

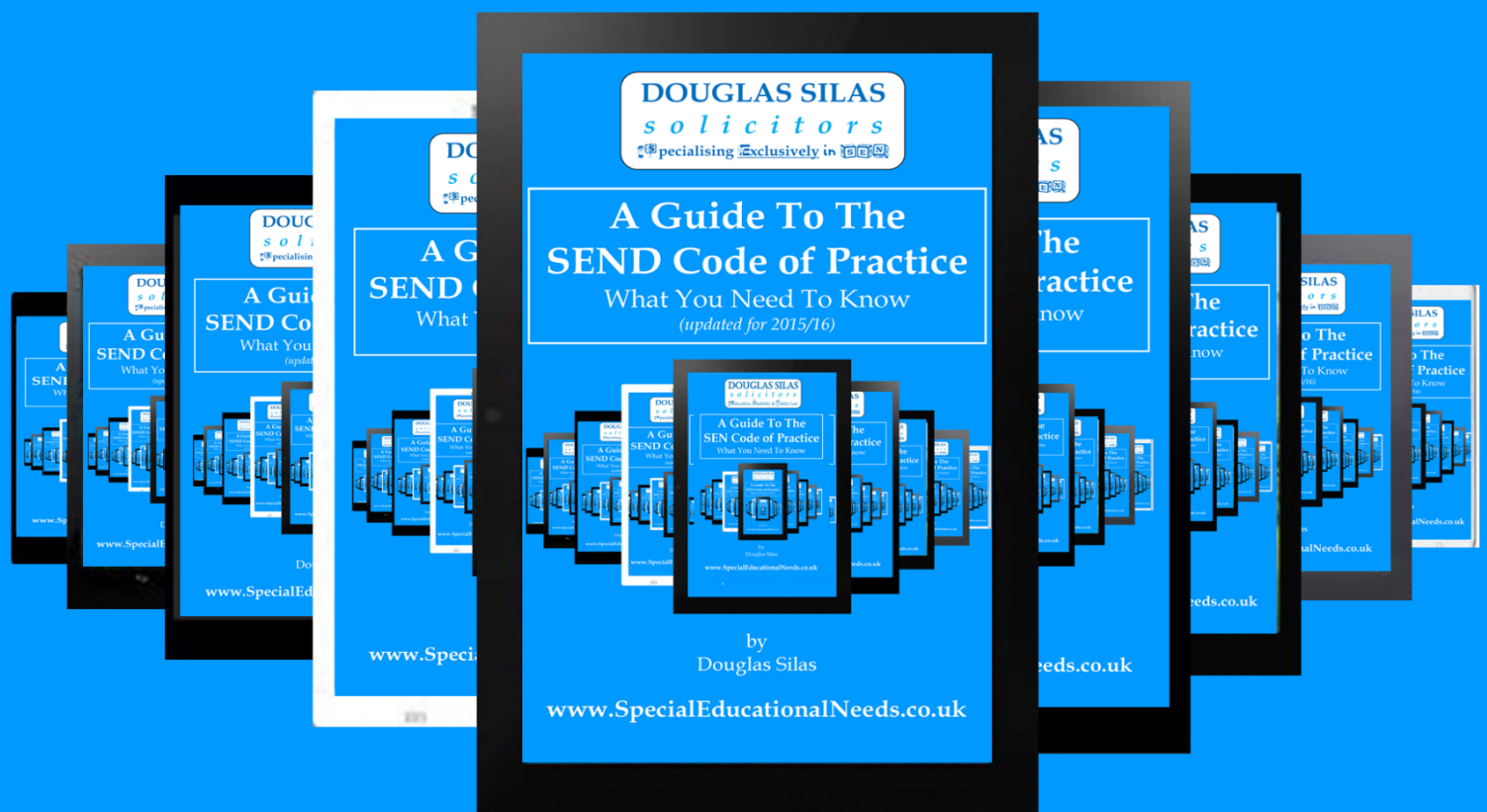
DOUGLAS SILAS

s o l i c i t o r s

specialising Exclusively in SEN

A Guide To The SEND Code of Practice

What You Need To Know
(updated for 2015/16)



by
Douglas Silas

www.SpecialEducationalNeeds.co.uk

*Nothing in life is to be feared,
it is only to be understood.*

Marie Curie

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TABLE OF CONTENTS

[ABOUT THE AUTHOR/ACKNOWLEDGEMENTS/PREFACE](#)

[PART 1 – THE SEN FRAMEWORK](#)

[Chapter 1: About this Guide](#)

[Chapter 2: A Brief History](#)

[Chapter 3: The Children and Families Act 2014](#)

[PART 2 – THE SEND CODE OF PRACTICE](#)

[Introduction](#)

[Chapter 1: Principles](#)

[Chapter 2: Impartial Information, advice and support](#)

[Chapter 3: Working together across education, health and care for joint outcomes](#)

[Chapter 4: The Local Offer](#)

[Chapter 5: Early years providers](#)

[Chapter 6: Schools](#)

[Chapter 7: Further education](#)

[Chapter 8: Preparing for adulthood from the earliest years](#)

[Chapter 9: Education, Health and Care needs assessments and plans](#)

[Chapter 10: Children and young people in specific circumstances](#)

[Chapter 11: Resolving disagreements](#)

[Annex 1: Mental Capacity](#)

[Annex 2: Improving practice and staff training in education settings](#)

[Glossary of terms](#)

[References](#)

[PART 3 – RESOURCES](#)

[Appendix 1: The SEND Code of Practice 2015](#)

[Appendix 2: Part 3 of the Children and Families Act 2014](#)

[Appendix 3: The SEND Regulations 2015](#)

[Appendix 4: Transition to the new 0 to 25 SEND system](#)

[Appendix 5: List of LAs \(with links to 'Local Offers'/'Transition Plans'\)](#)

ABOUT THE AUTHOR



Douglas specialises exclusively in SEN and has done so successfully for nearly 20 years. He is widely respected and internationally recognised as a leading expert in his field.

During his career, Douglas has successfully advised & represented thousands of parents of children/young people with SEN/Disability, helped many get the right educational provision or placement for their child, even where they thought that there was no hope left. He has also trained a wide variety of people in this field over many years. Douglas has been

consistently named as an expert in Education Law by the leading UK legal directories for well over a decade.

WEBSITE

Douglas' website www.SpecialEducationalNeeds.co.uk provides a lot of free information about SEN and is nationally recognised, getting many thousands of visitors (both personal and professional) every month.

AWARDS

In 2011, Douglas was shortlisted by the Law Society for 'Solicitor of the Year (Private Practice)'. In 2013, he received the first 'Outstanding Achievement' award at the Modern Law Awards. In 2014, he was named 'Education Lawyer of the Year' both in England and the UK in the Corporate International and ACQ Global Awards and he was also shortlisted again by the Law Society (for the second time in four years) for 'Solicitor of the Year (Private Practice)'. In both 2013 and 2014, Douglas Silas Solicitors were named 'Niche Law Firm in England (Education)' in the ACQ Law Awards and they then received the same award in the ACQ Global Awards in 2015.

PERSONAL

Douglas is physically disabled and a wheelchair-user. In recent years, he has become well-known for cycling a specially-modified trike to raise money for Norwood, a charity for children with disabilities. In 2011, he rode 380km across southern Israel. In 2012, he rode 420km across Sri Lanka. In 2013 he rode 380km across northern Israel and then 450km across Madagascar back to back! In November 2014, he did another 5 day (different) ride across northern Israel.

Douglas has so far raised £125,000 for charity. In November 2012, he was named an 'Unsung Hero' by the charity, Jewish Care. In November 2014, Douglas was given a 'Points of Light' award at the annual Norwood fundraising dinner by the Prime Minister, David Cameron, in recognition of him being an outstanding volunteer in the UK.



ACKNOWLEDGEMENTS

I would like to acknowledge those people who have helped me in putting this guide together.

First, there is my wife, Erica (Erica Hurst at the office but Erica Silas at home!). It was actually Erica's idea first that I should write this guide. They say that behind every great man is a great woman and, although I cannot claim to be the former, Erica is certainly the latter.

And they say that behind every great woman is... another great woman! In this case, my/our PA and friend, Sharon Portner, who has always been there to help me/us, both personally and professionally.

I also want to use this opportunity to thank Paul Tuhrim and Stephen Harrison, who have helped me to see more clearly and to do things that I otherwise would not have done during these past few years. They have also always provided me with their friendship and priceless advice whenever I have needed it during the past few years.

I am grateful to Peter Davis from Bluewave Publishing, who converted this into an eBook for me.

Finally, I want to thank my 'team' at the office, including my long-standing PA/secretary, Natasha Jones, together with Joshua Garrod, Suzannah Lindon-Morris and the more recent additions of Anthony Bentwood and Aoife Murray (who have helped me update this guide). I also want to again acknowledge Daisy Robson-Odugbemi and Anita Fung, who were part of the team that helped me put this guide together in a very short space of time over the summer of 2014.

With best wishes

Douglas

DOUGLAS SILAS

August 2015

PREFACE

A lot has happened during the past year ...

At around this time last year we were just about to enter a new SEN framework. Although, like most people, I felt that the SEN framework could, by then, do with a bit of a revamp, I still had some concerns about it undergoing wholesale reform, rather than just 'tweaking'.

I was also a bit concerned that there was insufficient time for everyone to get on top of things, as the final draft of the Code of Practice had only been issued in June 2014, a month before it was approved by Parliament and then enacted at the end of July 2014, to come into legal force from September 2014. Everything seemed to be happening so fast.

My first major concern actually came just a few days before 1 September 2014 as, although I had prepared the first version of this Guide to be ready for everyone to use a week before the new SEN framework came into effect and had included a copy of the original transitional guidance that had been issued, the Government then produced revised transitional guidance and issued a second version of it at the end of August 2014!

It subsequently became clear within the first couple of months of the new SEN framework coming into force that some LAs were not following it correctly. In fact, in an [open letter to all LAs, dated 11 November 2014](#), Edward Timpson MP, the then Parliamentary Under Secretary of State for Children and Families, who was the main figurehead in bringing in the changes, stated:

"We have had feedback that some local authorities are moving faster to transfer larger numbers to Education, Health and Care plans than are required and I would be concerned if this compromised the quality of the experience for families."

I thought that it would be a great shame if EHC plans ended up being worse than Statements, as we would effectively be taking a step backwards instead of forwards.

During the Autumn, the Government also consulted on a new version of the Code, which would now take into account the needs of young people in custody (as had been contemplated) but also make a few other amendments. This was opposed early on and

then did not rear its head again when the revised/second version of the Code was issued in January 2015 to come into force from April 2015. Around the same time, there was also new transitional guidance (a third version) issued in March 2014.

There was concern early on that some local authorities (LAs) had said they were ready for the changes (I have heard it said that the figure was over 90%), but this then did not seem to be the case and it was felt that the Government was possibly proceeding with unrealistic expectations and timescales. There was lots of concern (from both parents and LAs) about the process of transferring Statements of SEN to Education, Health and Care (EHC) plans and how long this was going to take in practice. There was also concern being expressed about the availability of post-16 provision with one of the main issues about post-16 education surrounding the issue of 'mental capacity'.

As we progressed during the academic year, whilst there were fundamental changes, which they were still getting to grips with, many people said that they felt that, whilst some things appeared to have been changed, many things had stayed the same. As we advanced further and things were beginning to make sense, there were issues rising to the surface, including the process of transferring Statements to EHC plans (which was new) and difficulties with requesting assessments/getting plans issued (some of which were new and some of which were old) and again some difficulties with secondary transfers (which were the same as before).

The interface between education, health and care was brought more sharply into focus by the bringing into legal effect in April 2015 by the Care Act 2014, but I am glad to say that by the end of the academic year in July 2015, we found that the world of SEN hadn't collapsed, as some were concerned would be the case!

To my knowledge, there was only one reported legal case focused on the new SEN framework during 2014/15, a case that dealt with the lawfulness of a 'Local Offer': *R (L & P) v Warwickshire County Council (2015) EWHC 203 (Admin)* ([you can read more here](#)).

Many people (parents and professionals) say that they cannot now believe that we have made it past a full year, but some tell me that they now feel that they are in limbo with some children/young people who have EHC plans, either as a result of an EHC needs assessment that took place after 1 September 2014, or as a result of having a Statement transferred to an EHC plan. But, at the same time, some also tell me that they are still

dealing with a lot of children/young people with Statements that have not yet been transferred which are only due to transfer to EHC plans in the next few years and, in any event, by April 2018.

I have even heard it said that it was perhaps too ambitious a task for us to think that we could successfully transfer 230,000 or so Statements (that were in existence at the beginning of September 2014) to EHC plans within just under four years, as is expected/planned. It remains to be seen what the next few years hold and, even though I specialise exclusively in this area, I am afraid that I do not have a crystal ball to look into the future and tell you what will happen.

For now, I have tried to make everyone's lives easier again by updating this Guide to incorporate the updated SEND Code of Practice and Transitional Provisions. I have also updated the resources section with new links to each LA's 'transition plan' (for transferring Statements to EHC plans). At the same time I have generally tried to bring everything up to date.

I am afraid, as I found last year with the issue of the revised transitional guidance being issued just a few days after my Guide was published, that this second version of the Guide will probably need to be updated again in the future. For now though, I hope that it helps the reader achieve what they need to do to help children and young people with SEN.

With best wishes.

Douglas

Douglas Silas

August 2015

PS. You will note that I am now calling this book 'A Guide to the SEND Code of Practice' rather than just 'A Guide to the SEN Code of Practice'. Although the latter phrase was the one that everyone was familiar with and was initially using when the new SEN framework came into force, now that we are a year on, people have started to call it by its proper title (the 'D' stands for 'disability', just in case you did not realise!)

PART 1

THE SEN FRAMEWORK

CHAPTER 1

ABOUT THIS GUIDE

*“Education is what survives,
when what has been learnt has been forgotten.”*

B. F. Skinner

INTRODUCTION

As I write this, we are now one year on from entering a new era for [special educational needs](#) (referred to as ‘[SEN](#)’ throughout this guide).

Unfortunately, the new [SEN Code of Practice](#) (‘CoP’), in force from 1st September 2014, was not actually issued in its final form until 28th July 2014. Although earlier versions of it were issued in Autumn 2013 (at 174 pages) and it was then revised in Spring 2014 (at 253 pages), it was not until April 2014 that a final draft was issued (at 281 pages). This was the version that was approved and enacted (at 282 pages). It was updated in January 2015 and this version came into force in April 2015 (it is now 292 pages).

The CoP is ‘Statutory Guidance’ but is based on primary legislation contained in [Part 3](#) of the new [Children & Families Act](#) (‘C+FA’) 2014 (and other associated Regulations), which replaces [Part 4](#) of [the Education Act](#) (‘EA’) 1996. It has been hailed as ‘*the biggest shake-up to SEN for 30 years*’. It makes some fundamental changes to the [SEN](#) system; by replacing ‘Statements of SEN’ (‘Statements’) with ‘[Education, Health & Care \(‘EHC’\) plans](#)’; covers 0-25 years of age (as opposed to 2-19); and seeks better integration between Local Authorities (‘LAs’) and others working with education, health and care provision. It also calls for children and (now) ‘young people’ with [SEN](#) or a disability (‘SEND’) and their families, to be put at the centre of the process.

REASON FOR THIS GUIDE

To explain why I have written this guide, I need to put things in context first.

I am a solicitor who specialises exclusively in [SEN](#) law and have done so for nearly two decades now. I also run the website: www.SpecialEducationalNeeds.co.uk, which I set up soon after going into sole practice in 2005. The website was another way of my trying to help people, as I realised quickly that I could not help everyone personally. To my surprise, the website became very popular. Whilst originally focused on parents, I soon found myself receiving compliments from others using it, which included teachers/[SENCOs](#), LA officers, healthcare professionals, people from education/disability organisations, etc.

Although it is no secret, many people do not realise that I am myself physically disabled and use a wheelchair to get around. As a result of limitations that I have faced, I have become increasingly reliant on technology over the years and always take ‘accessibility’ very seriously. Hence the website and now this guide, which combine both my passions for [SEN](#) and for technology.

Hopefully, I can now explain things a little better.

I realised by July 2014 that I needed to understand the new CoP quickly, so had planned to design a guide for myself that I could carry around and use to look up more detailed things when I needed to. But I then realised that other people involved with SEND would also need to know similar things, but had limited time to prepare, as the CoP was only issued at the end of July 2014, after the school holidays had already started.

I have always tried to help others, so I took it upon myself to write this guide, which sets out quickly what people need to know. By making it an eBook only, it has allowed me to include a copy of the full (now updated) CoP, the [C+FA](#), the [SEND Regulations](#), the [Transitional Provisions](#) and also a list of LAs (including links to their '[Local Offer](#)', 'Transition Plans'). I have also linked the text throughout this guide, wherever possible, to other relevant legislation, Regulations, etc.

In this way, people can now carry everything they need around with them and always have it to hand to refer to quickly on their e-readers/tablets/phones/other mobile devices, wherever they are. They can also make their own highlights/notes/bookmarks electronically, which they can search for later. An e-book is also more accessible to more people, no matter their needs (for example, fonts can usually be increased and reading styles changed on e-readers, or it can be read out to you if you have this facility but have a visual impairment or dyslexia).

I have tried to make sure that this guide is written so that everyone involved in [SEN](#), whether personally or professionally, can easily understand it. I have adopted a 'less is more' mentality when writing it and have tried to think ahead and anticipate how people will want/need to use it. Whilst it focuses on the main things that the reader needs to know or do, they can easily find more detailed information by clicking on the links to go to the original source or to other helpful guidance/definitions.

This guide is for, amongst other people:

- Parents/carers, young people and their advocates
- Teachers/[SENCOs](#) (both in mainstream, [special schools](#) or colleges)
- LA officers (both dealing with 'education' or 'care')
- Healthcare professionals (e.g. therapists, psychologists, doctors)
- Those involved with Complaints/Appeals/Alternative Dispute Resolution.

It has been split into three parts:

- [Part 1 – The SEN Framework](#)
- [Part 2 – The SEND Code of Practice](#)
- [Part 3 – Resources](#)

Part 1 is divided into three chapters: [Chapter 1 - 'About this Guide'](#); [Chapter 2 - 'A Brief History'](#); and [Chapter 3 - 'The Children & Families Act 2014'](#).

In Part 2, I look at the [Introduction](#) and all 11 chapters of the (updated) CoP individually.

Part 3 is entitled '[Resources](#)' and includes: (as Appendices) the full CoP, the [C+FA](#), the [SEND Regulations](#); the (updated) [Transitional Guidance](#) and finally a list of LAs with links to their '[Local Offer](#)' (I'm afraid that some of these were not ready yet so I have just done the best as I can).

I have linked the legislation, Regulations and Guidance referred to, to the relevant Resources appended [in Part 3](#) or available on the Internet. Although the CoP already has a [glossary](#), I have sometimes added 'Read More' at the end of some terms where I provide more detail on my website. I have used a number of abbreviations, which will make sense as you go along.

I have simplified each chapter of the CoP itself into three parts entitled:

- 'What This Chapter Covers'
- 'What This Chapter Contains' (which includes 'Relevant Legislation') and
- 'What You Need To Know'

At the end of each chapter, I have put the links relevant to that chapter from the end of the CoP.

Regarding the CoP, C+FA, SEND Regulations and Transitional Guidance in [Part 3](#), I have transposed the text from the PDF documents issued (I'm afraid that this has been a bit of a nightmare as some of their links were wrong/it was not formatted very well/it did not transpose easily - so forgive me if it does not look right sometimes).

By doing this as an eBook, it can be read easily on whatever mobile device the reader is using. By also incorporating everything the reader needs into one guide and interlinking everything, it can be read offline as well. This is better than having to print out and carry around the whole CoP.

In fact, most people don't realise that, for example, there are reading Apps for both the PC/Mac as well as for other mobile devices, such as phones/tablets. This means that a reader can buy one copy of this guide on one device, but then also have it on their computer to make annotations on. They can then even have everything available immediately on their mobile device (provided it is synced) and vice-versa. How good is that!

But don't worry, I know that not everyone will know how to be able to use the technology in this guide to its full potential at first, so I have also produced it as a PDF document which you can then either use on screen (all the linking internally and externally still works) or you can simply print out a hard copy of it to use traditionally. And if you do print it out, it will then save you from having to print out a copy of the (updated) CoP/C+FA/SEND Regulations/Transitional Guidance themselves as this guide contains everything that you will need.

As it happens, I had not realised personally at the time I initially wrote the Guide how many different types of ways that people would use it and take advantage of the fact that it is an eBook. For example, many people (including myself) have been able to use it to quickly to search for the information they are looking for (it is great for those pressurised moments, including on, say, an iPad in SEND Tribunal hearings, where others may be amazed at how quickly you can find the relevant information that you are looking for, whilst they are still leafing their way through a hard copy of the CoP).

Others (again including myself) use it regularly to 'copy and paste' from into letters and other documents, which ensures that everything is always quoted accurately. Remember, you do not need to read it like a book, but can dip in and out of it when you need to.

AND FINALLY...

This guide is not a substitute for reading the full CoP itself, if you are an individual using it, or if you are working for an organisation that needs to have regard to it. It is simply a 'guide'

– no more and no less. It is just meant to try and make it easier for people to understand/work with the CoP. I hope that you find it useful, in the same way that it has been helpful to me writing it. I also hope that by writing it, I have helped more people.

In fact, somebody said to me that this is the guide that the Government should have written, but didn't!

With best wishes

Douglas

DOUGLAS SILAS

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To find out more about what is happening in the world of SEN, please sign up to get my termly/half-termly 'SEN Updates' by email [here](#) or connect to me on one of the social media platforms below



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