 21 defines Health care provision as the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.

Social care provision means the provision made by a local authority in the exercise of its social services functions.

Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision). The terms 'educates' and 'trains' are not defined in the Act and so take their ordinary English meaning. Whether provision 'educates' or 'trains' a particular child will be decided on the facts of each individual case.

Young Person

Section 83 of the Act defines a "young person" as a person over compulsory school age but under 25.

The glossary to the SEND Code of Practice states that a child is of compulsory school age until the last Friday of June in the year in which they become 16, provided that their 16th birthday falls before the start of the next school year.

The distinction between a child and young person is important, as the Children and Families Act 2014 gives significant new rights directly to young people once they reach the end of compulsory school age. The SEND Code of Practice states that when a young person reaches the end of compulsory school age, local authorities and other agencies should normally engage directly with the young person rather than their parent, ensuring that as part of the planning process they identify the relevant people who should be involved and how to involve them.

Chapter 8 of the Code of Practice sets out in detail how some decision-making rights transfer from parents to young people at this stage and the role families will continue in supporting a young person with SEN. Most young people will continue to want, or need, their parents and other family members to remain involved in discussions and decisions about their future.

Under section 80 of the Children and Families Act and Regulations 64 and 65 of the SEN and Disability Regulations, the parent of a young person who lacks capacity (or their formal representative, if one has been appointed by the court) will be able to take decisions for that young person.

This gives parents a much greater level of control over certain decisions for young people than is set out under the Mental Capacity Act. Under the Mental Capacity Act 2005, where a young person lacks capacity, decisions are made in their 'best interests' which requires that parents are consulted and involved in decision making but do not have legal authority to make decisions on their behalf unless formally appointed as deputy.

Further information on decision-making and young people is set out in the 'preparing for adulthood' factsheet.

Factsheet #3: Duties on Schools

The Children and Families Act 2014 sets out specific duties on schools in relation to identifying and supporting all children with special educational needs whether or not they have an Education, Health and Care Plan.

This factsheet aims to provide an overview of the key duties which apply to schools which are set out in the Act and the Special Educational Needs and Disability Regulations 2014. They are as follows:

- **Co-operation and Assistance** - Section 29 of the Act places specific duties on governing bodies to co-operate with each responsible local authority, and each responsible local authority must co-operate with their partners, in the exercise of their functions.
- **Children with SEN in maintained nurseries and mainstream schools:** Section 35 of the Act provides that those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs. This duty applies only in so far as is reasonably practicable and is compatible with:
 - the child receiving the special educational provision called for by his or her special educational needs – for example, they may require 1:1 or small group work which takes them away from other children for a specific period;
 - the provision of efficient education for the children with whom he or she will be educated (this exception is to be narrowly interpreted and should not be used as a general ‘get out clause’), and
 - the efficient use of resources
- **Using best endeavours to secure special educational provision:** Section 66 of the Act imposes duties on schools and other institutions to use their best endeavours to secure that the special educational provision called for by the pupil’s or student’s special educational needs is made. This requires schools and other institutions to do everything possible to make sure that pupils and students have their educational needs met – but is not an absolute duty to do so in all circumstances.
- **SEN co-ordinators:** Section 67 of the Act requires all mainstream schools and maintained nursery schools to designate a member of staff at the school (to be known as the “SEN co-ordinator”) as having responsibility for co-ordinating the provision for pupils with special educational needs.
- **Informing parents and young people:** where a child or young person is receiving special educational needs provision at maintained school, a maintained nursery school, an Academy school, an alternative provision Academy or a pupil referral unit and there is no EHC plan in place, Section 68 of the Act requires the school to inform the child’s parent or the young person that special educational provision is being made for the child or young person.
- **SEN information report:** Section 69 requires the governing bodies of maintained schools and maintained nursery schools and the proprietors of Academy schools to prepare a report containing SEN information. This must include information about:
 - the kinds of SEN that are provided for
 - policies for identifying children and young people with SEN and assessing their needs, including the name and contact details of the SENCO (mainstream schools)
 - arrangements for consulting parents of children with SEN and involving them in their child’s education
 - arrangements for consulting young people with SEN and involving them in their education
 - arrangements for assessing and reviewing children and young people’s progress towards outcomes. This should include the opportunities available to work with parents and young people as part of this assessment and review
 - arrangements for supporting children and young people in moving between phases of education and in preparing for adulthood. As young people prepare for adulthood

outcomes should reflect their ambitions, which could include higher education, employment, independent living and participation in society

- the approach to teaching children and young people with SEN
 - how adaptations are made to the curriculum and the learning environment of children and young people with SEN
 - the expertise and training of staff to support children and young people with SEN, including how specialist expertise will be secured
 - evaluating the effectiveness of the provision made for children and young people with SEN
 - how children and young people with SEN are enabled to engage in activities available with children and young people in the school who do not have SEN
 - support for improving emotional and social development. This should include extra pastoral support arrangements for listening to the views of children and young people with SEN and measures to prevent bullying
 - how the school involves other bodies, including health and social care bodies, local authority support services and voluntary sector organisations, in meeting children and young people's SEN and supporting their families
 - arrangements for handling complaints from parents of children with SEN about the provision made at the school.
- **Equality and inclusion:** paragraph 6.8 of the SEND Code of Practice says that schools should regularly review and evaluate the breadth and impact of the support they offer or can access. Schools must co-operate with the local authority in reviewing the provision that is available locally and in developing the Local Offer. Schools should also collaborate with other local education providers to explore how different needs can be met most effectively. They must have due regard to general duties to promote disability equality.
 - **Careers guidance for children and young people** – paragraph 6.13 of the Code of Practice states that maintained schools and pupil referral units must ensure that pupils from Year 8 until Year 13 are provided with independent careers guidance. Academies are also subject to this duty through their funding agreements.
 - **Identifying SEN in schools** – Paragraph 6.14 to 6.35 of the Code of Practice states all schools should have a clear approach to identifying and responding to SEN and should seek to identify pupils making less than expected progress given their age and individual circumstances, focusing on four broad areas of need:
 - Communication and interaction
 - Cognition and learning
 - Social, emotional and mental health difficulties
 - Sensory and/or physical needs

Where, despite the school having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, the child or young person has not made expected progress, the school or parents should consider requesting an Education, Health and Care needs assessment. To inform its decision the local authority will expect to see evidence of the action taken by the school as part of SEN support.

- **Involving parents and pupils in planning and reviewing progress** – Paragraphs 6.64 to 6.71 of the Code of Practice states that Schools must provide an annual report for parents on their child's progress. A record of the outcomes, action and support agreed through the discussion should be kept and shared with all the appropriate school staff. This record should be given to the pupil's parents. The school's management information system should be updated as appropriate.

Unless stated otherwise, these duties apply to:

- mainstream schools;
- maintained nursery schools;
- 16 to 19 Academies;
- institutions within the further education sector;

- pupil referral units;
- alternative provision Academies.

There are separate factsheets available on SEN Support and the duties to support pupils with medical conditions and duties to disabled pupils under the Equality Act 2010.

Further information regarding these duties can be found in Chapter 6 of the SEN Code of Practice.

Factsheet #4: The Education, Health and Care Needs Assessments

This factsheet is aimed to provide you with an overview of the Education, Health and Care Needs Assessment (EHC needs assessment) process and in particular to outline:

- when a local authority must carry out an EHC needs assessment, including in response to a request
- who must be consulted and provide advice
- the statutory steps required by the process of EHC needs assessment including timescales

Who can request an assessment?

The following people have a specific right under the Act to ask a local authority to conduct an EHC assessment for a child or young person aged between 0 and 25:

- the child's parent
- a young person over the age of 16 but under the age of 25, and
- a person acting on behalf of a school or post-16 institution (the SEND Code of Practice states that this should be with the knowledge and agreement of the parent or young person where possible).

In addition, anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, particularly where they think an EHC needs assessment may be necessary. This could include, for example, foster carers, health and social care professionals, early years practitioners, youth offending teams or probation services, those responsible for education in custody, school or college staff or a family friend. This should be done with the knowledge and, where possible, agreement of the child's parent or the young person. Where a child or young person has been brought to the local authority's attention, they must determine whether an EHC needs assessment is required.

There is a right to request an assessment up to the young person's 25th birthday.

How does the local authority decide whether to secure an EHC needs assessment?

Section 36 of the Children and Families Act 2014 provides that when a request for an EHC needs assessment for a child or young person is made, the local authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

In reaching making this determination, the local authority must consult the child's parent or the young person as soon as practical after receiving a request and notify the parent or young person that they have the right to express views to the authority (orally or in writing) and submit evidence.

Where a local authority is considering whether to secure an EHC needs assessment, it must also notify:

- the responsible CCG;
- the officers of the local authority who exercise the local authority's social services functions for children or young people with special educational needs;
- in relation to a child, the head teacher of the school the child or if the child receives education from a provider of relevant early years education, the person identified as having responsibility for special educational needs (if any) in relation to that provider;
- in relation to a young person, the head teacher of the school or if the young person is a student at a post-16 institution, to the principal of that institution.

The local authority must secure an EHC needs assessment for the child or young person if, after regard to the views of the parent or young person and evidence submitted, the local authority is of the opinion that:

- a) the child or young person has or may have special educational needs, and
- b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

In relation to a young person over the age of 18, the local authority must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete his or her education or training.

Paragraph 9.14 of the Code of Practice sets out factors which local authorities must pay particular attention to when determining whether an EHC needs assessment is required. These include:

- Academic attainment and rates of progress
- Nature, extent and context of CYP's SEN
- Evidence of action already being taken by placement
- Evidence that where progress has been made, only as a result of additional intervention and support above usually provided
- Evidence of physical, emotional and social development and health needs

Local authorities may develop criteria or guidelines to help them decide but must be prepared to depart from criteria where compelling reason to do so. They must not apply a blanket policy to particular groups / types of needs and must consider the child or young person's needs individually and on their merits.

Where the local authority determines that it is not necessary for special educational provision to be made in accordance with an EHC plan it must notify the child's parent or young person of:

- the reasons for the determination not to secure an EHC needs assessment;
- their right of appeal
- the time limits for doing so;
- information concerning mediation,
- the availability of disagreement resolution services and information and advice about matters relating to the special educational needs of children and young people.

The local authority is not required to secure an EHC assessment if the child or young person has been assessed during the previous six months although can do so if it considers necessary.

The local authority must make its determination regarding whether to secure an EHC needs assessment within 6 weeks of the request subject to exceptions outlined below.

The assessment process - who must provide advice?

Where the local authority secures an EHC needs assessment for a child or young person, it must seek the following advice and information, on the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision:

- The child's parent or the young person
- Manager, headteacher or principal of education institution
- medical advice and information from a health care professional identified by the responsible commissioning body;
- psychological advice and information from an educational psychologist;
- advice and information in relation to social care;
- advice and information from any other person the local authority thinks is appropriate;
- Any person the child's parents or young person reasonably request the local authority obtain advice from;
- From Year 9 onwards – advice to assist with preparation for adulthood and independent living'
- Where it appears that the child or young person is either visually or hearing impaired or both, the school or placement should consult with a person who is qualified to teach children or young people with visual or hearing impairment before they provide their advice.

When the local authority is requesting advice, they must provide the person or body with a copy of any representations made by the child's parent or the young person and any evidence submitted.

Partners must respond within a maximum of 6 weeks of request although there are exceptions to the time limits as outlined below.

The assessment process – principles underpinning co-ordinated assessment and planning

Regulation 7 of the Special Educational Needs and Disability Regulations 2014 states that when securing an EHC needs assessment a local authority must:

- a) consult the child and the child's parent, or the young person and take into account their views, wishes and feelings;
- b) consider any information provided to the local authority by or at the request of the child, the child's parent or the young person;
- c) consider the information and advice obtained;
- d) engage the child and the child's parent, or the young person and ensure they are able to participate in decisions; and
- e) minimise disruption for the child, the child's parent, the young person and their family.

There is an emphasis in the SEND Code of Practice on ensuring all assessments have a person centred approach and there is effective co-ordination. Paragraph 9.22 states that the assessment and planning process should:

- focus on the child or young person as an individual
- enable children and young people and their parents to express their views, wishes and feelings
- enable children and young people and their parents to be part of the decision-making process
- be easy for children, young people and their parents or carers to understand, and use clear ordinary language and images rather than professional jargon
- highlight the child or young person's strengths and capabilities
- enable the child or young person, and those that know them best to say what they have done, what they are interested in and what outcomes they are seeking in the future
- tailor support to the needs of the individual
- organise assessments to minimise demands on families
- bring together relevant professionals to discuss and agree together the overall approach, and
- deliver an outcomes-focused and co-ordinated plan for the child or young person and their parent
- support and encourage the involvement of children, young people and parents or carers by:
 - providing them with access to the relevant information in accessible formats
 - giving them time to prepare for discussions and meetings, and
 - dedicating time in discussions and meetings to hear their views

In addition, the local authority must not seek any of the advice referred to above if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parent or the young person are all satisfied that it is sufficient for the purposes of an EHC needs assessment.

When securing an EHC needs assessment the local authority must also consider whether the child's parent or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs assessment, and if it considers that such information, advice or support is necessary, it must provide it.

Timescales

If a local authority decides, following an EHC needs assessment, not to issue an EHC plan, it must inform the child's parent or young person within a maximum of 16 weeks from the request for an EHC needs assessment.

Where the local authority decides to issue an EHC plan, the child's parent or young person must be provided with a draft plan and given 15 days to provide their views.

The entire process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC plan is issued, must take no more than 20 weeks.

Where there are exceptional circumstances, it may not be reasonable to expect local authorities and others partners to comply with the time limits above. The Special Educational Needs and Disability Regulations 2014 set out specific exemptions. These include where:

- the local authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 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 parent, or the young person during the time period; or
- the child, the child's parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph.

Chapter 9 of the SEND Code of Practice provides further information on the statutory assessment process. A separate factsheet is available on EHC plans.

Factsheet #5: The Education, Health and Care Plan

Following on from our factsheet on the EHC needs assessment process, this factsheet provides further information on Education, Health and Care Plans (EHC plans) including:

- Deciding whether to issue an EHC Plan.
- Writing an EHC Plan.
- The contents of an EHC Plan
- The draft EHC Plan
- Requests for a particular school, college or other institution
- Finalising and maintaining the EHC Plan

Deciding whether to issue and EHC Plan

Section 37 of the Children and Families Act states that a local authority must issue an EHC plan where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan.

Paragraph 9.54 and 9.55 of the Code of Practice sets out the factors which local authorities should consider when deciding whether to issue a plan. These include:

- the child or young person's SEN and the special educational provision made for the child or young person and whether:
 - the information from the EHC needs assessment confirms the information available on the nature and extent of the child or young person's SEN prior to the EHC needs assessment, and whether
 - the special educational provision made prior to the EHC needs assessment was well matched to the SEN of the child or young person
- Where, despite appropriate assessment and provision, the child or young person is not progressing, or not progressing sufficiently well, the local authority should consider what further provision may be needed. The local authority should take into account:
 - whether the special educational provision required to meet the child or young person's needs can reasonably be provided from within the resources normally available to mainstream early years providers, schools and post-16 institutions, or
 - whether it may be necessary for the local authority to make special educational provision in accordance with an EHC plan.

Where a local authority decides it is necessary to issue an EHC plan, it must notify the child's parent or the young person and give the reasons for its decision. The local authority should ensure it allows enough time to prepare the draft plan and complete the remaining steps in the process within the 20-week overall time limit within which it must issue the finalised EHC plan.

Key requirements when writing an EHC Plan

Paragraph 9.61 sets out the key requirements and principles which apply to local authorities and those contributing to the preparation of an EHC plan. These include:

- EHC plans should be clear, concise, understandable and accessible and written so they can be understood by professionals in any local authority
- EHC plans should be forward looking – for example, anticipating, planning and commissioning for important transition points in a child or young person's life, including planning and preparing for their transition to adult life.

The contents of an EHC Plan

As a statutory minimum, EHC plans must include the following sections, which must be separately labelled from each other using the letters below. The sections do not have to be in the order below and local authorities may use an action plan in tabular format to include different sections and demonstrate how provision will be integrated, as long as the sections are separately labelled.

| Label | Section | Information to include |
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| A | The views, interests and aspirations of the child and his or her parents or the young person. | <ul style="list-style-type: none"> • Details about the child or young person's aspirations and goals for the future (but not details of outcomes to be achieved – see section above on outcomes for guidance). When agreeing the aspirations, consideration should be given to the child or young person's aspirations for paid employment, independent living and community participation. • Details about play, health, schooling, independence, friendships, further education and future plans including employment (where practical). • A summary of how to communicate with the child or young person and engage them in decision-making. • The child or young person's history. • If written in the first person, the plan should make clear whether the child or young person is being quoted directly, or if the views of parents or professionals are being represented. |
| B | The child or young person's special educational needs. | <ul style="list-style-type: none"> • All of the child or young person's identified special educational needs must be specified. • SEN may include needs for health and social care provision that are treated as special educational provision because they educate or train the child or young person. |
| C | The child or young person's health needs which are related to their SEN. | <ul style="list-style-type: none"> • The EHC plan must specify any health needs identified through the EHC needs assessment which relate to the child or young person's SEN. Some health care needs, such as routine dental health needs, are unlikely to be related to SEN. • The Clinical Commissioning Group (CCG) may also choose to specify other health care needs which are not related to the child or young person's SEN (for example, a long-term condition which might need management in a special educational setting). |
| D | The child or young person's social care needs which are related to their SEN or to a disability. | <ul style="list-style-type: none"> • The EHC plan must specify any social care needs identified through the EHC needs assessment which relate to the child or young person's SEN or which require provision for a child or young person under 18 under section 2 of the Chronically Sick and Disabled Persons Act 1970. See further factsheets 7 and 8 for more on how the 1970 Act operates. • The local authority may also choose to specify other social care needs which are not linked to the child or young person's SEN or to a disability. This could include reference to any child in need or child protection plan which a child may have relating to other family issues such as neglect. |

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| | | Such an approach could help the child and their parents manage the different plans and bring greater co-ordination of services. Inclusion of information in relation to child protection plans must only be with the consent of the child and their parents. |
| E | The outcomes sought for the child or the young person. | <ul style="list-style-type: none"> • A range of outcomes over varying timescales, covering education, health and care as appropriate but recognising that it is the education and training outcomes only that will determine when a plan is ceased for young people aged over 18. Therefore, for young people aged over 17, the EHC plan should identify clearly which outcomes are education and training outcomes. • A clear distinction between outcomes and provision. The provision should help the child or young person achieve an outcome, it is not an outcome in itself. • Steps towards meeting the outcomes. • The arrangements for monitoring progress, including review and transition review arrangements and the arrangements for setting and monitoring shorter term targets by the early years provider, school, college or other education or training provider. • Forward plans for key changes in a child or young person's life, such as changing schools, moving from children's to adult care and/or from paediatric services to adult health, or moving on from further education to adulthood. • For children and young people preparing for the transition to adulthood, the outcomes that will prepare them well for adulthood and are clearly linked to the achievement of the aspirations in section A. |
| F | The special educational provision required by the child or the young person. | <ul style="list-style-type: none"> • Provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise, including where this support is secured through a Personal Budget. • Provision must be specified for each and every need specified in section B. It should be clear how the provision will support achievement of the outcomes. • Where health or social care provision educates or trains a child or young person, it must appear in this section. • There should be clarity as to how advice and information gathered has informed the provision specified. Where the local authority has departed from that advice, they should say so and give reasons for it. • In some cases, flexibility will be required to meet the changing needs of the child or young person including flexibility in the use of a Personal Budget. • The plan should specify: <ul style="list-style-type: none"> o any appropriate facilities and equipment, staffing arrangements and curriculum |

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| | | <ul style="list-style-type: none"> o any appropriate modifications to the application of the National Curriculum, where relevant o any appropriate exclusions from the application of the National Curriculum or the course being studied in a post-16 setting, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum o where residential accommodation is appropriate, that fact o where there is a Personal Budget, the outcomes to which it is intended to contribute (detail of the arrangements for a Personal Budget, including any direct payment, must be included in the plan and these should be set out in section J). |
| G | Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. | <ul style="list-style-type: none"> • Where an Individual Health Care Plan is made for them, that plan should be included. • Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it. • It should be clear how the provision will support achievement of the outcomes, including the health needs to be met and the outcomes to be achieved through provision secured through a personal (health) budget. • Clarity as to how advice and information gathered has informed the provision specified. • Health care provision reasonably required may include specialist support and therapies, such as medical treatments and delivery of medications, occupational therapy and physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. It could include highly specialist services needed by only a small number of children which are commissioned centrally by NHS England (for example therapeutic provision for young offenders in the secure estate). • The local authority and CCG may also choose to specify other health care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities, but which should sensibly be co-ordinated with other services in the plan. |
| H1 | Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDPA) | <ul style="list-style-type: none"> • Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it (including where this is to be secured through a social care direct payment). • It should be clear how the provision will support achievement of the outcomes, including any provision secured through a Personal Budget. There should be clarity as to how advice and information gathered has informed the provision specified. • Section H1 of the EHC plan must specify all services assessed as being necessary to meet the needs of a disabled child or young person under 18, under section 2 of the CSDPA. These services include: <ul style="list-style-type: none"> o practical assistance in the home |

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| | | <ul style="list-style-type: none"> o provision or assistance in obtaining recreational and educational facilities at home and outside the home o assistance in traveling to facilities o adaptations to the home o facilitating the taking of holidays o provision of meals at home or elsewhere o provision or assistance in obtaining a telephone and any special equipment necessary o non-residential short breaks (included in Section H1 on the basis that the child as well as his or her parent will benefit from the short break) <p>• This may include services to be provided for parent carers of disabled children, including following an assessment of their needs under sections 17ZD-17ZF of the Children Act 1989.</p> |
| H2 | Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. | <p>Social care provision reasonably required may include provision identified through early help and children in need assessments and safeguarding assessments for children. Section H2 must only include services which are not provided under Section 2 of the CSDPA. For children and young people under 18 this includes residential short breaks and services provided to children arising from their SEN but unrelated to a disability. This should include any provision secured through a social care direct payment. See chapter 10 for more information on children's social care assessments.</p> <p>• Social care provision reasonably required will include any adult social care provision to meet eligible needs for young people over 18 (set out in an adult care and support plan) under the Care Act 2014.</p> <p>• The local authority may also choose to specify in section H2 other social care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities. This will enable the local authority to include in the EHC plan social care provision such as that governed by child in need or child protection plans, or provision meeting eligible needs set out in an adult care plan where it is unrelated to the SEN but appropriate to include in the EHC plan.</p> |
| I | Placement | <p>• The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution (or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person).</p> <p>• These details must be included only in the final EHC plan, not the draft EHC plan sent to the child's parent or to the young person.</p> |
| J | Personal Budget (including arrangements for direct payments) | <p>• This section should provide detailed information on any Personal Budget that will be used to secure provision in the EHC plan.</p> |

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| | | <ul style="list-style-type: none"> • It should set out the arrangements in relation to direct payments as required by education, health and social care regulations. • The special educational needs and outcomes that are to be met by any direct payment must be specified. |
| K | The advice and information | <ul style="list-style-type: none"> • The advice and information gathered during the EHC needs assessment must be set out in appendices to the EHC plan. There should be a list of this advice and information. |

Note:

Where the child or young person is in or beyond year 9, the EHC plan must also include (in sections F, G, H1 or H2 as appropriate) the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

The draft EHC Plan and requests for a particular school, college or other institution

Before issuing the final EHC plan, child's parents or the young person must be sent plans in draft and given 15 days to make representations including on particular school named.

When the local authority sends the draft EHC plan to the child's parent or the young person the following apply:

- The local authority must notify the child's parent or the young person that during this period they can request that a particular school or other institution, or type of school or other institution, be named in the plan. The draft plan must not contain the name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person (see below).
- The local authority must advise the child's parent or the young person where they can find information about the schools and colleges that are available for the child or young person to attend, for example through the Local Offer.
- The local authority should also seek agreement of any Personal Budget specified in the draft plan.

Where particular school is requested, the local authority must consult with governing body and relevant local authority if out of area.

The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- maintained nursery school
- maintained school and any form of academy or free school (mainstream or special)
- non-maintained special school
- further education or sixth form college
- independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people).

Section 39 of the Children and Families Act 2014 provides that the local authority must name the requested school or other institution in the EHC plan names the school or other institution specified in the request, unless:

- a) the school is unsuitable for the age, ability, aptitude or SEN of the child or young person concerned, or
- b) the attendance of the child or young person at the requested school or other institution would be incompatible with—
 - a. the provision of efficient education for others, or
 - b. the efficient use of resources.

In determining whether attendance would be incompatible with the efficient use of resources, the LA must consider the cost to the public purse generally when comparing the costs of the parents' requested school with the LA's own provision. The Court of Appeal has recently confirmed in *Haining v Warrington Borough Council* [2014] EWCA Civ 398 that this includes the cost of non-educational expenditure, for example social care provision and transport, in relation to both potential placements.

Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority must specify **mainstream provision** in the EHC plan unless it would be:

- against the wishes of the parent or young person, or
- incompatible with the efficient education of others.

Mainstream education cannot be refused by a local authority on the grounds that it is not suitable.

Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it must demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility.

Finalising and maintaining the EHC Plan

Section 14 of the Special Educational Needs and Disability Regulations 2014 provides that the finalised EHC plan must be in the form of the draft plan, or in a form modified in the light of the representations made by the child's parent or young person.

When sending a copy of the finalised EHC plan to the child's parent or the young person, the local authority must notify them of:

- a) their right to appeal matters within the EHC plan;
- b) the time limits for doing so;
- c) the information concerning mediation
- d) the availability of:
 - disagreement resolution services; and
 - advice and information about matters relating to the special educational needs of children and young people.

Section 42 of the Children and Families Act provides that local authorities must secure the specified special educational provision in the EHC plan. If a local authority names an independent school or independent college in the plan as special educational provision it must also meet the costs of the fees, including any boarding and lodging where relevant.

The specific duties in relation to maintaining the health and social care aspects of the plans are summarised in a separate factsheet.

Chapter 9 of the SEND Code of Practice provides further information on EHC Plans.

Factsheet #6: Health assessments and duties

Under the Children and Families Act 2014, Clinical Commissioning Groups (“CCGs”) and other health bodies are required to co-operate with the local authority in jointly commissioning services, ensuring there is sufficient capacity contracted to deliver necessary services, drawing the attention of the local authority to groups and individual children and young people with SEN or disabilities, supporting diagnosis and assessment, and delivering interventions and review. CCGs have a specific duty to arrange the health provision specified in a child or young person’s Education, Health and Care Plan – a major change from the previous system.

Health services for children and young people with SEN or disabilities include those provided by paediatricians, psychiatrists, psychologists, nurses and allied health professionals such as occupational therapists, speech and language therapists, habilitation trainers and physiotherapists .

The health commissioning duty

CCGs have a duty under Section 3 of the NHS Act 2006 to arrange health care provision for the people for whom they are responsible to meet their reasonable health needs.

In addition Section 42 of the Children and Families Act 2014 creates a legal duty on the CCG to ensure that health care provision specified in the EHC plan is made available to the child or young person.

The joint arrangements underpinning the plan will include agreement between the partners about their respective responsibilities for funding the arrangements, to ensure that the services specified are commissioned.

Assessments of healthcare needs

The EHC plan must specify any health needs identified through the EHC needs assessment which relate to the child or young person’s SEN. Some health care needs, such as routine dental health needs, are unlikely to be related to SEN. The CCG may also choose to specify other health care needs which are not related to the child or young person’s SEN (for example, a long-term condition which might need management in a special educational setting).

In addition, each CCG will determine which services it will commission to meet the reasonable health needs of the children and young people with SEN or disabilities for whom it is responsible. These services should be described in the Local Offer.

Relevant local clinicians, such as community paediatricians, will participate in the development of the child’s or young person’s EHC plan, advising on the child’s needs and the provision appropriate to meet them.

The health care provision specified in section G of the EHC plan must be agreed by the CCG in time to be included in the draft EHC plan sent to the child’s parent or to the young person. As part of the joint commissioning arrangements, partners must have clear disagreement resolution procedures where there is disagreement on the services to be included in an EHC plan.

In addition, the National Framework for Children and Young People’s Continuing Care (DOH 2010, under review) sets out the requirements for assessing children with health needs and eligibility for continuing healthcare.

The central requirements of the Framework including the following aims:

- make the child or young person and their family the focus of the continuing care process and facilitate the provision of personalised packages of care;
- cross organisational and inter-agency boundaries, thus reducing the possibility of fragmented care.

At 4.1 the Framework states that:

‘A continuing care package will be required when a child or young person has needs arising from disability, accident or illness that cannot be met by existing universal or specialist services alone.’

Where a child or young person requires services commissioned by multiple organisations, the CCG is responsible for leading the continuing care process, involving the local authority and other partners as appropriate (paragraph 12).

Nominated children and young people's health assessors are responsible for ensuring that the assessment of a child or young person with possible continuing care needs, and their families, takes place in a consistent and open manner (paragraph 18).

During the assessment phase of the continuing care process, the following should be considered:

- the preferences of the child or young person and their family;
- holistic assessment of the child or young person and their family, including carer assessment; and
- reports and risk assessments from the multidisciplinary team.

The carer's assessment should consider the family's capacity for resilience; this relates to a family's ability to provide care for the child or young person. The Framework recognises that parents or other primary carers need to be supported to be skilled and confident in their caring, manage the risks and ensure that quality of life is maintained for the family as a whole.

The decision-making phase usually involves a multidisciplinary, multi-agency forum in which the forum or panel will make a decision as to whether or not the child or young person has a continuing care need. The Framework provides that a decision on the package of continuing care that may be provided should not be budget or finance led: the primary consideration should be supporting the child or young person's assessed needs (paragraph 34).

Transition to adult health services

The Code of Practice at paragraph 8.56 states that support to prepare young people for good health in adulthood should include supporting them to make the transition to adult health services. A child with significant health needs is usually under the care of a paediatrician. As an adult, they might be under the care of different consultants and teams. Health service and other professionals should work with the young person and, where appropriate, their family. They should gain a good understanding of the young person's individual needs, including their learning difficulties or disabilities, to co-ordinate health care around those needs and to ensure continuity and the best outcomes for the young person. This means working with the young person to develop a transition plan, which identifies who will take the lead in co-ordinating care and referrals to other services. The young person should know who is taking the lead and how to contact them.

For young people with EHC plans, the plan should be the basis for co-ordinating the integration of health with other services.

Where young people are moving to adult health services, the local authority and health services must co-operate, working in partnership with each other and the young person to ensure that the EHC plan and the care plan for the treatment and management of the young person's health are aligned.

The CCG must co-operate with the local authority in supporting the transition to adult services and must jointly commission services that will help meet the outcomes in the EHC plan.

The Role of the Designated Medical / Clinical Officer

The Code of Practice at paragraph 3.45 states that a Designated Medical Officer (DMO) should be appointed to support the CCG in meeting its statutory responsibilities for children and young people with SEN and disabilities.

The role of the DMO is to:

- act as a point of contact for local authorities, schools and colleges when notifying parents and local authorities about children and young people they believe have, or may have, SEN or a disability, and when seeking advice on SEN or disabilities;
- act as point of contact for local authorities, schools and colleges seeking health advice;
- support schools with their duties under Supporting Pupils at School with Medical Conditions guidance

- ensure that assessments, planning and health support is carried out within CCGs. The DMO would not routinely carry out the assessments themselves but ensure they are done.

The person in this role should have an appropriate level of clinical expertise and links with other professionals to enable them to exercise their duties in relation to children and young adults with EHC plans from the age of 0 to 25 in a wide range of educational institutions.

This role would usually be carried out by a paediatrician though there is local flexibility for the role to be carried out by a relevantly qualified and experienced nurse or other health professional (in which case the role would be the Designated Clinical Officer).

Factsheet #7: Social care assessments and duties: Children and young people under 18

This factsheet provides an overview of the social care assessment and service provision process for disabled children and young people under the age of 18 and how this links in with the EHC needs assessments and planning.

Social care assessments and service provision

Local authorities have a duty under Section 17 of the Children Act 1989 to safeguard and promote the welfare of 'children in need' in their area, including disabled children, by providing appropriate services to them. These services might include short breaks for parent carers, equipment or adaptations to the home. The courts have held that local authorities have to assess all children who are or may be 'in need' – so there is a duty to assess any child who is or might be disabled (broadly defined).

Section 17 does not impose a duty to provide services to every individual child 'in need'. However there is a duty to provide services to individual disabled children under section 2 of the Chronically Sick and Disabled Persons Act 1970. This duty arises where it is 'necessary' to provide services to the child – a question that can only be answered once there has been a proper section 17 assessment. In deciding whether support is 'necessary' a local authority is allowed to take into account its resources, so that more children will get support when more money is available. However there will be some cases where the needs are so great that it is obviously 'necessary' for the local authority to provide services no matter how little money it has. Also, once a local authority accepts that it is necessary to provide support under section 2 then it must fund a sufficient level of services to actually meet the needs identified through the assessment.

Following acceptance of a referral by the local authority children's social care service, a social worker should lead a multi-agency assessment under section 17 of the Children Act 1989. The purposes of social care assessments are:

- to gather important information about a child and family
- to analyse their needs and/or the nature and level of any risk or harm being suffered by a child
- to decide whether the child is a child in need (section 17 of the Children Act 1989) and/or is suffering significant harm (section 47 of the Children Act 1989), and
- to provide support to address those needs to improve the child's outcomes

The statutory guidance "Working Together to Safeguard Children 2013" sets out the process for managing individual cases which are referred to and accepted by children's social care.

All assessments should be child centred, focused on outcomes, transparent, timely and proportionate to the needs of each child. The maximum timeframe for a social care assessment to conclude that a decision can be taken on next steps is 45 working days from the point of referral.

Where there is an EHC needs assessment, it should be a holistic assessment of the child or young person's education, health and social care needs. EHC needs assessments should be combined with social care assessments under section 17 of the Children Act 1989 where appropriate.

If services are to be provided following an assessment there should be a 'child in need plan' which sets out who is going to do what, where and when to help the child.

Interface with EHC Plans

Local authorities with their partners should develop and publish local protocols for assessment which should set out how the needs of disabled children will be addressed in the assessment process and clarify how statutory social care assessments will be informed by and inform other specialist assessments including EHC needs assessments leading to an EHC plan.

If a local authority determines following assessment that a disabled child needs support under Section 17, it must first consider whether such support is of the type outlined in Section 2 of the Chronically Sick and Disabled Persons Act (CSDPA) 1970. These services include:

- practical assistance in the home

- provision or assistance in obtaining recreational and educational facilities at home and outside the home
- assistance in traveling to facilities
- adaptations to the home
- facilitating the taking of holidays
- provision of meals at home or elsewhere
- provision or assistance in obtaining a telephone and any special equipment necessary
- non-residential short breaks

Where it is, the local authority **must** provide that support and the provision must be included in section H1 of the EHC plan if it accepts that the support is 'necessary' to meet the child's needs.

All other social care services, including services provided under section 17 of the Children Act should be included in Section H2 of the EHC plan. Most typically, this will cover overnight short breaks.

EHC plan reviews should be synchronised with social care plan reviews.

Where a local authority has been providing children's social care services to a young person under the age of 18, and they have an EHC plan in place, local authorities can continue to provide these services on the same basis after the age of 18. The local authority retains discretion over how long it chooses to provide these services, so long as an EHC plan remains in place.

It is important to note that paragraph 9.35 of the Code of Practice states that where particular services are assessed as being needed, such as those resulting from statutory social care assessments under the Children Act 1989 or adult social care legislation, their provision should be delivered in line with the relevant statutory guidance and should not be delayed until the EHC plan is complete.

For social care, help and support should be given to the child and family as soon as a need is identified and not wait until the completion of an EHC needs assessment.

Factsheet #8: Social care assessments and duties: Young people over 18

Young people with SEN or disabilities over 18 may be eligible for adult social care services, regardless of whether they have an EHC plan or whether they have been receiving services from children's social care previously.

The Care Act 2014 and the associated regulations and guidance set out the requirements on local authorities when young people are approaching, or turn, 18 and are likely to require an assessment for adult care and support. For those already receiving support from children's services, the Care Act makes it clear that local authorities must continue to provide children's services until adult provision has started or a decision is made that the young person's needs do not meet the eligibility criteria for adult care and support following an assessment.

Any adult social care provision required to meet eligible needs for young people over 18 (as set out in an adult care and support plan) under the Care Act 2014 should be included in section H2 of the EHC plan.

Adult Social Care Assessments under section 47 of the NHS and Community Care Act 1990

The Care Act 2014 does not come into force until April 2015.

In the meantime, the existing law in relation to adult social care assessments is set out in section 47 of the National Health Service and Community Care Act 1990 ("NHSCCA 1990"), which creates a statutory duty on local authorities to assess those who appear to be in need of community care services.

Under section 47(1)(a), an assessment must be carried out wherever there is an appearance of need. Under section 47(1)(b), local authorities must make a service provision decision to meet a need once assessed.

In accordance with the Supreme Court judgement in R (KM) (by JM) v Cambridgeshire County Council [2013] UKSC 23, the local authority is required to assess the individual's presenting needs without taking into account its resources and then go on to consider which of the individual's needs is eligible for support, in accordance with the local authority's adult social care policy and the current Prioritising Need Guidance (2010).

Having carried out an assessment under section 47(1)(a), section 47(1)(b) requires that the authority decide whether the individual's needs call for the provision by them of any services.

A lawful assessment when completed should record all presenting needs, record the unmet needs and each identified need should be clearly identified within the terminology originally from the FACS guidance of being 'low', 'moderate', 'substantial' or 'critical', and therefore whether the authority accepts that it falls within its current policy as being a need that it is obliged to meet.

Duty to meet 'eligible' needs

Section 2 of the Chronically Sick and Disabled Persons Act 1970 imposes a duty to provide services if, subsequent to the assessment of an individual's needs, a local authority considers it 'necessary' to provide such services in order to meet a person's needs. This duty is mirrored in the Care Act 2014 from April 2015. The CSDPA 1970 currently works in the same way for children and adults and will remain the duty applicable to children even after the Care Act comes into force.

In deciding whether support is 'necessary' a local authority is allowed to take into account its resources, so that more adults will get support when more money is available. A local authority does this by adopting one of the four bands from the statutory guidance – 'critical', 'substantial', 'moderate' or 'low' as the threshold for eligibility. There will be some cases where the needs are so great that it is obviously 'necessary' for the local authority to provide services no matter how little money it has – these will be adults with 'critical' needs. Also, once a local authority accepts that it is necessary to provide support under section 2 then it must fund a sufficient level of services to actually meet the needs identified through the assessment.

The current guidance on eligibility criteria for adult social care is called 'Prioritising need in the context of Putting People first: A whole system approach to eligibility for social care' (Prioritising Need).

Personal budgets

To help support personalisation of care services, local authorities must produce a 'personal budget' as part of all care and support plans in order to allow the service user to identify how much money is available to meet their eligible needs, and often to purchase services themselves to meet these needs. This could be in the form of direct payments, made under section 57 of the Health and Social Care Act 2001.

Direct payments

Where a local authority has decided under s47 NHSCCA 1990 that a person's needs call for the provision of community care services, in most circumstances they will be required to offer a cash sum as a 'direct payment' to the person (or a representative if they lack capacity) to purchase the services rather than providing services themselves or arranging them through a third party ('commissioning').

The amount of the direct payments provided to an individual must meet the reasonable cost of securing the services which that individual has been assessed as needing. This means a direct payment "should be sufficient to enable the recipient lawfully to secure a service of a standard that the council considers reasonable to fulfil the needs for the service to which the payment relates" (Department of Health, Guidance on direct payments, England 2009 (as amended), para 111).

Transition to adult social care

Once the Care Act 2014 comes into force, the local authority must carry out a child's needs transition assessment where there is significant benefit to a young person or their carer in doing so and they are likely to have needs for care or support after turning 18.

Further information regarding transition assessments is provided in a separate factsheet entitled "Preparing for adulthood".

Assessments under the Care Act 2014

The duty in the Care Act 2014 from April 2015 to assess adults in need is triggered by the appearance of need and arises regardless of the 'level' of those needs or the person's financial resources.

The assessment must have specific regard to the 'well-being criteria' under the Care Act and must involve the adult and any carer. This includes personal dignity, physical and mental health and emotional well-being; protection from abuse and neglect; control over day-to-day life; participation in work, education, training or recreation; social and economic well-being; domestic, family and personal relationships; suitability of living accommodation; and 'the individual's contribution to society'.

When discharging any obligation under the Care Act 2014, including when carrying out assessments and providing services, the local authority must have regard to:

- the individual's views, wishes, feelings and beliefs;
- the need to prevent/ delay the development of needs for care and support;
- the need to make decisions that are not based on stereotyping individuals;
- the importance of individual's participating as fully as possible in relevant decisions (including provision to them of necessary information and support);
- the importance of achieving a 'balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual';
- the need to protect people from abuse and neglect;
- the need to ensure that restrictions on individual rights /freedoms be kept to the minimum necessary.

Decisions as to whether an individual is eligible for support following an assessment will depend upon their needs satisfying a national eligibility criteria.

Once an eligible need is identified, the local authority will then have a duty to meet that need, subject to a financial assessment being imposed.

Factsheet #9: Duties to parent carers and carer's assessments

The rights of parent carers to assessments and entitlement to support and services arise out of a number of different regulations and statutory guidance, including under Part 3 of the Children Act 1989 and the Care Act 2014.

They key duties are outlined below.

It is important to note that some of these duties are not yet in force and some of the existing duties will be repealed.

Duties to parent carers of children under the age of 18

Under the Children Act 1989, it has always been expected that an assessment of a child 'in need' under section 17, including all disabled children, will be 'holistic' – so that it will take account of the needs of other family members. Indeed 'parenting capacity' is one of three key domains for a child 'in need' assessment.

However parent carers also have rights to stand-alone assessments and new rights to services under the Children and Families Act 2014.

Section 97 of the Children & Families Act 2014 amends the Children Act 1989 (by adding s17ZD to s17ZF) to require local authorities to assess parent carers on the appearance of need or where an assessment is requested by the parent.

This is called a "parent carers needs assessment".

Where requested, then the local authority must assess whether that parent has needs for support and, if so, what those needs are. The assessment must include an assessment of whether it is appropriate for the parent to provide, or continue to provide, care for the disabled child, in the light of the parent's needs for support, other needs and wishes.

The assessment must also have regard to:

- the well-being of the parent carer; and
- the need to safeguard / promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility.

Following assessment, the local authority must then decide whether the parent has needs for support; whether the disabled child for has needs for support; and if so whether those needs could be met (wholly or partly) by services under Children Act 1989, s17.

Services to be provided for parent carers of disabled children, including following an assessment of their needs under sections 17ZD-17ZF of the Children Act 1989 can be included in Section H1 of the EHC plan, if the child has one.

The new rights for parent's carers under the Children and Families Act set out above are not yet in force.

In the meantime, parent carers still have a right to request a separate assessment of their needs under **Section 6 of the Carers and Disabled Children Act 2000**, where the carer:

- a) provides or intends to provide a substantial amount of care on a regular basis for another individual aged 18 or over; and
- b) asks a local authority to carry out an assessment of his ability to provide and to continue to provide care for the person cared for,

In these circumstances, the local authority must carry out a carer's assessment if it is satisfied that the person cared for is someone for whom it may provide or arrange for the provision of community care services.

Carers assessments during Transition to adult social care

As part of transition planning, the needs of carers should also be assessed or reviewed to explore the impact of changing circumstances on the carer.

Young people with SEN and disabled young people turning 18 or their carers may become eligible for adult care services, regardless of whether they have an EHC plan or whether they have been receiving children's social care services.

Under the Care Act 2014, the local authority must carry out an adult care transition assessment where there is significant benefit to a young person or their carer in doing so and they are likely to have needs for care or support after turning 18.

Carer's assessments for carers of adults over 18

Existing duties

Carers of adults over the age of 18 have rights to assessments and support under the following Acts:

- The Carers (Recognition of Services) Act 1995 – this gives carers a right to a carer's assessment.
- The Carers and Disabled Children Act 2000 – this extends the rights of carers to include rights to support services and to receive support through direct payments and vouchers.
- The Carers (Equal Opportunities) Act 2004 - this Act introduced a legal duty on local authorities to inform carers of their rights and requires carers assessments to consider whether the carer works or wishes to work and / or is undertaking or wishes to undertake, educate, training or any leisure activity.

In order to be eligible for a carer's assessment under existing law, carers must be providing substantial and regular care. This requirement will be removed under the Care Act as explained below.

The Care Act 2014

Section 10 of **the Care Act 2014** introduces key changes to the existing rights of carers for young people over 18 to assessments:

- Carers no longer have to request an assessment to obtain one and they must be completed by the local authority on appearance of need.
- The carer no longer has to establish that they are providing substantial care on a regular basis to qualify.

Instead, the only requirement is that the carer 'may have needs for support – whether currently or in the future'.

The assessment must consider:

- whether the carer is able / willing to provide and continue to provide the care;
- the impact on the carers 'well-being' of their caring role;
- the outcomes the carer wishes in day-to-day life;
- whether the carer works or wishes to work (and / or) to participate in education, training or recreation.

Local authorities must also consider whether the carer would benefit from preventative services, information and advice. There will be a national eligibility threshold to determine following the assessment whether the carer has eligible needs. Where a carer is assessed as having an eligible need, the local authority has a legal duty to meet those needs.

The new duties under the Care Act 2014 will come into force in April 2015.

Additional duties in the Local Offer

The local authority's local offer must include a short breaks duty statement giving details of the local range of services and how they can be accessed, including any eligibility criteria (in accordance with the Breaks for Carers of Disabled Children Regulations 2011). The Local Offer must also set out the support groups and others who can support parent carers of disabled children and how to contact them.

Factsheet #10: The Local Offer

All local authorities must publish by 1 September 2014 a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans. This duty stems from section 30 of the Children and Families Act 2014 and Part 4 of Special Educational Needs and Disability Regulations 2014.

The SEND Code of Practice states that the Local Offer has two key purposes:

- To provide clear, comprehensive, accessible and up-to-date information about the available provision and how to access it, and
- To make provision more responsive to local needs and aspirations by directly involving disabled children and those with SEN and their parents, and disabled young people and those with SEN, and service providers in its development and review.

It should not simply be a directory of services and the process of developing the Local Offer is intended to help local authorities and their health partners improve provision.

Consulting on the Local Offer

In accordance with Regulation 54 of the Special Educational Needs and Disability Regulations 2014 when preparing and reviewing its local offer, a local authority **must** consult the following persons in its area:

- children and young people with special educational needs and the parents of children with special educational needs;
- children and young people with a disability, and the parents of children with a disability;
- the governing bodies and proprietors of maintained schools, maintained nursery schools, Academies, post-16 institutions, non-maintained special schools, and pupil referral units;
- the advisory boards of children's centres;
- the providers of relevant early years education;
- the youth offending teams that the authority thinks have functions in relation to children or young people for whom it is responsible;
- any other person that makes special educational provision for a child or young person for whom it is responsible and those who provide advice in relation to making that provision;
- persons who make provision to assist children and young people in preparation for adulthood and independent living;
- its officers who exercise functions relating to education, training or social services functions for children and young people with special educational needs and disability and in preparation for adulthood and independent living;
- Relevant NHS trusts, NHS foundation trusts, Health Boards and health and wellbeing boards
- such other persons as it thinks appropriate.

In addition, when preparing and reviewing its local offer, a local authority must also consult any bodies specified above that are not in the local authority's area, but which the local authority thinks are or are likely to either be attended by children or young people for whom it is responsible; or have functions in relation to children or young people for whom it is responsible.

Involvement of children, their parents and young people in preparation and review of local offer

Regulation 55 provides that a local authority must consult children and young people with special educational needs or a disability and the parents of children with special educational needs or a disability in their area about:

- the services children and young people with special educational needs or a disability require;
- how the information in the local offer is to be set out when published;
- how the information in the local offer will be available for those people without access to the Internet;

- how the information in the local offer will be accessible to those with special educational needs or a disability;
- how they can provide comments on the local offer.

A local authority must seek comments on the contents of the local offer, the accessibility of information and how the local offer has been developed or reviewed. These comments must be published at least annually on its website (in a form which does not identify the individual) along with its response to those comments and any action taken or that the local authority intends to take.

Local authorities and those who are required to co-operate with them need also need to comply with their duties under the Equality Act 2010, including when preparing, developing and reviewing the Local Offer. These include the duty to make reasonable adjustments to improve accessibility of information. There is a separate factsheet available which looks at these duties in more detail.

What must the Local Offer contain?

The Regulations and the SEND Code of Practice provide a framework on the content of the local offer. Local authorities are able to go beyond this, depending on local needs and consultation with children, young people and parents.

The Local Offer must include provision in the local authority's area. It must also include provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are responsible and disabled children and young people. This could, for example, be provision in a further education college in a neighbouring area or support services for children and young people with particular types of SEN that are provided jointly by local authorities. It should include relevant regional and national specialist provision.

Regulation 53 states that a local authority **must** include the information in **Schedule 2** of the Regulations when it publishes its local offer. This includes:

- SEN provision and training which the local authority expects to be available in its area
- Provision that the local authority expects to be made outside of area
- Where the strategy prepared by the local authority under paragraph 1 of Schedule 10 to the Equality Act 2010(1) can be obtained
- Provision available in the local authority's area to assist children and young people with special educational needs or a disability in preparation for adulthood and independent living
- Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area,
- Social care provision for children and young people with special educational needs or a disability and their families including—
 - services provided in accordance with section 17 of the Children Act 1989;
 - the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;
 - support for young people in planning and obtaining support to assist with independent living;
 - information and advice services made available in accordance with section 4 of the Care Act 2014(3).
- Transport arrangements for children and young people with special educational needs or a disability
- Sources of information, advice and support in the local authority's area
- The procedure for making a complaint about any provision or service set out in the local offer.
- Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.
- Information about how to request an EHC needs assessment, and the availability of personal budgets.

Under the Care Act 2014 local authorities must also provide an information and advice service on the adult care and support system. This should include information on types of care and support, local provision and how to access it, accessing financial advice in relation to it and how to raise concerns. Local authorities must indicate in their Local Offer where this information can be found.

Paragraph 4.31 of the SEND Code of Practice states that the Local Offer should cover:

- support available to all children and young people with SEN or disabilities from universal services such as schools and GPs
- targeted services for children and young people with SEN or disabilities who require additional short-term support over and above that provided routinely as part of universal services
- specialist services for children and young people with SEN or disabilities who require specialised, longer term support

Keeping the Local Offer under Review

Local authorities must keep their educational and training provision and social care provision under review and this includes the sufficiency of that provision.

Paragraph 4.19 of the SEND Code Practice states that local authorities must keep their educational and training provision and social care provision under review and this includes the sufficiency of that provision. When considering any reorganisation of SEN provision decision makers must make clear how they are satisfied that the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with SEN.

This requirement will be an important factor to consider when local authorities are considering reorganisation of provision in order to make savings and cuts to services.

Transitional arrangements and implementation

The government have published advice to local authorities titled “Implementing a new 0 to 25 special needs system: LAs and partners: Duties and timescales - what you must do and when” in July 2014.

This states that **by 1 September 2014**, local authorities must publish an initial, accessible, local offer. This offer must have been developed in partnership with children and young people with SEN or Disability and their parents, and education, health and care partners. It should cover the support available for those with and without EHC plans and from birth to 25 years, including SEN Support.

After 1 September 2014, local authorities must develop and improve the local offer over time through regular review and consultation. During the first year, local authorities should continue to build on their joint commissioning arrangements with CCGs and involving children, young people and their families in strategic decision making.

Further information regarding the Local Offer can be found in Chapter 4 of the SEND Code of Practice.

Factsheet #11: Advocacy

The key provisions for advocacy are set out in the Code of Practice as follows:

- In supporting children, young people and parents to participate in decisions, local authorities should consider whether young people may require support in expressing their views, including whether they may need support from an advocate (who could be a family member or a professional) – see paragraph 1.10 and 8.11.
- Some children and young people will require support from an advocate (this could be a family member or a professional) to ensure that their views are heard and acknowledged during the process of assessment and production of an EHC plan to ensure the child or young person is involved as far as possible. They may need support in expressing views about their education, their health, the future and how to prepare for it, including where they will live, relationships, control of their finances, how they will participate in the community and how they will achieve greater autonomy and independence. **Local authorities should ensure that children and young people who need it have access to this support** – see paragraph 9.25.
- On contracting an effective disagreement resolution service, local authorities should, where necessary, provide advocacy support to help parents and young people take part in disagreement resolution – see paragraph 11.11

Independent Advocacy for young people undergoing transition

Section 67 of the Care Act 2014 (in force from April 2015) provides that local authorities must provide independent advocacy for young people undergoing assessments, provided certain conditions are met.

The requirements to provide an independent advocate are that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following:

- understanding relevant information;
- retaining that information;
- using or weighing that information as part of the process of being involved;
- communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).

However, this duty does not apply if the local authority considers that there is another appropriate person, such as a family member, to represent and support the individual for the purpose of facilitating the individual's involvement, and who is not engaged in providing professional paid care or treatment for the individual.

In deciding whether another person is appropriate, the local authority must first consider whether the individual has capacity to consent to be represented and if they do, that they have provided consent. If the individual lacks capacity to consent the local authority must be satisfied that it is in the best interests of the individual to be represented and supported by that person.

Where a local authority decided that the conditions above for the duty to provide an independent advocate are met, they must arrange for the independent advocate to be available to represent and support the individual whilst local authority is:

- carrying out needs assessments
- carrying out carers assessments
- preparing and reviewing care and support plans
- carrying out child's needs assessments
- carrying out carers assessments

Detailed guidance and regulations on independent advocates under the Care Act 2014 will be published in due course.



Factsheet #12: Consultation Duties

Section 19 of the Children and Families Act sets out the key principles which all local authorities must have regard to when exercising their functions under the Act. One of those key principles is:

“the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned”.

One of the ways which local authorities will ensure effective participation and engagement will be through consultation.

The Act sets out specific duties on local authorities and their partners to consult with children, their parents and young people in the development and reviewing of the Local Offer and further information on the particular requirements for consultation on the Local Offer are set out in a separate factsheet.

The Act also provides that local authorities must consult with children, parents and young people in relation to:

- Considering whether an EHC assessment is necessary
- The contents of their EHC Plans
- When reviewing educational, training and social care provision
- When considering local priorities and outcomes as part of joint commissioning arrangements
- When reviewing EHC plans and deciding on any changes to the support and outcomes
- When considering ceasing to maintain an EHC plan

However, in addition to the specific duties to consult under the New Act which are outlined above, local authorities and other public bodies will often be under a general duty to consult with children and young people with SEN or disabilities, their parents, and representative groups such as Parent Carer Forums when they are taking decisions which will impact upon children with SEN or disabilities. This might include decommissioning a service, introducing a new policy or criteria, or making cuts to services or budgets. This duty can arise where there has been a past practice of consultation, where it would be unfair to make the decision without consultation or where compliance with another duty, for instance the Public Sector Equality Duty described below, requires consultation to take place.

This factsheet is aimed to help you understand the legal duties on all public bodies when they are consulting. If these processes are not followed, the decisions may be open to a legal challenge.

Key Duties

Although as noted above a public body may not have to consult in relation to every decision, if your local authority chooses to consult, then it must be carried out properly. The standard by which the lawfulness of a consultation is measured does not change depending on whether the public body had to consult or chose to do so itself.

The leading judgment regarding consultation is *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213, and the key principles for a lawful consultation are that:

- The consultation must be undertaken at a time when proposals are still at a formative stage – meaning that the decision makers have an open mind about the final decision ;
- It must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response;
- Adequate time must be given for this purpose; and
- The responses to the consultation must be conscientiously taken into account when the ultimate decision is taken. Importantly though consultation is not negotiation – there is no duty on the public body to do what consultees want as long as the responses are carefully considered.

In addition, where the public are consulted, the relevant documents must be available to all and in a language that is clear and easily understandable.

NHS Trusts also have a duty (under s242 of the NHS Act 2006) to consult with users of health services about decisions affecting:

- The planning and provision of services;
- The development and consideration of proposals for change in the way those services are provided (if implementation would impact on the manner and range of services available);
- Decisions affecting how those services operate.

The same legal standards for lawful consultation described above apply to NHS bodies and local authorities – indeed they apply to all public bodies.

In the event that it is found that a consultation has not complied with one of those core requirements, then the consultation can be found to be unlawful and the decision made following such a process, quashed. This could mean that the public body has to start its decision making again from the beginning. However it is always up to the court to decide what the fair and just 'remedy' would be in the event that it finds unlawfulness.

Public Sector Equality Duty

Section 149 of the Equality Act 2010 requires public bodies (including local authorities and CCGs) to have 'due regard' to the need to promote equality of opportunity for disabled people. In order to demonstrate they have paid 'due regard', local authorities should ensure that they assess the impact of decisions they take on disabled people. If local authorities have not properly assessed the impact of the decision on disabled people before they take the decision then this may leave them open to legal challenge.

In addition, they should also consider whether disabled people should be treated 'more favourably' than nondisabled people to achieve equality.

As part of the process of assessing impact, it may be necessary to consult with disabled people, carers and other interested groups to make sure that the decision makers have sufficient information to understand what effect the proposals will have.

There are also separate consultation duties under the Mental Capacity Act 2005 which are set out in a separate factsheet.

Factsheet #13: Information, Advice and Support

Section 19 of the Children and Families Act sets out the key principles which all local authorities must have regard to when exercising their functions under the Act. One of those key principles is:

“the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions”.

The provision of information, advice and support should be done through a dedicated and easily identifiable service, and local authorities should build on Parent Partnership Services (and any similar local services for young people) to provide these services.

Legal Duties

The central duty to provide advice and information is set out in section 32 of the Act and requires that local authorities must arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs and disabilities of the children or young people concerned.

The local authority must take steps to ensure that these services provided are known to:

- Parents of children in its area;
- Children in its area
- Young people in its area
- Head teachers, proprietors and principals of schools and post-16 institutions in its area
- Other such persons as appropriate

There are also specific duties to provide information, advice and support in relation to the following parts of the new Act:

- **Joint Commissioning arrangements** – section 26(3) of the Act provides that joint commissioning arrangements between a local authority and its partner commissioning bodies must include arrangements for considering and agreeing:
 - What advice and information is to be provided about education, health and care provision;
 - By whom, to whom and how such advice and information is to be provided.
- **Personal Budgets** – regulation 3 of the Special Educational Needs (Personal Budgets) Regulations 2014 provides that where a local authority maintains an EHC plan or is securing the preparation of an EHC plan it must make arrangements for the provision of the following information to be made available to the child's parent or young person:
 - The provision for which a personal budget may be available;
 - Details of organisations that provide advice and assistance in connection with personal budgets; and
 - The conditions which must be met before direct payments may be made.
- **EHC needs assessments** – regulation 9 of the Special Educational Needs and Disability Regulations 2014 provides that when securing an EHC needs assessment the local authority must consider whether the child's parents or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs assessment, and if it consider that such information, advice or support is necessary, it must provide it.
- **The Local Offer** – this must contain details of how information, advice and support can be accessed and how it is resourced. Further information regarding the Local Offer is set out in a separate factsheet.

Who can access information, advice and support?

Although many children will access information, advice and support services via their parents, the local authority must also ensure that it is possible for children to access information, advice and support separately from their parents.

Once a young person reaches 16, and subject to them having capacity, certain rights transfer from the parents to the young person themselves. However, Parents can still access information, advice and support on behalf of, or with the young person.

In the event that there is disagreement between parents and the young person, staff providing information, advice and support should work impartially and separately with both the parents and the young person.

Young people must be provided with confidential and impartial information, advice and support from staff who are trained to enable them to participate fully in decisions. This should include support and advice to take up and manage Personal Budgets, and IAS services should direct young people to specialist support in relation to employment, independent living and access to careers advice and advocacy where necessary. Separate factsheets on advocacy for young people and preparing for adulthood are available.

How should information, advice and support be provided?

Local authorities must consider providing the following types of support:

- Signposting to additional sources of advice, information and support that may be available;
- Individual casework and representation for those who need it which should include support in meetings, contributing to assessments and reviews;
- Help when things go wrong, including arranging or attending early disagreement resolution meetings, supporting in managing mediation, appeals, exclusions and complaints.

For 2 years the Independent Support Programme will have a role in providing support throughout the EHC needs assessment and planning process for children and families.

Local authorities should also provide key working support to provide children, young people and parents with a single point of contact to help ensure the holistic provision and co-ordination of services and support.

When designing information, advice and support services, local authorities should take into account the following principles:

- The information, advice and support should be impartial and provided at arm's length from the local authority and CCGs;
- The information, advice and support offered should be free, accurate, confidential and in formats which are accessible and responsive to the needs of users
- Local authorities should review and publish information annually about the effectiveness of the information, advice and support provided, including customer satisfaction
- Staff providing information, advice and support should work in partnership with children, young people, parents, local authorities, CCGs and other relevant partners
- The provision of information, advice and support should help to promote independence and self-advocacy for children, young people and parents
- Staff providing information, advice and support should work with their local Parent Carer Forum and other representative user groups to ensure that the views and experiences of children, young people and parents inform policy and practice.

Non-statutory guidance on the development and delivery of IAS Services has been developed by The National Parent Partnership Network and can be found here –

<http://www.parentpartnership.org.uk/documents/parent-partnership-services/quality-standards-for-services-providing-information,-advice-and-support/>



Further information in relation to local authorities' duties to provide impartial information, advice and support can be found in Chapter 2 of the SEND Code of Practice: 0 to 25.

Factsheet #14: Support for pupils with Medical Conditions

Although a child or young person is required to have special educational needs in order to obtain an EHC needs assessment and EHC plan and access support under Part 3 of the Children and Families Act, section 100 of the Act (which falls under Part 5) places a duty on maintained schools and academies to make arrangements to support pupils with medical conditions. This duty comes into force on 1 September 2014.

The government published statutory guidance in April 2014 on “Supporting pupils at school with medical conditions” and all schools are required to have arrangements in place to support pupils with medical conditions by 1 September 2014. In doing so they should ensure that such children can access and enjoy the same opportunities at school as any other child.

Individual Healthcare Plans

The statutory guidance also sets out detailed information as to what should be set out within pupils’ Individual Healthcare plans.

Individual healthcare plans will normally specify the type and level of support required to meet the medical needs of such pupils.

Governing bodies should ensure that plans are reviewed at least annually or earlier if evidence is presented that the child’s needs have changed. They should be developed with the child’s best interests in mind and ensure that the school assesses and manages risks to the child’s education, health and social wellbeing and minimises disruption.

The guidance states that staff must not give prescription medicines or undertake health care procedures without appropriate training which should be updated to reflect any individual healthcare plans.

Key duties under the Guidance

There are a number of requirements under the guidance which schools must have regard to when putting in place support for pupils with medical conditions. In particular governing bodies should ensure their arrangements:

- take into account that many of the medical conditions that require support at school will affect quality of life and may be life-threatening.
- give parents and pupils confidence in the school’s ability to provide effective support for medical conditions in school. The arrangements should show an understanding of how medical conditions impact on a child’s ability to learn, as well as increase their confidence and promote self-care. They should ensure that staff are properly trained to provide the support that pupils need.

In addition, all schools must develop a policy for supporting pupils with medical conditions that is reviewed regularly and is readily accessible to parents and school staff. The policy must include:

- the procedures to be followed whenever a school is notified that a pupil has a medical condition
- the role of individual healthcare plans, and who is responsible for their development, in supporting pupils at school with medical conditions
- arrangements for children who are competent to manage their own health needs and medicines
- the procedures to be followed for managing medicines
- what should happen in an emergency situation
- details of what is considered to be unacceptable practice (examples are provided in the guidance)
- how complaints may be made and will be handled concerning the support provided to pupils with medical conditions

The school should have a named person who has overall responsibility for policy implementation.

Duties under the Equality Act 2010

Many children and young people with medical conditions will be disabled and will benefit from having the 'protected characteristic' of disability under the Equality Act 2010. This means that they have a right not to be discriminated against and can enforce a legal duty to make reasonable adjustments on a wide range of bodies, including schools and other providers of education.

This duty is not limited to schools and extends to all educational bodies that a child or young person might attend who are required to make adjustments to their policies and their premises and to provide auxiliary aids and services to avoid young people with disabilities being placed at a substantial disadvantage.

The duty requires those subject to it to anticipate the likely needs of disabled learners and take steps that are reasonable to meet those needs – with the cost of those reasonable steps to be met by the body concerned.

A failure to make a reasonable adjustment amounts to unlawful discrimination and can be challenged in a court or Tribunal.

The reasonable adjustments duties require action in the following three areas:

- where a policy (described in the Equality Act 2010 as a 'provision, criterion or practice') puts a disabled person at a substantial disadvantage, the duty is to take such steps as it is reasonable to have to take to avoid the disadvantage.
- where a physical feature puts a disabled person at a substantial disadvantage, the duty is to take such steps as it is reasonable to have to take to avoid the disadvantage.
- where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage, the duty is to take such steps as it is reasonable to have to take to provide the auxiliary aid.

This means that the education provider must undertake an assessment of the young person's needs and what detriment is being caused to them by the relevant policy or physical feature or the failure to provide the relevant aid.

In deciding whether an adjustment is reasonable, the educational body can take into account the cost of the adjustment sought, the organisation's resources and size and the availability of financial support.

Other duties under the Equality Act 2010 include a prohibition on direct discrimination (refusing to provide a service because the person is disabled) and on treating a person less favourably because of a reason connected with their disability without justification (described as 'discrimination arising from disability').

The Role of the Designated Medical / Clinical Officer

The Code of Practice at paragraph 3.45 states that a Designated Medical Officer (DMO) should be appointed to support the CCG in meeting its statutory responsibilities for children and young people with SEN and disabilities.

The role of the DMO is to:

- act as a point of contact for local authorities, schools and colleges when notifying parents and local authorities about children and young people they believe have, or may have, SEN or a disability, and when seeking advice on SEN or disabilities;
- act as point of contact for local authorities, schools and colleges seeking health advice;
- support schools with their duties to pupils under Supporting Pupils with Medical Conditions guidance
- ensuring that assessments, planning and health support is carried out within CCGs. The DMO will not routinely carry out the assessments themselves but ensure they are done.

The person in this role should have an appropriate level of clinical expertise and links with other professionals to enable them to exercise their duties in relation to children and young adults with EHC plans from the age of 0 to 25 in a wide range of educational institutions.

Factsheet #15: SEN Support – Early Years

Under the Children and Families Act, the current approaches of 'early years action' and 'early years action plus' will be abolished and replaced with a graduated approach to identifying and supporting pupils and students with SEN but who do not require an EHC plan, known as "SEN support".

This factsheet sets out the particular requirements and considerations for SEN support in early years under paragraphs 5.36 to 5.60 of the SEND Code of Practice.

It is important to note at the outset that governing bodies of maintained nursery schools have a specific duty to use their best endeavours to secure that the special educational provision called for by their pupils' special educational needs is made. This duty applies particularly to young children who do not have EHC Plans, as the local authority has an absolute duty to secure the relevant special educational provision for young children with Plans.

Key Principles and Duties

A key principle under the Code is that there should be no delay in making any necessary SEN provision in early years as delay at this stage can give rise to learning difficulty and subsequently to loss of self-esteem, frustration in learning and to behaviour difficulties. The Code states that:

"Early action to address identified needs is critical to the future progress and improved outcomes that are essential in helping the child to prepare for adult life".

Where an early years setting identifies a child as having SEN they should work in partnership with parents to establish the support the child needs;

All settings should adopt a graduated approach with four stages of action: assess, plan, do and review. In early years settings this means:

- **Assess** - in identifying a child as needing SEN support, the early years practitioner, working with the setting SENCO and the child's parents, will have carried out an analysis of the child's needs. This initial assessment should be reviewed regularly to ensure that support is matched to need. Where there is little or no improvement in the child's progress, more specialist assessment may be called for from specialist teachers or from health, social services or other agencies beyond the setting. Where professionals are not already working with the setting, the SENCO should contact them, with the parents' agreement.
- **Plan** - Where it is decided to provide SEN support, and having formally notified the parents, the practitioner and the SENCO should agree, in consultation with the parent, the outcomes they are seeking, the interventions and support to be put in place, the expected impact on progress, development or behaviour, and a clear date for review. Plans should take into account the views of the child. The support and intervention provided should be selected to meet the outcomes identified for the child, based on reliable evidence of effectiveness, and provided by practitioners with relevant skills and knowledge. Any related staff development needs should be identified and addressed. Parents should be involved in planning support and, where appropriate, in reinforcing the provision or contributing to progress at home.
- **Do** - The early years practitioner, usually the child's key person, remains responsible for working with the child on a daily basis. With support from the SENCO, they should oversee the implementation of the interventions or programmes agreed as part of SEN support. The SENCO should support the practitioner in assessing the child's response to the action taken, in problem solving and advising on the effective implementation of support.
- **Review** - The effectiveness of the support and its impact on the child's progress should be reviewed in line with the agreed date. The impact and quality of the support should be evaluated by the practitioner and the SENCO working with the child's parents and taking into account the child's views. They should agree any changes to the outcomes and support for the child in light of the child's progress and development. Parents should have clear information about the impact of the support provided and be involved in planning next steps.

This cycle of action should be revisited in increasing detail and with increasing frequency, to identify the best way of securing good progress. At each stage parents should be engaged with the setting,

contributing their insights to assessment and planning. Intended outcomes should be shared with parents and reviewed with them, along with action taken by the setting, at agreed times.

Transition

SEN support should include planning and preparing for transition, before a child moves into another setting or school. This can also include a review of the SEN support being provided or the EHC plan. To support the transition, information should be shared by the current setting (in agreement with parents) with the receiving setting or school.

Requesting an Education, Health and Care needs assessment

Where, despite the setting having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child, the child has not made expected progress, the setting should consider requesting an Education, Health and Care needs assessment.

Funding for SEN support in the early years

Local authorities must ensure that all providers delivering funded early education places meet the needs of children with SEN and disabled children. In order to do this local authorities should make sure funding arrangements for early education reflect the need to provide suitable support for these children.

Early years providers should consider how best to use their resources to support the progress of children with SEN.

Factsheet #16: SEN Support – Schools

Under the Children and Families Act, the current approaches of 'school action' and 'school action plus' will be abolished and replaced with a graduated approach to identifying and supporting pupils and students with SEN but who do not require an EHC plan, known as "SEN support".

This factsheet sets out the particular requirements and considerations for SEN support in schools under paragraphs 6.44 to 6.99 of the SEND Code of Practice.

It is important to note that governing bodies of mainstream schools, 16 to 19 Academies, alternative provision Academies and pupil referral units have a specific duty to use their best endeavours to secure that the special educational provision called for by their pupils' special educational needs is made. This duty applies particularly to children who do not have EHC Plans, as the local authority has an absolute duty to secure the relevant special educational provision for children with Plans.

Key Principles and Duties

The Code of Practice states that where a pupil is identified as having SEN, schools should take action to remove barriers to learning and put effective special educational provision in place. This SEN support should take the form of a four-part cycle through which earlier decisions and actions are revisited, refined and revised with a growing understanding of the pupil's needs and of what supports the pupil in making good progress and securing good outcomes. This is known as the graduated approach. It draws on more detailed approaches, more frequent review and more specialist expertise in successive cycles in order to match interventions to the SEN of children and young people.

- **Assess** - in identifying a child as needing SEN support the class or subject teacher, working with the SENCO, should carry out a clear analysis of the pupil's needs. This should draw on the teacher's assessment and experience of the pupil, their previous progress and attainment, as well as information from the school's core approach to pupil progress, attainment, and behaviour. It should also draw on other subject teachers' assessments where relevant, the individual's development in comparison to their peers and national data, the views and experience of parents, the pupil's own views and, if relevant, advice from external support services. Schools should take seriously any concerns raised by a parent. These should be recorded and compared to the setting's own assessment and information on how the pupil is developing. This assessment should be reviewed regularly. In some cases, outside professionals from health or social services may already be involved with the child. With the agreement of the parents, these professionals should liaise with the school to help inform the assessments.
- **Plan** - Where it is decided to provide a pupil with SEN support, the parents must be formally notified, and the teacher and the SENCO should agree in consultation with the parent and the pupil the adjustments, interventions and support to be put in place, as well as the expected impact on progress, development or behaviour, along with a clear date for review. All teachers and support staff who work with the pupil should be made aware of their needs, the outcomes sought, the support provided and any teaching strategies or approaches that are required. This should also be recorded on the school's information system.
- **Do** - The class or subject teacher should remain responsible for working with the child on a daily basis. Where the interventions involve group or one-to-one teaching away from the main class or subject teacher, they should still retain responsibility for the pupil. They should work closely with any teaching assistants or specialist staff involved, to plan and assess the impact of support and interventions and how they can be linked to classroom teaching. The SENCO should support the class or subject teacher in the further assessment of the child's particular strengths and weaknesses, in problem solving and advising on the effective implementation of support.
- **Review** - The effectiveness of the support and interventions and their impact on the pupil's progress should be reviewed in line with the agreed date. The impact and quality of the support and interventions should be evaluated, along with the views of the pupil and their parents. This should feed back into the analysis of the pupil's needs. The class or subject teacher, working with the SENCO, should revise the support in light of the pupil's progress and development, deciding on any changes to the support and outcomes in consultation with

the parent and pupil. Parents should have clear information about the impact of the support and interventions provided, enabling them to be involved in planning next steps.

A school should always involve a specialist where a pupil continues to make little or no progress or where they continue to work at levels substantially below those expected of pupils of a similar age despite evidence-based SEN support delivered by appropriately trained staff. The pupil's parents should always be involved in any decision to involve specialists.

Where assessment indicates that support from specialist services is required, it is important that children and young people receive it as quickly as possible. Joint commissioning arrangements should seek to ensure that there are sufficient services to meet the likely need in an area. The Local Offer should set out clearly what support is available from different services and how it may be accessed.

Requesting an Education, Health and Care needs assessment

Where, despite the school having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, the child or young person has not made expected progress, the school or parents should consider requesting an Education, Health and Care needs assessment. To inform its decision the local authority will expect to see evidence of the action taken by the school as part of SEN support.

Funding for SEN support

All mainstream schools are provided with resources to support those with additional needs, including pupils with SEN and disabilities. Most of these resources are determined by a local funding formula, discussed with the local schools forum, which is also applied to local academies. School and academy sixth forms receive an allocation based on a national funding formula.

Schools have an amount identified within their overall budget, called the notional SEN budget. This is not a ring-fenced amount, and it is for the school to provide high quality appropriate support from the whole of its budget.

It is for schools, as part of their normal budget planning, to determine their approach to using their resources to support the progress of pupils with SEN. The SENCO, head teacher and governing body or proprietor should establish a clear picture of the resources that are available to the school. They should consider their strategic approach to meeting SEN in the context of the total resources available, including any resources targeted at particular groups, such as the pupil premium.

Schools are not expected to meet the full costs of more expensive special educational provision from their core funding. They are expected to provide additional support which costs up to a nationally prescribed threshold per pupil per year. The responsible local authority, usually the authority where the child or young person lives, should provide additional top-up funding where the cost of the special educational provision required to meet the needs of an individual pupil exceeds the nationally prescribed threshold.

For pupils with EHC Plans, the legal responsibility for arranging the specified special educational provisions rests with the local authority. In practice this means that unless the school is willing and able to fund the provision the local authority must do so from its own resources.

Factsheet #17: SEN Support – Further Education

The Children and Families Act extends a requirement to provide support for young people whose needs are not so significant as to require an EHC Plan to providers of further education.

This factsheet sets out the particular requirements and considerations for SEN support in further education under paragraphs 7.13 to 7.34 of the SEND Code of Practice.

Key Principles and Duties

Where a student has a learning difficulty or disability that calls for special educational provision, all institutions within the further education sector must use their best endeavours to put appropriate support in place to ensure those needs are met.

Young people should be supported to participate in discussions about their aspirations, their needs, and the support that they think will help them best. Support should be aimed at promoting student independence and enabling the young person to make good progress towards employment and/or higher education, independent living, good health and participating in the community.

Assessing what support is needed

Where a student is identified as having SEN and needing SEN support, colleges should bring together all the relevant information from the school, from the student, from those working with the student and from any screening test or assessment the college has carried out. This information should be discussed with the student. The student should be offered support at this meeting and might be accompanied by a parent, advocate or other supporter. This discussion may identify the need for a more specialist assessment from within the college or beyond.

Where the college decides a student needs SEN support, the college should discuss with the student their ambitions, the nature of the support to be put in place, the expected impact on progress and a date for reviewing the support. Plans should be developed with the student. The support and intervention provided should be selected to meet the student's aspirations, and should be based on reliable evidence of effectiveness and provided by practitioners with the relevant skills and knowledge.

Special educational support might include, for example:

- assistive technology
- personal care (or access to it)
- specialist tuition
- note-takers
- interpreters
- one-to-one and small group learning support
- habilitation /independent living training
- accessible information such as symbol based materials
- access to therapies (for example, speech and language therapy)

Putting in place and reviewing support

Colleges should ensure that the agreed support is put in place, and that appropriately qualified staff provide the support needed. The college should, in discussion with the student, assess the impact and success of the intervention.

The effectiveness of the support and its impact on the student's progress should be reviewed regularly, which may lead to changes in the type and level of their support. The college and the student together should plan any changes in support.

Colleges should revisit this cycle of action, refining and revising their decisions about support as they gain a richer understanding of the student, and what is most effective in helping them secure good outcomes.

Funding for SEN support

All school and academy sixth forms, sixth form colleges, further education colleges and 16-19 academies are provided with resources to support students with additional needs, including young people with SEN and disabilities.

These institutions receive an allocation based on a national funding formula for their core provision. They also have additional funding for students with additional needs, including those with SEN. This funding is not ring-fenced and is included in their main allocation in a 'single line' budget. Like mainstream schools, colleges are expected to provide appropriate, high quality SEN support using all available resources.

It is for colleges, as part of their normal budget planning, to determine their approach to using their resources to support the progress of young people with SEN. The principal or a senior leader should establish a clear picture of the resources available to the college and consider their strategic approach to meeting SEN in the context of the total resources available.

This will enable colleges to provide a clear description of the types of special educational provision they normally provide. This will help parents and others understand what they can normally expect the college to provide for young people with SEN.

Colleges are not expected to meet the full costs of more expensive support from their core and additional funding in their main allocation. They are expected to provide additional support which costs up to a nationally prescribed threshold per student per year. The responsible local authority, usually the authority where the young person lives, should provide additional top-up funding where the cost of the special educational provision required to meet the needs of an individual young person exceeds the nationally prescribed threshold. This should reflect the cost of providing the additional support that is in excess of the nationally prescribed threshold. There is no requirement for an EHC plan for a young person for whom a college receives additional top-up funding except in the case of a young person who is over 19. But where the local authority considers it is necessary for special educational provision to be made through an EHC plan it should carry out an EHC needs assessment. Local authorities should be transparent about how they will make decisions about high needs funding and education placements. They should share the principles and criteria which underpin those decisions with schools and colleges and with parents and young people.

It should be noted that colleges are funded by the Education Funding Agency (EFA) for all 16-18 year olds and for those aged 19-25 who have EHC plans, with support from the home local authority for students with high needs. Colleges cannot charge tuition fees for these students.

Colleges are funded by the Skills Funding Agency (SFA) for all students aged 19 and over who do not have an EHC plan (including those who declare a learning difficulty or disability). Colleges are able to charge fees for these students. However, students who meet residency and eligibility criteria will have access to Government funding.

Factsheet #18: Personal Budgets

Section 49 of the Children and Families Act 2014 provides that a local authority that maintains an EHC plan, or is preparing an EHC plan, for a child or young person **must** prepare a personal budget for him or her if asked to do so by the child's parent or the young person.

What is a Personal Budget?

A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC plan where the parent or young person is involved in securing that provision.

Local authorities must have a policy on Personal Budgets which should form part of the Local Offer and include:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets,
- how that funding will be made available,
- clear and simple statements of eligibility criteria and the decision-making processes.

Mechanisms for delivery of a personal budget

There are four ways in which a personal budget can be delivered:

- Direct payments – where individuals receive the cash to contract, purchase and manage services themselves
- An arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the plan (these are sometimes called notional budgets)
- Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- A combination of the above.

Setting and agreeing the Personal Budget

The child's parent or the young person should be given an indication of the level of funding that is likely to be required to make the provision specified, or proposed to be specified in the EHC plan.

An indicative figure can be identified through a resource allocation or banded funding system but this should only be a starting point and local authorities should be clear that any figure discussed at this stage is indicative amount only. The final allocation of funding budget must be sufficient to secure the agreed provision specified in the EHC plan and must be set out as part of that provision.

The child's parent or the young person should confirm their decision and agreement of the budget. In the event of disagreement regarding the personal budget, the decision cannot be challenged through an appeal to the First Tier Tribunal, however, there are other routes to challenge which are set out in other factsheets.

Local authorities must consider each request for a personal budget on its own individual merits. If a local authority is unable to identify a sum of money they should inform the child's parent or young person of the reasons. For example, the local authority might agree that the provision is needed but may be unable, at that point in time, to disaggregate funding that is currently supporting provision of services to a number of children and young people.

Where a direct payment is proposed for special educational provision, local authorities must secure the agreement of the early years setting, school or college, if any of the provision is to be delivered on that institution's premises.

Where agreement cannot be reached, with the early years setting, school or college, the local authority must not go ahead with the direct payment. However, they should continue to work with the child's parent or young person and the school, college or early years setting to explore other opportunities for the personalisation of provision in the EHC plan.

Scope of personal budgets

The Personal Budget can include funding from education, health and social care. However, the scope of that budget will vary depending on the needs of the individual, the eligibility criteria for the different components and the mechanism for delivery. It will reflect local circumstances, commissioning arrangements and school preference. The scope of Personal Budgets should increase over time as local joint commissioning arrangements provide greater opportunity for choice and control over local provision.

- **Education – Paragraph 9.112 of the Code of Practice states that** the special educational provision specified in an EHC plan can include provision funded from the school's budget share (or in colleges from their formula funding) and more specialist provision funded wholly or partly from the local authority's high needs funding. It is this latter funding that is used for Personal Budgets, although schools and colleges should be encouraged to personalise the support they provide and they can choose to contribute their own funding to a Personal Budget. The Code of Practice states that the extent to which Personal Budgets will include local authority's high needs funding will vary depending on how services are commissioned locally and what schools and colleges are expected to provide as part of the Local Offer.
- **Health -** Decisions in relation to the health element (Personal Health Budget) remain the responsibility of the CCG or other health commissioning bodies. Personal Health Budgets for healthcare are not appropriate for all of the aspects of NHS care an individual may require. In principle, other than excluded services a Personal Health Budget could be given to anyone who needs to receive healthcare funded by the NHS where the benefits of having the budget for healthcare outweigh any additional costs associated with having one. Since April 2014, everyone receiving NHS Continuing Healthcare (including children's continuing care) has had the right to ask for a Personal Health Budget, including a direct payment. From October 2014 this group will benefit from 'a right to have' a Personal Health Budget.
- **Social Care -** The Care Act 2014 mandates from April 2015, for the first time in law, a Personal Budget as part of the care and support plan for people over 18 with eligible care and support needs, or where the local authority decides to meet needs. For children and currently for adults, personal budgets are often used by local authorities without any specific statutory requirements. The legislation underpinning social care personal budgets is that for direct payments (see separate factsheet).

Local authority commissioners and their partners should seek to align funding streams for inclusion in Personal Budgets and are encouraged to establish arrangements that will allow the development of a single integrated fund from which a single Personal Budget, covering all three areas of additional and individual support, can be made available. EHC plans can then set out how this budget is to be used including the provision to be secured, the outcomes it will deliver and how health, education and social care needs will be met.

Factsheet #19: Direct Payments

A direct payment is a mechanism for delivery of a personal budget.

A direct payment is a cash payment made directly to the child's parent, the young person or their nominee, allowing them to arrange provision themselves. As such, a direct payment is the mechanism by which funds identified for the child or young person in a personal budget can be transferred to the parents or young person.

Direct Payments must be set in every case at a level that will secure the provision specified in the EHC plan. If a direct payment is not set at a suitable level, it must be reviewed and adjusted. Detailed arrangements for direct payments should be set out in section J of the EHC plan.

In addition to the right to request a personal budget, a child's parent or a young person may make a request to a local authority for direct payments at any time during the period in which:

- (a) the draft EHC plan is being prepared;
- (b) the EHC plan is being reviewed.

Where a request for direct payments has been made, a local authority must consider that request.

Direct payments for special educational provision, health care and social care provision are subject to separate regulations. These are:

- The Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009 (social care – these will be replaced by those made under the Care Act 2014)
- The National Health Service (Direct Payments) Regulations 2013 (health)
- The Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014 (education)

Local authorities must offer direct payments for social care services, subject to minimum requirements generally concerning the ability of the parent or young person to manage the funds effectively. See below for circumstances in which education direct payments must be offered. For both education and social care the local authority must be satisfied that the person who receives the direct payments will use them in an appropriate way and that they will act in the best interests of the child or young person.

There is currently a power but not a duty to make direct payments for certain health provision. Direct payments for health require the agreement of a Care Plan between the CCG and the recipient. This requirement can be fulfilled by sections G and J of the EHC plan as long as it includes the following information:

- the health needs to be met and the outcomes to be achieved through the provision in the plan
- the things that the direct payment will be used to purchase, the size of the direct payment, and how often it will be paid
- the name of the care co-ordinator responsible for managing the Care Plan
- who will be responsible for monitoring the health condition of the person receiving care
- the anticipated date of the first review, and how it is to be carried out
- the period of notice that will apply if the CCG decides to reduce the amount of the direct payment
- where necessary, an agreed procedure for discussing and managing any significant risk, and
- where people lack capacity or are more vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures

Direct Payments for SEN provision

Specific duties and requirements relating to direct payments for education are set out in the Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014 and are summarised below.

- **Who can direct payments be made to?** A local authority may make direct payments to the child's parent, young person or a person nominated in writing by the child's parent or the young person to receive direct payments on their behalf provided that the intended recipient:

- Appears capable of managing direct payments without assistance or with such assistance as may be available to them;
 - is over compulsory school age;
 - does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
 - is not an excluded person.
- **When can local authorities make direct payments?** A local authority may only make direct payments where they are satisfied that:
 - the recipient will use them to secure the agreed provision in an appropriate way;
 - where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;
 - the direct payments will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and
 - securing the proposed agreed provision by direct payments is an efficient use of the authority's resources.
- **What if a local authority decides not to make a direct payment?** The local authority must inform the child's parent or the young person of its decision, the reasons for the decision, and the right to request a review of the decision. Where requested to do so, the local authority must review its decision, considering any representations made by the child's parents or the young person. They must then inform in writing the outcome of the review, giving reasons.
- **Will there be any conditions on making direct payments?** A local authority must not make direct payments unless the local authority has provided written notice to the recipient, specifying:
 - the name of the child or young person in respect of whom direct payments are to be made;
 - the goods or services which are to be secured;
 - the proposed amount;
 - any conditions on how direct payments may be spent
 - the dates for payments into the bank account approved by the local authority.

Upon receipt of the written notice, the direct payments recipient must confirm in writing that they agree to receive the direct payments in accordance with any condition and that they will notify the local authority of any changes in circumstances which might affect the need for the agreed provision. They must also agree to use the bank account solely for the purposes of managing direct payments (including for health and social care). The recipient must keep a record of the money paid in and withdrawn and provide information to the local authority regarding the account and agreed provision on request.

- **Is permission of the school required?** A local authority may not make direct payments in respect of any goods or services which are to be used or provided in an early years setting, school or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.
- **How is the amount of direct payments calculated?** The local authority must ensure that the amount of direct payments is sufficient to secure the agreed provision. The local authority may increase or reduce the amount of direct payments provided that the authority is satisfied that the new amount is sufficient to secure the agreed provision.
- **What happens if the direct payments are not used?** The local authority may reduce the amount of direct payments where payments remain unused and the local authority considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.
- **How will direct payments be monitored and reviewed?** The local authority must monitor the use of direct payments by the recipient and must review the making and use of direct payments—

- at least once within the first three months of direct payments being made; and
 - when conducting a review or a re-assessment of an EHC plan under section 44 of the 2014 Act.
- **What if the local authority wants to reduce the amount of direct payments?** Where a local authority decides to reduce the amount of direct payments it must provide reasonable notice to the recipient, and must set out in the notice the reasons for its decision. The local authority must reconsider its decision, where requested to do so by the recipient. When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons of its decision following the reconsideration.
 - **Can a local authority stop making direct payments?** A local authority **must** stop making direct payments if:
 - the recipient has notified the local authority in writing that he or she no longer consents to receive the direct payments;
 - the recipient ceases to be a person to whom a direct payments may be made;
 - following a review, it appears to the local authority that—
 - the recipient is not using the payment to secure the agreed provision;
 - the agreed provision can no longer be secured by means of direct payments;
 - at any point the local authority becomes aware that the making of direct payments is—
 - having an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; or
 - no longer compatible with the authority's efficient use of its resources;

A local authority **may** stop making direct payments if the recipient has failed to comply with any of the conditions set out above.

Where a local authority decides to stop making direct payments, the local authority must first give notice in writing to the recipient setting out the reasons for its decision. The local authority must reconsider its decision where requested to do so by the recipient. When conducting its reconsideration, the local authority must consider the representations made by the recipient and must then provide written reasons of its decision following the reconsideration to the recipient. The local authority may not be required to undertake more than one reconsideration of its decision following the reconsideration.

Any right or liability of the recipient to a third party acquired or incurred in respect of a service secured by means of direct payments transfers to the local authority when the local authority stops making direct payments.

- **What happens on transition?** When a child in respect of whom direct payments are being made becomes a young person, the local authority must take reasonable steps to ascertain whether the young person has capacity to consent to receive direct payments and if so, whether they consent. Where the young person notifies the local authority in writing that they do not consent to the making of direct payments, the authority must stop direct payments as soon as reasonably practicable.

Further information in relation to direct payments is set out in Chapter 9 of the SEND Code of Practice.

Factsheet #20: Annual Reviews and Re-assessments

This factsheet aims to provide with an overview of the annual review process for EHC plans, including how amendments should be made to the EHC plan.

When must EHC plans be reviewed?

Section 44 of the Children and Families Act 2014 requires local authorities to review EHC plans every 12 months starting on the date the plan was first made.

Regulation 18 of the Special Educational Needs and Disability Regulations 2014 provides further specific circumstances where plans must be reviewed:

- Where a child or young person is within 12 months of a transfer between phases of education, the local authority must review and amend the plan to include the placement the child or young person will attend following transfer no later than:
 - 31 March 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.
- Where it is proposed that a young person transfers from one post-16 institution to another post-16 institution at any other time, the local authority must review and amend the EHC plan at least five months before that transfer takes place so that it names the post-16 institution that the young person will attend following the transfer.
- Where a child or young person is due to transfer from a secondary school to a post-16 institution on 1 September 2015 the local authority must amend and review the EHC plan before 31 May 2015. This provision reflects the transitional arrangements for the first year under the new Act.

Local authorities should consider reviewing an EHC plan for a child under five at least every three to six months to ensure that the provision continues to be appropriate. Such reviews would be in addition to the annual review and are not subject to the same requirements regarding invitations and obtaining advice. However, the child's parent must be fully consulted on any proposed changes to the EHC plan and made aware of their right to appeal to the Tribunal – both if they do not agree with the proposed changes and if no changes are made.

Conduct of reviews

When undertaking a review of an EHC plan, a local authority must:

- consult the child and the child's parent or the young person, and take account of their views, wishes and feelings;
- consider the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether these outcomes remain appropriate for the child or young person; and
- consult the school or other institution attended by the child or young person.

Where the child or young person attends a school, the local authority can require the head teacher or principal of the school to arrange and hold the meeting. The local authority can ask a FE College to convene the review.

The following persons must be invited to attend with at least 2 weeks' notice:

- the child's parent or the young person;
- the provider of the relevant early years education or the head teacher or principal of the school, post-16 or other institution attended by the child or young person;
- an officer of the authority who exercises the local authority's education functions in relation to children and young people with special educational needs;
- a health care professional identified by the responsible commissioning body to provide advice about health care provision in relation to the child or young person;

- an officer of the authority who exercises the local authority's social services functions in relation to children and young people with special educational needs.

The person arranging the review meeting **must** obtain advice and information about the child or young person from the persons invited to attend and must circulate it to those persons at least two weeks in advance of the review meeting.

The child or young person's progress towards achieving the outcomes specified in the EHC plan must be considered at the meeting. This requirement is particularly important for young people aged over 18 as the educational and training outcomes will determine whether the EHC plan ceases.

When the child or young person is in or beyond year 9, the review meeting must consider what provision is required to assist the child or young person in preparation for adulthood and independent living.

What happens after the Review?

The head teacher or principal of the school or educational institution must prepare a written report following the review which sets out any recommendations or amendments to be made to the EHC plan. The report must include the advice and information obtained prior to the annual review.

The report must be prepared within two weeks of the review meeting and sent to everyone who was invited to attend / prepared advice.

When the local authority receives the report they must decide whether to:

- continue to maintain the EHC plan in its current form;
- amend it; or
- cease to maintain it.

They must notify the child's parent or the young person of their decision within four weeks of the review meeting and inform them of:

- their right to appeal;
- the time limits for doing so;
- the information concerning mediation; and the availability of:
 - disagreement resolution services; and
 - information and advice.

Making amendments to the EHC plan

Where a local authority decides to make amendments following the annual review it must:

- send the child's parent or the young person a copy of the EHC plan together with a notice specifying the proposed amendments, together with copies of any evidence which supports those amendments;
- provide the child's parent or the young person with notice of their right request that a particular school is or other institution is named in the plan;
- give them at least 15 days, beginning with the day on which the draft plan was served, in which to:
 - make representations about the content of the draft plan;
 - request that a particular school or other institution be named in the plan;
 - request a meeting with an officer of the local authority, if they wish to make representations orally.
- advise them where they can find information about the schools and colleges that are available for the child or young person to attend.

The local authority must then send the finalised EHC plan to the child's parent or young person, the governing body or principal of the school or educational institution and the CCG, as soon as possible and in any event within 8 weeks of first sending the plan and proposed amendments to the parent and notify them of:

- their right to appeal;

- the time limits for doing so;
- the information concerning mediation; and the availability of:
 - disagreement resolution services; and
 - information and advice.

Re-assessments

Provided that an assessment has not been undertaken within the previous 6 months, and the local authority considers it is necessary, the local authority must carry out a re-assessment of the educational, health care and social care needs of a child or young person for whom it maintains an EHC plan if a request is made to it by:

- the child's parent or the young person;
- governing body, proprietor or principal of the school, post-16 institution or other institution which the child or young person attends; or
- The responsible CCG for that child or young person.

The local authority may also secure a re-assessment of those needs at any other time if it thinks it necessary.

The local authority must notify the child's parent or the young person whether or not it is necessary to reassess the child or young person within 15 days of receiving the request to re-assess. Where the local authority does not consider it is necessary to re-assess they must notify them of:

- their right to appeal;
- the time limits for doing so;
- the information concerning mediation; and the availability of:
 - disagreement resolution services; and
 - information and advice.

Amending an EHC plan without a review or reassessment

If, at any time, a local authority proposes to amend an EHC plan, it shall proceed as if the proposed amendment were an amendment proposed after a review, with parents or young people having the same appeal rights and entitlement to notification of these.

Further information regarding reviews and re-assessments is set out at paragraphs 9.166 to 9.210 of the SEND Code of Practice. A separate factsheet is also available which looks specifically at preparing for adulthood.

Factsheet #21: Preparing for Adulthood

The Children and Families Act 2014 sets out a range of duties towards young people preparing for adulthood. These include the provision of information, advice and support, working together to achieve outcomes and strategic joint commissioning through the Local Offer which are looked at in separate factsheets.

This factsheet aims to provide an overview of key requirements specifically in relation to preparing for adulthood set out in Chapter 8 of the Code of Practice and in particular:

- Preparing for adulthood reviews
- Support for young people aged 16-17 years and decision making
- Planning transition into post 16 education and training and advice on careers and courses
- Young people aged 19-25 and transition to adult services

Preparing for adulthood reviews

From the annual review of the EHC plan in Year 9, and at each review thereafter, local authorities must include a focus on preparing for adulthood and transition planning must be incorporated in the EHC plan and set out clear outcomes to prepare young people for adulthood.

Planning should include:

- Support to prepare for higher education and/or employment;
- Support to prepare for independent living – this should include ascertaining where the child or young person would like to live (it may be that they do not wish to move into independent living) and local housing options should be explained;
- Support in maintaining good health – including effective planning for transition of health services;
- Support in participating in society – including mobility and transport and developing and maintaining relationships and friendships.

Reviews should identify what support the child or young person requires to achieve the outcomes and aspirations specified in their EHC plan and to prepare them for adult life.

Support for Young people aged 16-17 years and decision making

When a young person reaches the end of compulsory school age, the following rights to make requests and decisions under the Act will apply directly to them rather than their parents:

- the right to request an assessment for an EHC plan (which they can do at any time up to their 25th birthday)
- the right to make representations about the content of their EHC plan
- the right to request that a particular institution is named in their EHC plan
- the right to request a Personal Budget and direct payments for elements of an EHC plan
- the right to appeal to the First-tier Tribunal (SEN and Disability) about decisions concerning their EHC plan

However, local authorities and educational institutions should still involve parents in discussions and it is anticipated that in many cases they will continue to support young people in making decisions, provided that young person is happy for them to do so.

These are rights subject to the young person having capacity to make the decision applying the principles under the Mental Capacity Act 2005. The five key principles under the Mental Capacity Act are:

- It should be assumed that everyone can make their own decisions unless it is proved otherwise
- A person should have all the help and support possible to make and communicate their own decision before anyone concludes that they lack capacity to make their own decision
- A person should not be treated as lacking capacity just because they make an unwise decision

- Actions or decisions carried out on behalf of someone who lacks capacity must be in their best interests
- Actions or decisions carried out on behalf of someone who lacks capacity should limit their rights and freedom of action as little as possible

If a young person lacks capacity (applying the test in section 2 of the MCA 2005) to make a particular decision, that decision can be taken by a representative on their behalf. The representative will be a deputy appointed by the Court of Protection, or a person who has a lasting or enduring power of attorney for the person. It will be relatively rare for a disabled young person to have a representative.

The Special Educational Needs and Disability Regulations 2014 provide that where the young person does not have a representative, the decision can be taken by the young person's parent on their behalf. This is a specific provision which relates to particular decisions which need to be made under Part 3 of the Children and Families Act 2014 and does not extend to other decisions under the Mental Capacity Act 2005. In effect, this gives parents of disabled young people who lack capacity greater rights to make decisions about their education than in other areas of their lives.

Planning transition into post 16 education and training and advice on careers and courses

Transition planning and consideration of post 16 education should start in Year 9 and the plans should be reviewed and made more detailed at each review.

Support during this time should include access to:

- Independent Careers Advice
- High Quality Study programmes
- Pathways to employment – to include access to work-based learning such as apprenticeships, traineeships and supported internships

Young people with EHC plans should have access to packages of support across five day weeks which should include a full package of provision and support across education, health and care and include activities such as volunteering or work experience.

Transition Assessments

Once the Care Act 2014 comes into force in April 2015, local authorities must carry out transition assessments for adult care and support where there is significant benefit to a young person or their carer in doing so and they are likely to have needs for care and support after turning 18.

Transition assessments must involve the young person and anyone else they want to involve in the assessment. They must also include the outcomes, views and wishes that matter to the young person – much of which will already be set out in their EHC plan.

Transition assessments for adult care and support must consider:

- current needs for care and support
- whether the young person is likely to have needs for care and support after they turn 18, and
- if so, what those needs are likely to be and which are likely to be eligible needs.

Local authorities can meet their statutory duties around transition assessment through an annual review of a young person's EHC plan that includes the above elements.

Having carried out a transition assessment, the local authority must give an indication of which needs are likely to be regarded as eligible needs so the young person understands the care and support they are likely to receive once children's services cease. Where a young person's needs are not eligible for adult services, local authorities must provide information and advice about how those needs may be met and the provision and support that young people can access in their local area. Local authorities should ensure this information is incorporated into their Local Offer.

Where a transition assessment identifies needs that are likely to be eligible, local authorities should consider providing an indicative Personal Budget so that young people have an idea of how much funding might be available to meet their care and support needs when they enter the adult system.

Continuity of provision

The Code of Practice makes clear that under no circumstances should young people find themselves suddenly without care and support as they make the transition to adult services.

Under the Care Act 2014, from April 2015 local authorities must continue to provide a young person who is receiving children's social care services with children's services until they reach a conclusion about their situation as an adult, so that there is no gap in provision. Reaching a conclusion means that, following a transition assessment or an adults' needs assessment for care and support, the local authority concludes that the young person:

- does not have needs for adult care and support, or
- does have such needs and begins to meet some or all of them, or
- does have such needs but decides it is not going to meet them (either because they are not eligible needs or because they are already being met)

Section 50 of the Children and Families Act 2014 provides that the local authority can continue to provide care and support from children's services after the young person has turned 18. This can continue until the EHC plan is no longer maintained but when the EHC plan ceases or a decision is made that children's services are no longer appropriate, the local authority must continue to provide children's services until they have completed the 'relevant steps' set out above.

Factsheet #22: Implementation and Transitional arrangements

The first key date for implementation of the new system created by the Children and Families Act 2014 is **1 September 2014**. From that date, no new assessments for statements or learning difficulty assessments will be offered by local authorities. All new requests for an assessment from this date will be considered under the new legislation and those requiring support will receive it through an EHC plan.

The reformed mediation and appeals process, the option of a personal budget for those with an EHC plan and each local authority's initial "Local Offer" must also be available from this date – see separate factsheets on this issue.

However there is not an instant transfer to the new system in every respect from 1 September 2014. Given the size of the task, it is necessary for a phased process of transition to be in place. This factsheet summarises the key elements of this transitional process from the old system to the new system.

Importantly, all local authorities must have a local transition plan in place by 1 September 2014 – see further below.

When will transfer take place?

Statistics published by the Department of Education estimated that in January 2013, there were 229,390 pupils (2.8%) across all schools in England had statements of SEN.

Whilst there may understandably be an eagerness to ensure that children and young people benefit from the new system as soon as possible, this must be balanced with ensuring that new assessments and plans are of good quality and are not rushed through.

The government has published advice on implementation setting out the timeframes over which transfer should take place:

- Between **1 September 2014 and April 2018** all children and young people with **statements of SEN** must transfer to the new system following a process called 'transfer review'
- As young people with **learning difficulty assessments** are considered to have fewer rights and less protection under existing laws they are a priority group for transfer to the new system and the final date by which they should have EHC plans in place is **1 September 2016**. **Young people with LDAs will not go through the 'transfer review' process but will need to make a new request for an EHC needs assessment under the new legal framework from 1 September.**

Between 1 September 2014 and 1 September 2015, local authorities **must** transfer children and young people with statements to the new arrangements prior to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship. This **must** be done by 31 May 2015.

In addition, local authorities should prioritise transfer for the following groups of children and young people with statements in 2014/15:

- those transferring from early years settings to school (including where the child remains at the same institution);
- those transferring from an infant to a junior school;
- those transferring from primary to middle school;
- those transferring from primary to secondary school;
- those transferring from middle to secondary school;
- those transferring from mainstream to a special school or vice versa;
- children in year 9;
- all children in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities **must** take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);

- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014,
- 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 or Learning Difficulties Assessment (they must be transferred to EHC plans by 30 September 2015 if their direct payments are to continue).

Between 1 September 2015 and 1 April 2018, local authorities must transfer children and young people with statements to the new arrangements in year 9 and prior to them transferring from:

- early years settings to school (including where the child remains at the same institution);
- an infant to a junior school;
 - primary to middle school;
 - primary to secondary school;
 - middle to secondary school.
- transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship;
- mainstream to a special school or vice versa.

In addition to complying with the requirements set out above, local authorities will be expected to prioritise transfer for the following groups of children and young people from a September 2016 to 31 March 2018:

- all children with statements in year 6, not just those who are transferring from one institution to another;
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014, and
- those moving between one local authority and another.

Where there is a pending Tribunal appeal under the Education Act 1996 which was issued prior to 1 September 2014, the local authority cannot commence the transfer until the Tribunal has concluded. Where the appeal is against a decision not to assess, where the Tribunal upholds the appeal rather than orders that an assessment under the 1996 Act is conducted, the Tribunal will have a power to require the local authority to carry out an EHC needs assessment.

The legal force of existing statements and learning difficulty assessments remains as at present until all children and young people have completed the transition to EHC plans.

The government has made clear that they expect that all children and young people who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan – no child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing. The same applies to young people with learning difficulty assessments.

The Local Transition Plan

To help parents understand what is happening locally, each local authority must publish by 1 September an initial version of their “Local Transition Plan” which must include:

- The numbers of children and young people expected to transfer each year during transition
- The order in which children and young people will be transferred
- Information for young people in further education and training who receive support as a result of a LDA
- Details of the transfer review process
- Sources of independent information and advice

The transfer review process for children and young people with Statements of SEN

In the academic year of transfer to the new system, the annual review of the statement must be replaced with a "Transfer Review". Parents and schools must receive 2 weeks' notice of the transfer review commencing.

The local authority must maintain the child or young person's statement until the transfer review has taken place. However, from beginning of transfer review, rights of appeal on statements cease and parents/young people must use rights under new system.

In advance of the transfer review, the local authority must undertake an Education, Health and Care Needs Assessment (EHC needs assessment).

An EHC needs assessment should be a joined up assessment considering the child or young person's health, social care and special educational needs. In carrying out assessments and making EHC plans, local authorities must have regard to:

- The views, wishes and feelings of the child, young person or parent
- The importance of their full participation in decisions
- The importance of their being provided with the necessary information and support to participate
- The need to support the child or young person to achieve the best educational or other outcomes.

Local authorities should not seek advice if an advice has already been provided and both the local authority and parents or young person are satisfied it is sufficient.

Following the EHC needs assessment, the local authority must decide whether an EHC plan is necessary and if so issue a draft plan for parents or the young person to provide comments on. The EHC plan must be finalised within 14 weeks of the start of the transfer review (although note exceptions).

If the local authority decides not to secure an EHC plan following the transfer review:

- they must notify parents or young person within 10 weeks of start of review
- the existing statement must remain in place until the outcome of the Tribunal appeal.

Arrangements for transfer of young people with learning difficulty assessments

Requests for assessment for young people who are receiving additional support as a result of learning difficulty assessments must be dealt with as if they are a new entrant into the system. From 1 September 2014, local authorities should take all reasonable steps to inform young people in further education or training with learning difficulty assessments of their options and provide information on obtaining an EHC needs assessment and plan.

Local authorities have 6 weeks to respond to request for an EHC needs assessment and must make a plan, where necessary, within 20 weeks of the original request.

There is a right of appeal if the local authority decides not to issue a EHC plan to a young person who previously has a learning difficulty assessment, as there is in every case.

Where the local authority decides that it is not necessary to make an EHC plan, the young person should continue to receive provision as set out in their learning difficulty assessment pursuant to s139A of the Learning and Skills Act 2000 as planned.

Arrangements for transfer of children with non statutory EHC plans issued before 1 September 2014

It is understood that there are approximately 2500 children and young people across 31 pathfinder authorities who currently have non statutory EHC plans that were issued as part of the government's pilot scheme.

Local authorities should treat these existing non statutory EHC plans as if they were a statutory document BUT not all non-statutory plans will be suitable for transfer and some may require additional assessment information and/or restructuring to comply with the new Act and Code of Practice:

Where a non-statutory EHC plan rather than a statement has been issued in advance of 1 September the local authority will become responsible for the child or young person under the Children and Families Act 2014 on 1 September. Local authorities will, therefore, be required to determine whether a statutory EHC needs assessment is necessary for these children and young people.

If the child also has a statement, they should be transferred in 2014/2015 in accordance with the transfer review process outlined above and will have same rights as other children with statements until transferred.

What if the assessment is already in progress on 1 September 2014?

Where a local authority is considering a request for an assessment or re-assessment on 1 September 2014, the Education Act 1996 (i.e. SEN assessment for a statement) applies unless the local authority and the child's parents or the young person agree to treat it as a request for an EHC needs assessment.

Where a local authority is conducting a Learning Difficulty Assessment on 1 September 2014, the local authority may issue an EHC plan with the young person's agreement.

Where local authorities continue to assess and issue a statement under the Education Act 1996, they should anticipate the requirements for EHC needs assessments to reduce burden of transfer reviews.

If the child or young person has been assessed under Education Act 1996, the statement should comply with requirements under Education Act unless the local authority considers the assessment is sufficient to produce an EHC plan and parent or young person agrees.

Parents of children with statements will continue to be able to request re- assessments under the 1996 Act rather than the 2014 Act during the transition period. However, where a re-assessment is needed and the local authority is able to, they can conduct an EHC needs assessment and transfer the child/young person to the new system.

Introduction of SEN Support

The new SEN Support arrangements come into force from 1 September 2014. All education settings should review children and young people currently on school action and school action plus (and equivalents) and put in place SEN Support. This will include setting clear targets for progress, agreeing what support should be provided and track how it is working. Special educational provision should continue for children and young people who need it. It may change only if: their learning needs have changed; or the educational setting has changed its universal offer.

It is anticipated that most children on School Action / School Action Plus will have transferred to the SEN support category by spring 2015, with all pupils moving to SEN support by September 2015.

Further information on transitional arrangements, including in the circumstances when an appeal to the First Tier Tribunal is already underway, can be found in the DfE guidance 'Transition to the new 0-25 special educational needs and disability system'.

Factsheet #23: Mediation

The Children and Families Act 2014 provides new duties and rights in relation to mediation.

Mediation is a statutory service commissioned by local authorities which is designed to help settle disagreements between parents or young people and local authorities over EHC needs assessments and plans. Parents and young people can use mediation before deciding whether to appeal to the First-Tier Tribunal about decisions on assessment or the special educational element of a plan.

Mediation can also consider health and social care aspects of the plan although it is not possible to appeal to Tribunal regarding these parts.

From 1 September 2014, all local authorities are required to have in place arrangements for access to high quality mediation. Mediators must have sufficient knowledge of the legislation relating to special educational needs, health and social care to be able to conduct the mediation.

Requirement to consider mediation

Parents and young people who wish to make an appeal to the Tribunal (see paragraphs 11.39 to 11.52) may do so only after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement.

This requirement does not apply where the appeal is solely about the name or type of the school, college or other institution named on the plan.

Where a parent or young person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months after written notice of the local authority's decision was sent, and inform the mediation adviser that he or she wishes to appeal and inform the mediation adviser whether they wish to pursue mediation.

Mediation Advice

Upon contacting the mediation advisor, they must explain to the parent or young person:

- that mediation is an informal, non-legalistic, accessible and simple disagreement settlement process run by a trained third party and designed to bring two parties together to clarify the issues, and reach a resolution
- that the parent or young person's use of mediation is voluntary
- the timescales which must be met and the certificate, and
- that the local authority will pay reasonable travel expenses and other expenses to the parent or young person and witnesses taking part in mediation

No-one should be pressured into going to mediation. The requirement under the Act is simply to obtain mediation advice.

If, on receiving that advice, the parent or young person does not wish to pursue mediation, they should inform the mediation adviser who must issue a mediation certificate within 3 working days. The parent or young person can then proceed with their Tribunal appeal.

Where the parent or young person decides that they do wish to go ahead, the local authority must arrange for mediation within 30 days.

Mediation in relation to health care issues

Where a parent or young person has informed the local authority that he or she wishes to pursue mediation and the mediation issues relate solely or in part to the healthcare provision the local authority must notify the CCG within 3 working days of what the mediation issues are.

Where the mediation issues relate solely to health care provision, the responsible CCG must arrange for mediation between it and the child's parent or young person within 30 days from the date on which it receive notification from the local authority.

Attendance at the mediation

The Special Educational Needs and Disability Regulations 2014 says that the following individuals may attend mediation:

- the parties to the mediation;
- any advocate or other supporter that the child's parent or the young person wishes to attend the mediation;
- where the child's parent is a party to the mediation, the child (with the agreement of the parent and the mediator);
- where the young person's alternative person is a party to the mediation, the young person (with the agreement of the alternative person and the mediator);
- any other person, with the consent of all of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.

Where the child's parent is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the child about the mediation issues.

The Code of Practice provides guidance on effective mediation and that to work well:

- the mediation session should be arranged, in discussion with the parents or young people, at a place and a time which is convenient for the parties to the disagreement. The body arranging the mediation must inform the parent or young person of the date and place of the mediation at least 5 working days before the mediation.
- the mediator should play a key role in clarifying the nature of the disagreement and ensuring that both sides are ready for the mediation session. The mediator should agree with the parties on who needs to be there.
- the local authority and health commissioner representative(s) should be sufficiently senior and have the authority to be able to make decisions during the mediation session.
- both parties should be open about all the aspects of the disagreement and not hold anything back for a possible appeal to the Tribunal on the SEN aspects of EHC plans.

The Code of Practice states that generally, legal representation should not be necessary at the mediation. However, parents can be legally represented at the mediation if they wish and the mediator agrees.

Where mediation is pursued before making an appeal to the First-tier Tribunal, the mediation adviser must issue a certificate to the parent or young person within 3 working days of the conclusion of the mediation.

Factsheet #24: Appeals to the First-tier (Special Educational Needs and Disability) Tribunal

The First-tier (SEN and Disability) Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people's EHC needs assessments and EHC plans.

It also hears disability discrimination claims against schools and against local authorities when the local authority is the responsible body for a school.

This factsheet aims to provide an overview regarding the Tribunal process.

What can be appealed to Tribunal?

Section 51 of the Children and Families Act 2014 provides that a child's parent or a young person may appeal to the Tribunal in relation to:

- a decision of a local authority not to secure an EHC needs assessment;
- a decision of a local authority, following an EHC needs assessment, not to issue an EHC plan;
- where an EHC plan is maintained for the child or young person:
 - the child's or young person's special educational needs as specified in the plan;
 - the special educational provision specified in the plan;
 - the school or other institution named in the plan, or the type of school or other institution specified in the plan;
 - that no school or other institution is named in the plan;
- a decision of a local authority not to carry out a re-assessment following a request;
- a decision of a local authority not to amend an EHC plan following a review or re-assessment;
- a decision of a local authority to cease to maintain an EHC plan. .

A parent or young person **cannot** appeal the following parts of the EHC Plan to the Tribunal and other remedies should be considered (which are set out in separate factsheets), with specialist advice sought:

- Section C: The child or young person's health needs
- Section D: The child or young person's social care needs
- Section E: The outcomes sought for the child or the young person
- Section G: Health provision
- Section H1 and H2: Social care provision
- Section J: The amount of Personal Budget or any conditions imposed (although the Tribunal can consider appeals which relate to the special educational provision that will be delivered via a Personal Budget).

There are new duties under the Act to consider mediation before an appeal can be lodged. These requirements are set out in detail in a separate factsheet.

What are the time limits for appeal?

The deadline for registering an appeal with the Tribunal is:

- two months from the date of the local authority sent the notice containing a decision which can be appealed or;
- one month from the date of a mediation certificate which has been issued following the mediation or the parent or young person being given mediation information, whichever is the later.

The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcome of any mediation. Parents and young people will not be disadvantaged at the Tribunal if they have chosen not to go to mediation.

Claims for disability discrimination must be made within six months of the alleged instance of discrimination.

Time limits for all claims to the Tribunal can be extended but only if the Tribunal considers it appropriate to do so. However, there must be good reason and parents and young people should always aim to lodge within the time limits.

Given these limits parents and young people should seek advice about a potential Tribunal appeal as quickly as possible.

Who can appeal to the Tribunal about EHC needs assessments and plans?

The following individuals can appeal to the Tribunal:

- Children from 0 to the end of compulsory schooling - Parents
- Young people over compulsory school age until they reach age 25 – Young People where they have capacity to make the decision and their representative or parents where they lack capacity.

Young people can register an appeal in their name but can also have their parents' help and support if needed.

What decisions the Tribunal can make?

The Tribunal has a range of powers to make certain decisions in relation to appeals. These include:

- dismissing the appeal;
- ordering the local authority to carry out an assessment,
- ordering the local authority to make and maintain an EHC plan
- ordering the local authority to amend the EHC plan.
- ordering the local authority to reconsider or correct a weakness in the plan, for example, where necessary information is missing.

Local authorities have time limits within which to comply with decisions of the Tribunal (see the Special Educational Needs Regulations 2014).

In making decisions about whether the special educational provision specified in the EHC plan is appropriate, the Tribunal should take into account the education and training outcomes specified in Section E of the EHC plan and whether the special educational provision will enable the child or young person to make progress towards their education and training outcomes. The Tribunal can consider whether the education and training outcomes specified are sufficiently ambitious for the child or young person. When the Tribunal orders the local authority to reconsider the special educational provision in an EHC plan, the local authority should also review whether the outcomes remain appropriate.

In the event that a Tribunal appeal is considered necessary, specialist advice and information should always be sought. Legal aid may be available and a separate factsheet has been produced which provides further information on legal aid.

Factsheet #25: Making complaints

This factsheet aims to provide an overview of the process of making complaints in relation to:

- Education
- Health
- Social care

It does not intend to replace legal advice and parents and young people should consult with a specialist advisor if they consider that their legal rights are being breached.

Further information on complaints procedures should be set out in the Local Offer.

Complaints about social care:

Complaints are most commonly made on behalf of a child or young person by their parent, carer or a representative. However, children and young people can make comments and complaints in their own right.

There is separate local authority complaints procedures depending on whether the complaint is made in relation to a child's social services provision or any other matter – for example adult social care.

- **Complaints on behalf of a child or young person** – local authorities have a statutory duty to have a complaints procedure for children's services which involves three stages:
 - **Stage one – Local Resolution.** Parents, children or young people should start by directly contacting the Manager of the service responsible either verbally, electronically or in writing. The local authority must make a written record of a verbal complaint and must also provide a copy. Complaints should be acknowledged within three working days of receipt and a response should be made within 10 working days of receipt. If it is not possible to give a full response in this time it is possible to extend this timescale by 10 days.
 - **Stage two – Investigation.** Complaints can be escalated to stage two if stage one has not resolved the matter. This should be requested within 20 working days of receiving the stage one response. This stage involves an independent investigation, usually by an external investigating officer who will meet with the parent, young person or child to better understand the issues and expected outcomes. They will write a report with their recommendations to the Head of Service who will adjudicate the case. A response at this stage should be made within 25 working days but this may extend to 65 working days. This is because the investigation process at this stage is more formal.
 - **Stage three – Review Panel.** Anyone who is not satisfied with the stage two response has the right to request a 'review panel' which must be held within 30 working days of receiving the request. The panel must send their report along with their recommendations to the local authority within 5 working days who then have 15 days to respond.
- **Local authority complaints process for adult social care** – currently, if the complaint is not about children's social care provision, for example, it relates to a decision regarding adult social care, then the law does not prescribe that a local authority must follow a particular process and each local authority will have its own complaints procedure which can be requested in writing. However, the law does require the following:
 - The timescale for acknowledging a complaint should usually be three working days after the date the complaint is received.
 - The complainant must be given the opportunity to discuss the matter complained of.
 - The complaint must be investigated in a manner appropriate to resolve it speedily and efficiently.

- Once the complaint has been investigated, the complainant must be sent a response which explains the investigation process, the conclusion reached and any remedial action the local authority proposes to take.
- The response must also inform the complainant of their right to refer the matter to the Local Government Ombudsman.
- There is a maximum response period of 6 months from the date the complaint was received, which can be extended by agreement.

From 2016 there will be a new system for appealing local authority decisions regarding adult social care made under part 1 of the Care Act 2014.

Complaints to the Local Government Ombudsman

Anyone who feels that their complaint has not been resolved to their satisfaction by the local authority can make a complaint to the Local Government Ombudsman. This must be made within 12 months of the date of the incident or matter being raised as the subject of complaint.

The 12 month time limit may be extended with good reason providing it is still possible to efficiently investigate the complaint.

The local authority must have been given the opportunity to resolve the matter first and there must not be any legal action in process in relation to the complaint. However, the Ombudsman will consider a complaint without the completion of the full complaints procedure if the matter is urgent, there has been unreasonable delay or there has been a complete breakdown of trust.

The Ombudsman can also only investigate complaints resulting in maladministration that has resulted in injustice (e.g. discrimination, unnecessary delay, failure to abide by fair procedure). In addition, the Ombudsman may not investigate a complaint if they consider that there is an alternative remedy, such as a legal challenge by way of judicial review.

The Local Government Ombudsman has a number of powers which include:

- The ombudsmen are allowed access to information held by the local authority.
- The ombudsman can make recommendations to the local authority to put things right – this can include an award of compensation or an apology, or to put in place different policies and practices.

Because complaints can be dealt with in a variety of ways, there is an estimated timescale of three months to a year for a complaint resolution, depending on the complexity of the case.

Complaints about health services:

Complaints to the NHS can be made in relation to all health services which a child or young person receives under an EHC plan.

A complaint may be made to a service provider (for example, the NHS Hospital Trust), where there are concerns about the service provided, or to the CCG, where there is a concern about the way in which a service is commissioned or provided, and this might include concerns about the appropriateness of the services in an EHC plan.

Support in making a complaint about health services can also be provided by NHS Complaints Advocacy Services (each local authority will have details of services in their own local areas).

If a complainant is dissatisfied with the way in which the NHS has dealt with their complaint, they can contact the Parliamentary and Health Service Ombudsman (PHSO).

The PHSO and the Local Government Ombudsman, which covers local authorities, have the same status. The role of the PHSO is to investigate complaints that individuals have been treated unfairly or have received a poor service from government departments and other public organisations in the UK, and the NHS in England.

The PHSO can investigate complaints about the commissioning and provision of healthcare and can conduct joint investigations with the LGO where a complaint includes concerns about the delivery of the health provision in EHC plans. They will normally investigate a complaint only once the NHS organisation has had a chance to resolve the issue first.

The PHSO can also investigate a number of other organisations: Ofsted, the Education Funding Agency, the Skills Funding Agency, and the Department for Education (including its School Complaints Unit and the Secretary of State for Education). The PHSO will generally expect the individual to have completed the organisation's own complaints procedure first.

Education:

The primary method of resolving disputes regarding education provision if dispute resolution has not succeeded will be through the mediation and appeals processes which are outlined in separate factsheets.

However, complaints on educational issues can be made to a number of different organisations who each have different functions as follows:

- **Local authority's complaints procedures:** local authorities must consider complaints made in relation to admissions, exclusions, child protection/allegations of child abuse, school transport and actions of the Governing Body. These complaints proceed in different specified stages if matters are not resolved at each stage.
- **Local Government Ombudsman:** can investigate complaints against local authorities where the complaint has not been resolved by the local authority's own complaints procedure. The LGO does not investigate matters which can be appealed to the Tribunal, such as a decision not to carry out an assessment.
- **Complaints to Ofsted:** Ofsted can consider complaints from parents and others about early years providers and schools, but only where the complaint is about the early years provision or the school as a whole rather than in relation to individual children, and where the parent or other complainant has tried to resolve the complaint through the early years provider's or school's own complaints procedure. This might include where the school is not being well led, or wasting money, or not providing a good enough education.
- **Complaints to the Secretary of State:** complaints can be made to the Secretary of State for Education that either the governing body of a maintained school or a local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including their SEN duties. The Secretary of State can issue directions to remedy the matter, but cannot intervene where there is another remedy available, such as Tribunal.
- **Skills Funding Agency:** can consider complaints in relation to further education colleges although complaints should be made through the **colleges own complaints procedure** in the first instance.

Factsheet #26: Judicial Review

Judicial review is the procedure by which an individual can seek to challenge the policy, decision, action or failure to act of a public body. Bodies which are amenable to judicial review include government departments, local authorities or other body exercising a public function such as a CCG or an NHS Trust.

Grounds of Judicial Review and remedies

A challenge against a public body can be brought on a growing number of grounds. The main grounds of challenge in most judicial review cases are the following:

- **Irrationality / unreasonableness** – unreasonableness is where the decision is so “outrageous” or “absurd” that no reasonable body of persons could have reached it. This is one kind of irrationality – a more common example of an irrational decision is where the decision maker has failed to ask himself or herself the right questions, has failed to take account of all the relevant considerations or has taken account of irrelevant matters.
- **Illegality** – this is where a public body:
 - acts outside of its powers. This is known as acting “ultra vires”;
 - acts in breach of a requirement under a particular statute. This is the most common type of illegality – for example, a local authority may fail to arrange the special educational provision specified in a child’s EHC Plan, and thereby breaches the requirements of section 42 of the Children and Families Act 2014;
 - unlawfully fetters its discretion – for example, by using a blanket policy when deciding whether to carry out assessments without considering the merits of each individual case;
 - Error of law – meaning that the public body has misunderstood its legal obligations and needs to be corrected in its understanding of the law by the court;
 - Failure to provide reasons for its decision.
- **Procedural impropriety** – this includes a duty to act in accordance with rules of natural justice and procedural fairness and follow procedural requirements. Specific grounds under this heading can include:
 - Bias – both actual bias (very rare) and appearance of bias – as the law requires decision making both to be fair and to be seen to be fair.
 - Fairness – at its most basic meaning that two like cases should be treated in the same way.
 - Legitimate expectation – where a public body says that it will act in a particular way, that representation may give rise to a legitimate expectation that the public authority will do as it said it would and the court may enforce this.
 - Consultation – see separate factsheet on this specific duty.
- **Breach of Human Rights**
 - The vast majority of the rights contained in the European Convention on Human Rights are now part of English law as a result of the Human Rights Act 1998 and as a result it is unlawful for a public body not to act in accordance with those rights. The courts are much less likely to allow an application for judicial review which relies solely on another human rights treaty that has not been incorporated into English law, for example the UN Convention on the Rights of the Child.

Judicial Reviews are heard in the Administrative Court, a part of the High Court, which sits in locations across the country. Appeals in judicial review cases are heard by the Court of Appeal and then in the most important cases by the Supreme Court. Decisions of the Supreme Court trump all other decisions; decisions of the Court of Appeal trump those of the High Court.

If a judicial review challenge is successful, the court may:

- make a mandatory order (i.e. an order requiring the public body to do something);
- make a prohibiting order (i.e. an order preventing the public body from doing something);
- make a quashing order (i.e. an order quashing the public body’s decision); or

- issue a declaration – a way in which the court can state what the law is and how the public body has got it wrong without directly interfering with the decision. The public body will be expected to take necessary steps to act in accordance with the declaration.

The most common types of remedies are quashing orders and declarations. It is very rare that the court will make a mandatory order unless there is really only one lawful course of action open to the public body and it refuses to take that action voluntarily.

In addition, the court has powers to grant interim relief (requiring something to happen / not to happen pending a final decision). For example, in a case where a family are arguing that their child is not being provided with suitable social care and that the local authority are therefore acting unlawfully under s2 Chronically Sick and Disabled Persons Act 1970, the court might order that some social care provision should be put in place on an interim basis pending the final hearing of the claim.

What types of decisions can be challenged?

In the context of Part 3 of the Children and Families Act 2014; the following types of decision could be challenged by way of judicial review:

- Failure to provide provision which is set out in the Plan (where there is an enforceable duty to provide it);
- The rationality and / or lawfulness of the contents of the social care and health sections of the Plan – as there is no right of appeal to the Tribunal in relation to these sections;
- Failure to comply with duties under the Local Offer – for example regarding its contents or failing to consult;
- Refusal to provide a personal budget or award direct payments;
- The use of a policy or eligibility criteria limiting access to assessment or provision which is arguably unlawful.

In all cases however, judicial review must be used as a last resort and the court will not grant permission unless it is satisfied that there is no suitable alternative remedy such as using the complaints process or appealing to the Tribunal.

Procedure and Time-limits

Before an application for judicial review can be issued, the claimant has to comply with the pre-action protocol which requires, where time permits, for the claimant to send a letter before claim and allow 14 days for a response.

The claimant must then obtain “permission” from the court to bring the judicial review claim. Permission is usually determined by a Judge considering the papers but sometimes an oral hearing is required. The test for permission is whether the claimant has an arguable case, and only once permission has been granted, can you proceed with the judicial review.

It is important to note that any judicial review challenge must be brought promptly and in any event **within three months of the original decision being challenged**. The court has a discretion to extend time where it is fair and just to do so but it cannot be assumed that this will happen in any particular case. It is therefore important to consider at an early stage whether a formal complaint to the local authority and/or Ombudsman will provide a satisfactory remedy to the concerns or whether a legal challenge by way of a judicial review is more appropriate.

Subject to means and merits tests, legal aid is available to cover the legal costs of a Judicial Review and further information on legal aid is provided in a separate factsheet.

Factsheet #27: Availability of Legal Aid

If parent or young person wants to challenge a decision, for example through a Tribunal appeal or judicial review application, legal aid may be available to assist them to do so.

Before someone can be granted legal aid they must pass a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of succeeding. The rules relating to eligibility for legal aid are complex and parents or young people should always contact the Legal Aid Agency or a specialist legal aid solicitors' firm to check the position.

This factsheet is intended to provide a summary of the key eligibility requirements to assist parents and young people in understanding the availability of legal aid in this area.

Availability of Legal Aid

Legal aid is available for the following types of work:

- Legal advice and assistance in preparing an appeal to the Tribunal (but not representation at the Tribunal itself). This form of legal aid is known as "Legal Help".
- Legal advice and assistance in relation to the provision of community care services (including those provided by CCGs) – this is known as "Legal Help".
- Legal Representation (including Investigative Representation) for judicial review applications and some other 'public law' matters – for example, some applications to the Court of Protection in relation to the health and welfare of adults who lack capacity to make certain decisions.

A parent or young person seeking access to legal aid for an **SEN case or disability discrimination case** should go to the legal aid checker on the GOV.UK website to find out if they are eligible or contact the Civil Legal Advice (CLA) service on 0845 345 4 345. If a person is eligible, the CLA will provide legal advice, normally by phone, online or by post unless the specialist advice provider assesses them as unsuitable to receive advice in this way.

The following groups do not have to apply via CLA – they can seek advice directly from a face-to-face provider:

- young people under 18, and
- those assessed by the CLA in the previous 12 months as requiring face-to-face advice, who have a further linked problem, and are seeking further help from the same face-to-face provider.

For advice and assistance in relation to a potential judicial review, parents or young people do not have to phone CLA first and can contact a legal advisor directly for specialist advice. Further details are set out in a separate factsheet.

Financial Eligibility Limits

In order to be eligible for legal aid, the individual must meet a financial means test. As at 7 April 2014, the limits were

- **Income Limit:**
 - Clients properly in receipt, directly or indirectly, of: Income Support, Income-Based Job Seeker's Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit are passported through the income test but capital must be assessed in all cases
 - **Gross income** limit not to exceed: **£2,657 per month.**
 - **Disposable income** limit not to exceed: **£733 per month.**
- **Capital Limit: £8000.00** – although note that the individual will have to make a contribution from their capital of any amount over £3000.00.

Whose means should be assessed?

This depends on the type of legal aid provided and the type of case. You should always check the specific circumstances with a legal aid advisor, but broadly:

- For advice and assistance (“Legal Help”) in relation to SEN and discrimination matters the Legal Aid Agency will assess the means of whoever has the right of appeal. This will usually be the parents but note that some rights transfer to young people upon them reaching the end of compulsory school age.
- For advice and assistance (“Legal Help”) in relation to community care matters for children, the child will be the client and their means will be assessed but the parent’s means will also be taken into account. Where the advice or assistance is for a young person over 18, the assessment will be on their means only.
- For Legal Representation for judicial reviews – for example, a challenge to the health and social care element of an EHC Plan – eligibility will be based on the means of the child or young person.

In addition, the rules require that in most cases, the individual’s partner’s means (if they have one) must also be assessed.

Note: the eligibility requirements set out above are correct as at 30.7.2014. Individuals who consider that they might be eligible for legal aid should always contact a specialist legal aid adviser to confirm eligibility.

Factsheet #28: Organisations who can provide specialist advice and support

Specialist advice and support is available from a range of organisations nationally, including specialist solicitors firms and charities.

There are a number of specialist charitable organisations who can provide advice and assistance, particularly if the individual is not eligible for legal aid or does not have the funds to pay privately for legal advice. These include:

- **IPSEA** is a registered charity offering free and independent advice to parents of children with special educational needs in England and Wales on:
 - local authorities' legal duties to assess and provide for children with special educational needs;
 - exclusions of children with special needs/disabilities;
 - actions or inaction by local authorities and/or schools which discriminate against children with disabilities

General Advice Line: 0800 018 4016 for advice on: Problems with schools; requesting statutory assessment; proposed statements; annual reviews; possible disability discrimination; exclusion from school, etc.

Tribunal Help Line: 0845 602 9579 for next-step advice on SEN appeals and disability discrimination claims to the Special Educational Needs and Disability Tribunal including whether the individual requires casework support

- **Contact a Family National SEN Advice Service** provides education specialist advisers from Monday-Friday, 9.30-5.00 pm to answer queries: 0808 808 3555 and can help on any aspect of education in England and Wales.

In order to access legal advice and assistance under the Legal Aid scheme on matters relation to special educational needs, there is now a mandatory telephone gateway and individuals must telephone **Civil Legal Advice** on 0845 345 4345 or use the online inquiry form at <https://claonlineadvice.justice.gov.uk/> who, if appropriate, will refer the case to a law firm who has a legal aid contract to provide advice and assistance on education law.

The following groups do not have to apply via CLA – they can seek advice directly from a face-to-face provider:

- young people under 18, and
- those assessed by the CLA in the previous 12 months as requiring face-to-face advice, who have a further linked problem, and are seeking further help from the same face-to-face provider

In the event that the legal issue relates to health and social care, or is an education law issue where the remedy is likely to be judicial review (see separate factsheet) then there are a number of specialist law firms who can provide advice under the legal aid scheme.

They be identified using the search engine on the **Community Legal Service website** – see www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp or call 0845 345 4345.

There are also law firms who can provide advice on a privately funded basis and whose details can be obtained from the **Law Society**: <http://www.lawsociety.org.uk> 020 7242 1222.