



Indicative Draft: The (0-25) Special Educational Needs Code of Practice

This indicative draft Code of Practice is provided to Parliament to aid consideration of the SEN Clauses in Part 3 of the Children and Families Bill and the related draft indicative regulations. It is work in progress.

Officials in the Department for Education are leading the process of drafting the Code of Practice. They will be producing a subsequent draft for formal consultation later in 2013 prior to a final draft being placed before Parliament for approval in time for it to come into force alongside the Children and Families legislation.

This draft takes account of the widespread consultation that took place to develop the package of reforms included in the Children and Families Bill and the pre-legislative scrutiny of the reforms. It also reflects the provisions in the related draft indicative regulations. The draft Code and regulations are necessarily indicative and will be developed considerably further to reflect the passage of the Bill through Parliament as well as the emerging evidence from the pathfinder programme testing the SEN reforms in 20 pathfinders across England.

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The draft indicative regulations/policy statements for Committee relevant to this indicative draft SEN Code of Practice are:

In Chapter 4 – The Local Offer

- The Special Educational Needs (Local Offer) (England) Regulations, Clause 30.

In Chapter 5 - Early Years, Schools, Colleges and Other Providers

- The Special Educational Needs (SEN co-ordinators) Regulations, Clause 62;
- Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
- The Special Educational Needs (Information) Regulations, Clause 64.

In Chapter 6 - Assessments and Education, Health and Care Plans

- The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41;
- Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
- Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45;
- Policy statement on regulations (Personal Budgets), Clause 48;
- Policy statement on regulations (Parents and young people lacking capacity), Clause 68;
- Policy statement on regulations (Transitional arrangements), Clause 107.

In Chapter 7 - Resolving Disputes

- The Special Educational Needs (Appeal) Regulations, Clause 50;
- The Special Education Needs (Mediation) Regulations, Clause 51;
- Policy statement on regulations (Children's Right to Appeal Pilots), Clause 53 and 54.

1 Introduction

1.1 A new system for special educational needs

Our vision

Every child should be given the best chance to succeed in life.

Professionals who work with the fifth of children and young people who have a special educational need (SEN) should strive to enable them to achieve at school and college, and make a successful transition to adulthood, including finding paid work, living independently and participating in their community.

A new system for special educational needs

The Children and Families Bill and associated regulations take forward wide-ranging reform of the system for identifying, assessing and supporting children and young people with special educational needs and their families. Those reforms make provision for:

- Children, and young people to be at the heart of the system;
- Close cooperation between all the services that support children and their families through the joint planning and commissioning of services
- Early identification of children and young people with SEN
- A clear and easy to understand ‘local offer’ of education, health and social care services to support children and young people with SEN and their families
- For children and young people with more complex needs, a coordinated assessment of needs and a new 0 to 25 Education, Health and Care plan (EHC plan), for the first time giving new rights and protections to 16-25 year olds in further education and training comparable to those in school.
- A clear focus on outcomes for children and young people with Education, Health and Care Plans, anticipating the education, health and care support they will need and planning for a clear pathway through education into adulthood, including finding paid employment, living independently and participating in their community.
- Increased choice, opportunity and control for parents and young people including a greater range of schools and colleges for which they can express a preference and the offer of a personal budget for those with an EHC plan.

1.2 The SEN Code of Practice

This 0-25 Code of Practice sets out guidance on policies and procedures aimed at enabling children and young people with SEN to reach their full potential and support families to do the best for their children.

It reflects the provisions of Part 3 of the Children and Families Bill and associated regulations (indicative drafts of which have been published to help Parliament consider the Bill) and explains and provides guidance on carrying out the duties in the legislation.

1.3 The Purpose of the Code and who it applies to

The purpose of the Code

The SEN Code of Practice is statutory guidance that provides practical advice on how to carry out statutory duties to identify, assess and make provision for children and young people's SEN as set out in the Children and Families Bill (currently before Parliament).

The Code also sets out how legislation and regulations concerning children and young people with disabilities works alongside this.

Whilst this document aims to support effective decisions it cannot provide detailed advice for every individual case. The Code of Practice is framed so that it is easy for all interested parties to navigate to understand the statutory duties and provides guidance on how to fulfil those statutory duties.

References to statutory duties

In this Code of Practice where the text uses the word **MUST** this refers to a statutory requirement.

In this Code of Practice where the text uses the word **SHOULD** this refers to guidance which is a non-statutory requirement.

Definitions of special educational needs (SEN) and disability

Definition of special educational needs (SEN)

A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for them. A child of compulsory school age or a young person has a learning difficulty or disability if they:

- (a) have a significantly greater difficulty in learning than the majority of others of the same age; or

(b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

(c) a child under compulsory school age has special educational needs if they fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them. Clause 20 Children and Families Bill

Definition of disability

A child is disabled if he is blind, deaf or dumb or suffers from a mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed. Section 17 (11) Children Act 1989

A person has a disability for the purposes of this Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. (Section 6), Equality Act 2010

Who the Code applies to

This Code of Practice is statutory guidance for organisations who work with and support children and young people with SEN and their parents, such as:

- local authorities (education, social care and relevant housing and employment services)
- early years providers
- schools
- further education colleges
- sixth form colleges
- Academies
- independent special schools and independent specialist providers
- pupil referral units
- the NHS Commissioning Board
- clinical commissioning groups

- NHS trusts
- NHS foundation trusts
- Local Health Boards
- SEN Tribunal (see 7.7)

[Note: Further information to follow on how the document is structured, how to use the executive summary as a high-level guide, how statutory duties are highlighted for ease of reference and how best practice case studies can be found].

1.4 Roles and responsibilities

The new SEN system will mean new ways of working and a strong focus on improving outcomes for children, young people and support for them and their families.

- Good quality teaching at every stage in a child and young person's journey through early education, school, further education and training is vital.
- Health bodies have a vital role to play in collaborating with, and supporting, education and care providers in meeting the needs of children with SEN, as well as their general responsibility for ensuring the health and wellbeing of children and young people. The reforms of the NHS introduced by the Health and Social Care Act 2012 have enhanced the potential for the NHS to exercise these roles; the reforms of SEN commissioning introduced by the Children and Families Bill build on these to strengthen the role of the health sector in meeting the needs of this group.
- Clinical Commissioning Groups (CCGs) and, where responsible for children and young people with SEN, the NHS Commissioning Board, will be full partners in the new arrangements for securing the provision to meet these needs.

[Note: This section and those that follow will be developed to include more on the respective roles of professionals in education, health and social care towards children and young people with SEN including a table on roles and responsibilities]

1.5 Related legislation, regulations and guidance

Legislation and regulations

The SEN provisions in the Children and Families Bill are supported by the [xxxx] regulations covering the key areas of reform [See indicative regulations published alongside this draft of the Code of Practice.]

Evidence suggests that approximately 75% of disabled children have a special educational need. There are further duties on schools and colleges in relation to children and young people with disabilities under the Equality Act 2010 and duties on health and social care providers under the Health and Social Care Act 2012 and the draft Care and Support Bill. This Code should be used in conjunction with guidance relating to [Equality Act 2010 and xxxx regulations] to help ensure that all organisations meet their responsibilities for disabled children and young people.

The Health and Social Care legislation and current Adult Social Care legislation

[Note: Further information to follow on what this legislation means for organisations in the context of the Code of Practice.]

Related guidance

This Code is complemented by a number of other guidance documents. This is not an exhaustive list, but organisations will find it particularly helpful to consider:

- Working Together to Safeguard Children, is statutory guidance which sets out what is expected of organisations, individually and jointly, to safeguard and promote the welfare of children. This includes a detailed section on the process for assessment including how assessments for children and young people's social care needs can be best coordinated with the other elements of their education and health assessments and describes best practice in local protocols for assessment.
- Equality Act 2010 advice for school leaders, is non-statutory advice from the Department for Education. It has been produced to help schools to understand how the Equality Act affects them and how to fulfil their duties under the Act (including the reasonable adjustments to make for disabled pupils set out in detail in Chapter 5).

[Note: Further information to follow on other guidance that is relevant to matters covered in the Code, including key guidance on support for disabled children.]

1.6 Principles underpinning the Code and the new system

The legislative framework for the new SEN system and the detailed guidance in this 0-25 Code of Practice are underpinned by a number of principles:

- **Early identification of needs** so that professionals can intervene early with the most appropriate support for a child and their family
- **High expectations and aspirations for what children and young people** with SEN and disabilities can achieve, including paid employment, living independently with choice and control over their lives and support and participating in society.

- **Focus on the outcomes that children and young people and their families want to achieve**, so that all decisions are informed by these aspirations.
- **The views and participation of children and their parent/carer and young people are central** and supported throughout the system, and person-centred planning is used to place children and young people at the heart of the system.
- **Choice and control for young people and parents** over the support they/ their children receive, including greater choice of schools and colleges and personal budgets to tailor services.
- **Education, health and social care partners collaborate** so that a coordinated and tailored support can be provided to children, young people and families.
- **Clarity of roles and responsibilities** to ensure that collaboration goes hand in hand with accountability to fulfil duties.
- **High quality provision to meet the needs of most children and young people**, alongside rights for those with EHC plans to say where they wish to be educated.
- **The skills, knowledge and attitude of those working with children and young people are central to achieving excellent outcomes.**

This Code explains how all the organisations on which children and young people with SEN rely can bring these principles to life in fulfilling their statutory duties.

1.7 Implementation of the new Code of Practice

From xxxx date all those organisations listed at 1.3 **must have regard to this Code of Practice**. This means that whenever decisions are taken relating to children with SEN, consideration must be given to what the Code says. Bodies must fulfil their statutory duties towards children with SEN in the light of the guidance set out in this Code of Practice (and the duty to have regard to this Code will continue for its lifetime).

All those organisations listed at 1.3 need to be able to demonstrate in their arrangements for children and young people with SEN, that they are fulfilling their statutory duty to have regard to this Code.

2 A Family Centred System

2.1 Introduction

Parents know their child best. Equally, children and young people are well placed to reflect on their experiences, their needs and their aspirations. For these reasons, at the core of the Children and Families Bill is the expectation that local authorities and educational settings place parents and young people at the heart of the processes and decisions that will affect the lives of children and young people with SEN.

[Note: Paragraph to be included here with references to where the other chapters have specific information about how children, young people and their parents are at the heart of the system]

Local authorities must ensure that parents and young people are involved when they are:

- planning and reviewing the local offer;
- reviewing special educational and social care provision;
- drawing up individual EHC plans, and in reviews and reassessments.

Schools and colleges need to ensure that they fully engage parents and young people with SEN when drawing up policies that affect them. Pupil forums should always ensure that there is representation from pupils with SEN. Schools and colleges should also take steps to ensure that parents and young people are actively supported in contributing to assessment, planning and review processes.

The knowledge and understanding that parents have about their child is key information that can help teachers and others to meet their child's needs. Enabling parents to share their knowledge and engage in positive discussion instils confidence that their contribution is valued and acknowledged. At times, parents, teachers and others may have differing expectations of how a child's needs are best met to enable them to progress and achieve. Sometimes these discussions can be challenging but it is in the child's best interests for a positive dialogue between parents, teachers and others to be maintained to work through points of difference and agree outcomes. It is important to engage directly with young people to discuss their needs, and plan how they can achieve the best outcomes.

2.2 Person-centred planning

A key approach that ensures that parents and carers, children and young people are actively placed at the heart of the system is person centred planning. A person centred approach to planning means that planning should start with the individual (not with services), and take account of their wishes and aspirations, and the support they need to be included and involved in their community. It aims to empower parents, children and

young people so that they have more control over assessment and decision-making processes. It enables continual listening and learning, focusing on what is important to someone now and in the future, and acting on this in partnership with their family and their friends.

Family or person-centred planning uses a number of techniques, all of which aim to reflect how the person communicates and help them to outline their needs, wishes and goals. Some of the central features of person-centred methods and approaches are:

- focusing on the child or young person, not their needs or diagnostic label;
- using ordinary language and images, rather than professional jargon;
- actively highlighting a person's strengths and capacities;
- strengthening the voice of the person, and those who know the person best to say what they have done, what they are interested in and what outcomes they are seeking in the future;
- tailoring support and personal budgets around the person's plan.

Using these approaches, educational settings, professionals and local authorities need to ensure that parents, children and young people are genuinely involved in planning, review and decision-making processes. This should then inform commissioning decisions for both support and opportunities; deliver a responsive local offer and for those that need them ensure that EHC Plans are co-produced and reflect aspirational and achievable outcomes for the individual.

A useful resource for that provides advice for using person-centred thinking, planning and reviews in schools and transition is available at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@publications/digitalasset/dh_115246.pdf.

2.3 Parent Partnership Services

Parent partnership services provide impartial information, advice and support to parents of children and young people with SEN so they can make appropriate, informed choices. These services should be available to all parents of children and young people with SEN. Parent partnership services provide information to parents about the law on SEN and local policy and practice and are well placed to provide information and support to parents about the assessment process for an EHC plan. They also work with schools in promoting positive engagement with parents of children and young people with SEN and disabilities.

Each local authority commissions a parent partnership service. Many services are delivered at arms-length from the local authority, with some being delivered by another provider, often from the voluntary sector.

Effective parent partnership services have the following features:

- a confidential service for parents providing impartial advice and guidance;
- staff trained in the legal framework who inform and advise parents and also provide information in leaflets, on their website and in other languages;
- providing access to additional trained support, such as volunteers, for all parents who request it, including support about appeals to the SEN Tribunal;
- clear terms of reference and a development plan setting out needs and priorities for the service and its staff;
- providing support and training for parents to (actively) participate in local strategic groups and develop and review local children's services and SEND policy;
- located in easily accessible premises that are perceived by parents as independent of the local authority.

Local authorities must ensure that advice and information is offered to young people with SEN directly. Some local authorities already commission services which work directly with young people.

Details of local parent partnership services can be found at [www.parentpartnership.org.uk](http://www.parentpartnership.org.uk/documents/parent-partnership-services) and information about standards for parent partnership services are set out in <http://www.parentpartnership.org.uk/documents/parent-partnership-services>.

Parents serving in HM Armed Forces have access to an information advice and support service through the MoD's Directorate Children and Young People Children's Education Advisory Service (DCYP (CEAS)): <https://www.gov.uk/childrens-education-advisory-service>.

2.4 Parent Carer Forums

It is important to look at information about all children collectively at a strategic level.

Parent carer forums have been established in most areas and work with local authorities. Parent carer forums are local groups made up of parents and carers of disabled children who work alongside local authorities, education, health services and other providers to make sure the services they plan and deliver meet the needs of disabled children and families. There should be a steering group of parent carers who help to lead the forum and listen to the views of other parent carers in the local area to make sure they know what is important to them.

Effective parent participation happens when parents are enabled to work alongside professionals to ensure that:

- the engagement of parent carers in the authority is valued, planned and resourced;
- The parent carer forum offers proactive and on-going leadership;
- the participation of parent carers is evident at all stages in the planning, delivery and monitoring of services;
- the function of the parent carer forum to parents and providers;
- there is genuine partnerships working, and user/ provider experiences are co-presented;
- the contribution of parents is professionally valued through, for example, policies of reward, recognition and remuneration;
- there are clearly described roles for parent representatives and
- plans are in place for on-going recruitment and training.

There should be co-ownership of these aims between local authorities and parents to mark progress and build trust. Effective parent participation can lead to a better fit between families' needs and service provision, higher satisfaction with service delivery, reduced service costs (as long term benefits emerge), better value for money decisions and less conflict between providers and those dependent upon services.

Local authorities and other service providers should work in partnership with parent carer forums in:

- preparing and reviewing their local offer;
- reviewing and planning SEN provision;
- the joint commissioning of services.

Schools and colleges may also find their local parent carer forum a helpful resource in contributing to the development of their policies and practices for supporting children and young people with SEN and involving families.

[Note: Further information to follow on support provided for families from Health and Social Care]

3 Education, Health and Care: Integration, Joint Commissioning and Co-operation

3.1 Education, Health and Social Care – working together for positive outcomes

Children and young people with SEN need integrated, family focused support from a range of agencies. The Children and Families Bill places duties on local authorities and Clinical Commissioning Groups (CCGs) to support this.

Integrated services

Local authorities are required by clause 25 of the Children and Families Bill to exercise their duties and powers under the Bill with a view to ensuring the integration of special educational provision with health and social care provision where they think this would promote the wellbeing of children or young people in their area who have SEN or improve the quality of special educational provision. The wellbeing of children and young people includes:

- their physical and mental health and emotional wellbeing;
- protection from abuse and neglect;
- control by them over their day to day lives;
- participation in education, training or recreation;
- social and economic wellbeing; domestic, family and personal relationships; and
- their contribution to society.

Joint commissioning

Clause 26 of the Children and Families Bill requires local authorities and their partners CCG to commission services jointly for children and young people with SEN, both those with and without EHC plans. Those arrangements could involve joint funding agreements or pooled budgets. The details are decided locally but all local authorities and their partner clinical commissioning groups must make arrangements for considering and agreeing:

- The education, health and care provision reasonably required by children and young people with SEN;
- What education, health and care provision is to be secured and by whom;
- What advice and information is to be provided about education, health and care provision and by whom and to whom it is to be provided;

- How complaints about education, health and care provision may be made and are dealt with; and
- Procedures for ensuring that disputes between local authorities and clinical commissioning groups are resolved as quickly as possible.

The joint commissioning arrangements must include arrangements for:

- securing Education, Health and Care assessments;
- securing the education, health and care provision specified in EHC plans; and
- agreeing personal budgets.

Local authorities will provide Information about the services that result from joint commissioning arrangements in their local offer.

Children, young people and their families should be at heart of this process. The joint commissioning duty will help ensure that local councils, health professionals and volunteers come together to organise services, and set out a clear expectation of what parents, children and young adults with SEN can expect.

[Note: When the duty on health commissioners to ensure provision of healthcare services specified in Education, Health and Care Plans has been cleared by the Committee considering the Children and Families Bill it will be referenced here]

Co-operation

A local authority in England and its partner clinical commissioning groups must make arrangements to deliver the education, health and social care provision for 0-25 year old children and young people that the LA is responsible for who have SEN. To do that, the local authority must work with:

- children and young people with SEN, and the parents of children with SEN, in its area;
- the governing bodies of maintained schools and maintained nursery schools in its area;
- the proprietors of Academies in its area;
- the governing bodies, proprietors or principals of post-16 institutions in its area;
- the governing bodies of non-maintained special schools in its area;
- the advisory boards of children's centres in its area;
- the providers of relevant early years education in its area;

- the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by children or young people for whom it is responsible;
- a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible;
- such other persons as the authority thinks appropriate.

Local authorities also have a duty to ensure that there is suitable education and training for young people in their areas, including for those children and young people who are unable to attend school, for example, due to health needs.

The arrangements for joint commissioning for children and young people with SEN will draw on:

- the local needs identified by Health and Wellbeing Boards in their Joint Strategic Needs Assessments, and
- the agreed priorities of the Joint Health and Wellbeing Strategy.

Each CCG will determine what services must be provided to meet the reasonable health needs of the children and young people for whom they are responsible. At a population level, these services will be reflected in the local offer of services published by the local authority¹. However, a CCG may also commission a specific service to meet the needs of a child or young person, based on the assessment of the child or young person's needs and consideration of their individual case.

The local authority and the partner CCG(s) have a statutory duty to consider the extent to which children and young people's needs could be more effectively met through partnership arrangements under section 75 of the NHS Act 2006. They must also have regard to the NHS mandate published by the Secretary of State (and any guidance issued by the Secretary of State) and, must involve the Local Healthwatch organisation for the area of the local authority, and the people who live or work in the area.

The objectives in the NHS Mandate include:

- improving partnership across different services for children and young people with SEN or disabilities. The Board has a responsibility to ensure that they have access to the services identified in their agreed care plan;

¹ Note that the NHS Commissioning Board may also have commissioning responsibility for some children and young people (for example in some secure children's homes), and therefore a similar duty to meet their reasonable health needs. See the National Health Services Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012:

<http://www.legislation.gov.uk/ksi/2012/2996/contents/made>

- giving parents of children who could benefit from it the option of a personal budget based on a single assessment across health, social care and education;
- improving integration across health services, including the transition between children and adults services;
- health services working with wider stakeholders, such as schools, to improve health outcomes;
- mental health having the same importance as physical health throughout the NHS, and an emphasis on increasing young people's access to mental health services.

Involving children, young people and their families

Both clinical commissioning groups and the NHS Commissioning Board must develop effective ways of harnessing the views of patients and the public so that commissioning decisions on services for children and young people with SEN are shaped by people's experiences and aspirations and focused on helping achieve agreed outcomes.

The integrated arrangements for commissioning services for children and young people with SEN must promote the involvement of children and young people, and their parents, carers and representatives in decisions which relate to their care, and in the development and review of a local offer of services, derived from commissioning plans which reflect the strategic participation of local young people and their families. CCGs will want to engage with Healthwatch organisations, patient representative groups, Parent-Carer forums and other local voluntary organisations and community groups to do this.

3.2 Keeping provision under review

Joint commissioning is an on-going process and local authorities and their partner CCGs must keep the arrangements under review.

Local authorities also have a duty to keep under review the special educational provision and social care provision in their areas for children and young people who have SEN and the provision made for children and young people from their areas that are educated out of the area. The local authority will do this by working with the partners to their joint commissioning arrangements.

3.3 Working in partnership

Health services

Local authorities and CCGs will want to consider how best to integrate the commissioning of services for children and young people with SEN with the CCG's broad responsibility for commissioning health services for other groups, and the local authority's responsibility for health protection and health improvement for the local population. The local authority in particular has responsibility for securing a range of public health

services which may be relevant for children and young people, and will want to consider how their commissioning and provision can be aligned with the arrangements for commissioning services for children with SEN: for example, the Healthy Child Programme for pre-school and school-age children, including school nursing.²

Designated Medical Officer

The designated medical officer for SEN (who might be an employee of an organisation such as a CCG or NHS Trust), has responsibility for co-ordinating the role of the health body in statutory assessment. The officer must work strategically across health, social care and local government, and have good relations with local commissioners who are partners in the joint arrangements for SEN, working to ensure effectiveness in co-operation, and encouraging and supporting the optimum use of flexibilities for joint working (e.g. through partnership arrangements and pooled budgets).

They must provide a means for the local authority to access expert medical advice – for example, on whether or not a child can attend school, or on medical evidence provided in support of a school application - but may also be required to provide or facilitate access to, advice or support for the health community on SEN, particularly when health services are preparing reports on children. Whilst the advice and support may be provided by a number of health and care professionals as appropriate, the designated medical officer must be an identified, qualified and registered medical practitioner, with the appropriate training and/or experience to exercise this role in relation to children and young people with SEN.

The designated medical officer should ensure all early years providers, schools and colleges in the local authority have a contact for seeking medical advice on children who may have SEN, and should ensure other agencies are fully engaged with arrangements for ensuring appropriate statutory notifications are made. For example, the designated medical officer must ensure that there are arrangements in place to ensure local health services (including primary medical services and secondary care) are able to inform the local authority of children who they think may have SEN.

Social Care Services

Social care teams have a range of duties and responsibilities towards children and young people with SEN. In particular, they should:

- Provide early years providers and schools with a contact for the provision of social care advice on children and young people with SEN;
- Co-operate (with the local authority) in drawing up its local offer;

² A factsheet has been produced on the public health responsibilities of local authorities: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131901.pdf

- Undertake their duties to identify children and young people with SEN;
- Respond to requests for advice for an EHC plan within required time limits;
- Make available social care provision specified in the plan;
- Undertake reviews of children and young people with plans where there are social care needs.

Social care departments may find it useful to designate an officer or officers to support their social care teams in undertaking these duties and to act as the central point of reference for the local authority's SEN teams on matters related to social care.

[Note: This chapter will be developed to include more information on the roles of health and social care professionals in integrating, commissioning and reviewing services. Further information to be provided here in relation to duties of Adult Social Care services towards 18-25 year olds with SEN and EHC plans who are entitled to adult care]

4 The Local Offer

[Draft indicative regulations for Committee relevant to this chapter are:

- *The Special Educational Needs (Local Offer) (England) Regulations, Clause 30.]*

4.1 What is the local offer?

Local authorities must publish, in one place, information about provision they expect to be available in their area for children and young people from 0 to 25 who have SEN.

The local offer must include both local provision and 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, including relevant national specialist provision. For example, if an FE college in a neighbouring authority takes students from the “home” local authority then it should be included.

The local offer has two key purposes:

- To provide clear, comprehensive and accessible information about the support and opportunities that are available; and
- To make provision more responsive to local needs and aspirations by directly involving children and young people with SEN, parents and carers, and service providers in its development and review.

The process of developing the local offer is intended to help local authorities to improve provision. The local offer should not simply be a directory of existing services.

The local offer should be:

- Engaging: local authorities must involve parents, children and young people in developing and reviewing the local offer and should cooperate with those providing services and education. Effective parent participation happens when parents have conversations with and work alongside professionals in order to design, develop and improve services
- Accessible: the local offer should be easy to understand, factual and jargon-free. It should be structured in such a way that relates to young people’s and parent’s needs (for example by broad age category or by type of provision). This should be developed with local families.
- Transparent and comprehensive: parents and young people should know what support is available across education, health and social care from 0 to 25, how to

access it (including eligibility criteria where relevant), how decisions are made and who is accountable. The local offer should include details of where to go for information, advice and support, as well as how to make a complaint about support, or appeal against decisions.

The [xxxx] Regulations provide a common framework for the local offer. They specify the requirements that **all** local authorities must meet in developing, publishing and reviewing their local offer:

- The information to be included
- How the local offer is to be published
- Who is to be consulted about the local offer
- How children and young people with SEN and parents will be involved in the preparation and review of the local offer
- The publication of comments on the local offer and the local authority's response

4.2 What must be included in the local offer?

Local authorities must include information about all the areas specified in the Regulations. Local authorities are also encouraged to include wider information, particularly in light of their discussions with children and young people with SEN and parents.

The local offer must include information about:

- Education, health and care provision for children and young people with SEN (which should include information about its quality and the destinations/outcomes achieved by those who use it);
- Arrangements for identifying and assessing children and young people's SEN, including arrangements for requesting an EHC needs assessment;
- Other education provision (educational provision outside of schools or colleges such as sports or arts provision)
- Training provision, including Apprenticeships;
- Arrangements for travel to and from schools, post-16 institutions and early years providers;
- Support to help children and young people in moving between phases of education (for example from early years to school, from primary to secondary) and to prepare for adulthood;

- Sources of information, advice and support in the local authority's area relating to SEN including information provided under clause 32 of the Children and Families Bill, forums for parents and carers, support groups, childcare and leisure activities, and
- Arrangements for making complaints, for the resolution of disagreements, mediation and parents' and young people's right to appeal a decision of the local authority to the Tribunal.

Arrangements for Identification and Assessment

Local authorities should make clear in the local offer the arrangements in schools, post-16 institutions and early years providers for:

- Identifying the particular learning needs of any child or young person, modifications to teaching approaches and provision of ancillary aids.
- Arrangements for involving the child's parents or the young person in decisions about their provision;
- Securing additional services, expertise, equipment and facilities required by children and young people with SEN;

Mainstream educational settings must use their best endeavours to secure the special educational provision called for by the child's or young person's needs.

As well as setting out the provision the local authority expects to be available in early years providers, schools and post-16 institutions, the local offer should make clear where information provided by schools [under clause 64 of the Children and Families Bill] about their arrangements for identifying, assessing and making provision for children and young people can be found. It will also need to make clear how young people and parents can find information published by post-16 institutions.

The local authority must include details of how to request an Education, Health and Care needs assessment.

Education, Health and Care Provision

Education Provision should include provision available in both mainstream and specialist educational settings, including details of provision available in the independent and non-maintained sectors that are attended or likely to be attended by children or young people in its area. It also includes:

- The special educational provision (such as SEN support or learning support services, sensory support services or specialist teachers) made available to mainstream schools, early years providers, special units, alternative provision and

- other settings (including home visits), whether provided by the local authority or others;
- Local arrangements for collaboration between institutions to support those with SEN (for example, partnership working between further education colleges or shared services between schools); and
- The local authority's arrangements for providing additional funding for children and young people with high needs in mainstream and specialist settings.

The local offer must include information about health care provision for children and young people with SEN, including speech and language and other therapies, services relating to mental health and services assisting relevant early years providers, schools and post-16 institutions to support children and young people with medical conditions.

It should include health and care provision commonly accessed by children and young people with SEN such as wheelchair services and community equipment, children's community nursing, Portage, continence services, physiotherapy and other relevant therapy services, palliative and respite care and other provision for children with complex health needs.

The emphasis should be on ensuring all relevant information can be easily accessed by children, young people and their families. A CCG should ensure families can easily access information on other services, such as local urgent and emergency care provision. Local authorities and their partner CCGs should ensure that this information is accessible through the local offer. They should particularly include provision for children and young people's continuing care arrangements, with information on how these are aligned with the Education Health and Care planning process locally, described in Chapter 3.

The local offer must include information about social care services provided in accordance with section 17 of the Children Act 1989 for children and young people with SEN. It must include support for young people when moving between social care services for children to social care services for adults, and support for young people in finding appropriate accommodation and assistance to support independent living and should include details of the short breaks for disabled children, young people and their families.

[Note: Further information on adult social care. The draft Care & Support Bill contains requirements for publishing information on adult social care. We will cross-reference that here]

Since April 2011, local authorities have been under a duty to provide a range of short breaks services for disabled children, young people and their families. A key part of that duty is the requirement for all local authorities to prepare a short breaks duty statement,

providing details of the local range of services; how services are responding to the needs of local carers; and how services can be accessed, including any eligibility criteria.³

Local authorities are required to publish statements on their websites and to review them on a regular basis. They must also consider the needs of local parents and carers when preparing and revising their statements. The short breaks duty statement will form a core part of the social care strand of the local offer.

This range of education, health and care provision is likely to be funded by a number of sources, including schools or colleges through their delegated resources, the local authority high needs funding block and other funding (for health and social care provision for example) from the local authority and partner clinical commissioning groups.

The local offer should provide information that is accessible to young people and parents on what provision is available and how it can be accessed, irrespective of the funding source involved.

In setting out the special educational provision the local authority expects to be available in early years providers, schools, post-16 and other institutions from their own budgets in their local offer must include information about the arrangements in place for:

- Identifying children and young people's SEN
- Assessing and reviewing children and young people's progress towards outcomes, including the opportunities available to work with parents and young people as part of this assessment and review.
- 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 for employment, independent living and participation in society.
- The availability of specialist expertise among teachers, lecturers or other professionals to support children and young people with SEN.
- Assessment and evaluation of the effectiveness of SEN provision.
- Access to facilities and extra-curricular activity used by all children and young people at the educational setting.

³ The Breaks for Carers of Disabled Children Regulations 2011

- Extra pastoral support including practices for listening to the views of children and young people with SEN and measures to prevent bullying

Provision available in training settings

The local offer must identify training opportunities, including Apprenticeships, Traineeships and Supported Internships, available to local young people. Training is an important option for young people from age 16. Local authorities must therefore ensure they identify training providers who can serve young people with SEN in their area, and engage with those providers to ensure the local offer provides good quality information about that provision.

Transport arrangements to and from educational provision

Transport is often a critical factor in the support for children and young people with SEN. The local offer must make clear:

- any support available from the local authority with transport costs and the local authority's policy on transport support
- any specific arrangements for specialised transport (e.g. specially fitted buses)
- any arrangements for free or subsidised transport
- where support might be obtained from other sources to help with transport costs

This must include transport arrangements for young people in relation to post-16 provision as set out in the section 509AA of the Education Act 1996. It must include any arrangements for transport provision for young people up to age 25 with an EHC plan, including independent travel training.

Local authorities will wish to include in this section any support that is offered to children and young people to help them use transport, including public transport, and what training is given to help independent travel.

Support available to children and young people to help them prepare for adulthood

The local authority must set out in the local offer what support is available to children and young people with SEN to enable them to move into adulthood with choice and control over their lives. This should include evidence of what works in achieving good outcomes.

Preparing for adulthood support must include provision relating to finding paid employment, housing and accommodation and participation in society:

- Preparing for and finding employment, including supported employment: this must include Supported Internships and how to apply for them, and Apprenticeships

and Traineeships, support available from job coaches and how to obtain that support, support available from employment agencies, and support available from Year 9 to help children and young people plan their careers. It should also include some signposting on where young people could obtain advice about setting up their own enterprise. It should also include signposting on where young people can obtain advice and information about financial support available for them when they are looking for work, or once they are employed.

- Preparing for independent living - enabling young people with SEN to have informed choice and control over their lives, and finding accommodation: this must include information about different housing options such as social housing, housing association accommodation, private renting, shared housing and shared ownership, how to apply for accommodation, and where to get financial and other support (such as a personal assistant, assistive technology or modifications to a home) and more detailed advice on accommodation. For people eligible for social care or health support, it should include support to develop choice and control over who supports them and how they are supported, including managing their personal budget or recruiting a personal assistant.
- Community participation: for instance leisure and social activities so that young people with SEN are able to develop relationships and contribute to their community, including influencing local decision making. This must include information about how young people can access mainstream community facilities and local youth services, and volunteering opportunities. Access in this context does not simply mean wheelchair access: it means support to enable young people to participate in local society (for example, this could mean training staff at leisure facilities to better understand different needs). It should include information on how care support can enable young people to access social opportunities (e.g. a personal assistant or assistive technology) and develop friendships, and how to apply for that support.

Information about how to seek an Education, Health and Care assessment

In addition to providing information about the support that is available from the delegated budgets of schools, colleges and early years providers and, where appropriate, from the local authority through its high needs budget, it is important that parents and young people have information about how to seek an assessment for an EHC plan when support is not helping the child or young person to make progress.

The local offer should include information about:

- how an assessment can be requested
- how the local authority will consider a request for an assessment and inform parents and young people of their decision

- how parents and young people will be involved in the assessment process
- any support to help families during the assessment and planning process (such as key working or family support services)
- any timescales involved in the assessment process
- the process for making an EHC plan and how parents and young people will be involved
- the option of a personal budget, who is eligible, how to ask for one and what information, advice and support is available for one
- arrangements for mediation, disagreement resolution and appeals

Information about where to get advice and support

It is vital that parents and young people know where to get advice, information and support. Parents of children with SEN have benefited from the information, advice and support provided by local Parent Partnership Services for many years.

With the extension of protections enjoyed by young people in schools to those in colleges and much closer integration of education, health and social care services there is a need for parents and young people to have access to coordinated advice and information.

This Information and advice should be accessible through a single service or place, and direct parents, carers and young people, as well as those who support them, to the appropriate local authority voluntary and community sector SEN support services, factual information, advice on rights, legal requirements and what to do if things go wrong.

Local authorities must also publish information on how young people with SEN can access impartial advice and guidance on education, health and social care provision and ensure that this advice is tailored appropriately for them.

The information and advice should include arrangements for additional individual support for those families who find it particularly difficult to engage with services. This may be through the offer of an independent “key working” role or coordination role to deliver practical support to families going through the assessment process.

Local authorities have responsibilities to support young people into education or training and to secure sufficient suitable education and training provision for all young people aged 13-19 and for those aged 20-24 with an EHC plan [currently applies to those with a Learning Difficult Assessment] and make available to those young people support that will encourage, enable or assist them to participate in education or training. Tracking young people’s participation and outcomes/destinations is a key element of this duty.

4.3 How the local offer should be published

Local authorities should make their local offer widely accessible by making it available as a web based resource and publishing their arrangements for enabling those without access to the web to get the information. It should also enable access for different groups, including disabled people and those with different SEN.

4.4 Who should be consulted by a local authority in preparing its local offer

Children and young people with SEN and parents should be at the heart of the local offer and should co-produce it with the local authority. Local authorities are best placed to decide how to do this but it needs to go beyond a simple sign off process. Children, young people and families can influence usefully both the type of provision and how it is made accessible. The [xxxx] Regulations make clear that local authorities should involve them in:

- planning the content of the local offer - to find out what services children and young people need
- deciding how to publish the local offer - so it is easily accessible and easy to navigate reviewing the local offer
- providing feedback on services in the local offer

Local authorities should publicise in the local offer the ways in which they will involve children, young people and parents. This should include any support available to enable them to contribute.

The success of the local offer rests on cooperation between the local authority and the range of bodies and organisations set out in the Children and Families Bill including schools, colleges and health services. Clause 28 of the Bill places a reciprocal duty to cooperate on those bodies and organisations and the local authority.

Local authorities and their partners will need to develop the local offer in the context of their local Health and Wellbeing Strategy, joint commissioning arrangements and agreements about the delegation of SEN funding with local partners. The local offer is the key vehicle for communicating the effects of these strategic discussions to local families affected by SEN.

More broadly, local authorities should consult with children and young people with SEN and parents and those bodies in keeping their special educational provision and social care provision under review, including the sufficiency of that provision (clause 27 of the Children and Families Bill). This will help local authorities to identify gaps in their provision.

Local authorities must seek and publish comments about their local offer, including those received from or on behalf of children and young people with SEN and their parents. Comments must be published if they relate to:

- The content of the local offer, which includes the quality of existing content and any gaps in the content
- The accessibility of information in the local offer
- How the local offer has been developed or reviewed

Local authorities must publish their response to those comments in the local offer alongside an explanation of what action they are taking to respond. They are not required to publish abusive or vexatious comments and must ensure that comments must be published in a form that does not enable any individual to be identified.

4.5 The local offer: links to joint commissioning, co-operation and health and social care

The local offer will be underpinned by joint commissioning arrangements made by local authorities and clinical commissioning groups agreeing what education, health and care provision is needed locally and who will provide and pay for that provision. Those joint commissioning arrangements will be informed by:

- The local needs identified by Health and Wellbeing Boards in their Joint Strategic Needs Assessments, and
- The agreed priorities of the Joint Health and Wellbeing Strategy.

Each CCG will determine what services must be provided to meet the reasonable health needs of the children and young people for whom they are responsible. At a population level, these services will be reflected in the local offer of services published by the local authority⁴.

Joint commissioning arrangements must include details of how advice and information will be provided to parents and young people, including details of how they should raise complaints about education, health and care. They must also have procedures to resolve disputes between local partners quickly.

Local authorities and their partners, including clinical commissioning groups will have a duty to co-operate with each other to assess children and young people, prepare EHC plans and to commission and provide services. This means the local authority must

⁴ The NHS Commissioning Board may also have commissioning responsibility for some children and young people (for example in some secure children's homes), and therefore a similar duty to meet their reasonable health needs. See the National Health Services Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012:
<http://www.legislation.gov.uk/ksi/2012/2996/contents/made>

ensure that all its officers co-operate with each other to ensure a seamless and consistent service for children, young people and families. This must include those officers whose roles will contribute to helping young people make a successful transition to adulthood – for example housing, economic regeneration.

Co-operation between the local authority, its partner clinical commissioning groups and other local partners, including early years providers, schools and post-16 institutions [provided for in clauses 28, 29 and 31 of the Children and Families Bill] is essential so that the local offer provides a transparent and accessible picture of the range of services available locally.

4.6 How the local offer links to other duties

[Note: This section will be developed to include references to other relevant statutory duties including The Equality Act (2010); Raising the Participation Age; providing suitable education and training for young people over compulsory school age and those 19 -25 with EHC plans; provision of Information, Advice and Guidance, publishing information on positive activities for young people, Care and Support Bill duties to publish information on adult care services, children of service personnel; and the duty to keep a register of disabled people]

5 Early Years, Schools, Colleges and Other Providers

[Draft indicative regulations for Committee relevant to this chapter are:

- *The Special Educational Needs (SEN co-ordinators) Regulations, Clause 62;*
- *Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;*
- *The Special Educational Needs (Information) Regulations, Clause 64.]*

5.1 Improving outcomes for all – high expectations for children and young people with SEN

All children and young people should have an appropriate education with opportunities to achieve their goals and aspirations and where their voice is heard. Education should always build on what has gone before; ensuring a child or young person continues to make progress and ultimately preparing them to make a successful transition to adulthood.

All education settings, including nurseries, early years providers, schools, colleges and other providers, should have high aspirations for all children and young people, including those with SEN. Improving outcomes for all children and young people involves early years providers, schools, colleges and local authorities in actively engendering a sense of community and belonging and seeking to remove barriers to learning and participation that can hold back or exclude children and young people with SEN. This is supported by the duties that local authorities, early years providers, schools and colleges have towards disabled people under the Equality Act 2010.

It is vital to identify quickly and accurately where children and young people have SEN that requires additional support so that this can be put in place. All teachers need to be equipped to teach children and young people with a diverse range of need. Early years providers, schools and colleges should plan their staff training, development and support to ensure all teachers are able to do this. Taking this approach should ensure a focus on the quality of teaching for all children and young people and on the development and evaluation of different approaches to meet the needs of individual children and young people within the early years provision, school or college.

Section 5.4 below provides guidance on identifying children and young people with SEN and providing Additional SEN Support. It emphasises the importance of teaching and learning strategies in meeting the needs of most children and young people and gives advice on providing additional or different support for those who cannot be supported effectively in this way.

5.2 “All teachers are teachers of children with special educational needs”

Good practice on quality provision

- Good quality teaching

Requirements for what all early years providers, schools, colleges and other providers should be providing to all children and young people

- The integrated review at age 2/2.5
- The Early Years Foundation Stage and its importance for early teaching, learning and identification of SEN
- Phonics Check

Requirements from the National Curriculum – details

- The National Curriculum – including P Scales
- Programmes of study
- For 14-16 year olds enrolled in college, the core KS4 curriculum

Principles of 16-19 Study Programmes (16-25 for young people with SEN) [Note: from September 2013]

- All students should follow a coherent programme that supports progression to work or further study.
- For some students, study at Level One or Entry level may be appropriate; for others, where the student has profound and/or complex learning difficulties, it may be appropriate for the Study Programme to concentrate on work experience or other non-qualification activities that will prepare them for adult life.
- In all cases, Study Programmes should include English and maths at an appropriate level.

5.3 Inclusion and choice

With the right training, strategies and support in place the majority of children and young people with SEN are already successfully included in mainstream education. This is reflected in the general principle in law that children and young people with SEN should be educated in mainstream settings. That principle is supported by provisions safeguarding the interests of all children and young people and ensuring that the preferences of the child’s parents or the young person for where they should be educated are met wherever possible.

Special schools (in the maintained, non-maintained and independent sectors), special post-16 institutions and specialist colleges all have an important role in providing for children and young people with SEN and in developing and working collaboratively with mainstream and special settings to develop and share expertise and approaches.

All children and young people have different needs and children and young people can be educated effectively in a range of settings, including mainstream and special schools and colleges. Alongside the general principle of inclusion parents of children with an EHC plan and young people with such a plan have the right to seek a place at a special school, special post-16 institution or specialist college.

Children and young people with SEN but without Education, Health and Care Plans

Most children and young people with SEN have always been taught in mainstream settings. Where a child or young person has SEN but does not have an EHC plan they must be taught in a mainstream setting except in specific circumstances (see below).

The School Admissions Code of Practice requires children and young people with SEN to be treated as fairly as others. Admissions authorities:

- must consider applications from parents of children who have SEN who do not have an EHC plan on the basis of the school's published admissions criteria as part of normal admissions procedures
- must not refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs
- cannot refuse to admit a child on the grounds that they do not have an Education, Health and Plan

FE colleges manage their own admissions policies. They will do so in line with the requirements of the Equalities Act. Students will need to meet the entry requirements for courses as set out by the college, but should not be refused access to opportunities based solely on whether or not they have SEN.

Children and young people without an EHC plan can be placed in special schools and special post-16 institutions in the following specific circumstances:

- where they are admitted to a special school or special post-16 institution to be assessed for an EHC plan with the agreement of their parent, the local authority, the head teacher or principal of the special school or special post-16 institution and anyone providing advice for the assessment;
- where they are admitted to a special school or special post-16 institution following a change in their circumstances with the agreement of their parent, the local authority and the head teacher or principal of the special school or special post-16 institution;

- where they are in hospital and admitted to a special school which is established in a hospital; or
- where they are admitted to a Special Academy (including a Special Free School) whose Academy arrangements allow it to admit children or young people with SEN who do not have an EHC plan.

The last of these provisions enables the Secretary of State to approve Academy arrangements for individual Special Academies or Special Free Schools that are innovative and increase access to specialist provision for children and young people for children and young people without EHC plans.

The Academy arrangements in such cases would make clear that a child or young person would only be placed in such a Special Academy or Special Free School at the request of their parents or at their own request and with the support of professional advice. A special Academy which has these arrangements can only admit children who have a type of SEN for which they are designated and the special Academy will have adopted fair practices and arrangements that are in accordance with the Schools Admission Code for the admission of children without an EHC plan.

Children and young people with Education, Health and Care Plans

Details of the arrangements relating to children and young people with Education, Health and Care Plans (EHC plans) are set out in Chapter 6, Assessments and Education, Health and Care Plans.

Parents of children with an EHC plan and young people with such a plan have the right to express a preference for a particular maintained mainstream or special school, Academy or Special Academy, non-maintained special school, Further Education College, or independent school or special post-16 institution approved by the Secretary of State under clause 41 of the Children and Families Bill. The local authority must comply with their preference unless it would:

- be unsuitable to the age, ability, aptitude or SEN of the child or young person; or
- the attendance of the child or young person there would be incompatible with the efficient education of others; or the efficient use of resources

Where a parent or young person does not express a preference for a particular school or further education college or special post-16 institution, or they do so and their preference is not met, the local authority has a duty to provide for a mainstream setting in the child or young person's EHC plan unless it would be:

- against the wishes of the parent or young person; or

- incompatible with the efficient education of others.

Where the local authority considers a mainstream place to be incompatible with the efficient education of others it must demonstrate that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility by the school or college or local authority.

Children with EHC plans can also attend more than one school under dual placements. Dual placements can allow children time away from their mainstream school for specialist support. This can help to prepare children for mainstream education and prepare schools for meeting children's needs. In order for a child with SEN who is being supported by a dual placement to be deemed as being educated at a mainstream school they must spend the majority of their time (at least 51%) there.

Where appropriate, a young person with an EHC plan can also attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 providers and independent specialist colleges to commission such placements where that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there.

Disability and the Equality Act

Many disabled children also have a special educational need. Schools, early years providers, post-16 institutions and local authorities have duties under the Equality Act 2010 towards disabled children and adults and children and adults with other "protected characteristics". The Department publishes guidance for schools on their duties under the Equality Act 2010 [<http://www.education.gov.uk/aboutdfe/advice/f00215460/equality-act-2010-departmental-advice>]

School and local authority duties towards disabled pupils are as follows:

- They must not discriminate against or harass disabled children;
- They must make reasonable adjustments for individual pupils and disabled pupils more generally to help alleviate any disadvantage they suffer;
- They must (under public sector equality duties) have regard to the need to eliminate discrimination of, and promote equality of opportunity for, disabled pupils and foster good relations between disabled and non-disabled pupils;
- Schools must publish accessibility plans and local authorities' accessibility strategies setting out how they propose to increase the access of disabled pupils

to premises, the curriculum and information. These plans and strategies must be published every three years;

- Schools must publish specified information about their provision, policies, plans and practices in relation to disabled pupils.
- Under schools', local authorities' and early years providers' reasonable adjustments duty they must make reasonable adjustments to their policies, procedures and practices to prevent disabled children being put at a substantial disadvantage. They must also provide auxiliary aids and services for disabled pupils where reasonable and where failure to do so would put pupils at a substantial disadvantage.
- Early years providers have the same duties as schools under the Equality Act not to discriminate against or harass a disabled child and to make reasonable adjustments. Also, if they are public authorities, the same public sector equality duty requirements apply.

Further Education Institutions within the Post-16 sector have duties under the Equality Act 2010. These include:

- They must not discriminate against or victimise disabled students or applicants to the institution;
- They must not discriminate in their admission policies;
- They must not discriminate in the education, course or qualification they offer students;
- They must make reasonable adjustments in all the above for individual students to prevent discrimination (schedule 13);
- They must not discriminate in terms of who may access recreational or training facilities and the responsible body should make reasonable adjustments.

5.4 Identifying needs

The importance of early identification

The benefits of early identification are widely recognised; identifying need at the earliest point that a physical, sensory, learning or mental health need presents itself, and then providing good interventions, improves long-term outcomes for the child.

Whilst for many children and young people, their needs can be identified at birth or at an early age, some difficulties only become evident as children grow and develop. It is therefore important that all those who work with children and young people are alert to

emerging difficulties and respond early. In particular, parents know their children best, and it is important that all professionals listen and understand when parents express concerns about their child's development.

Key points at which SEN may be identified

From birth to two - Many of the more complex needs, developmental and sensory, are identified at birth. Early health assessments, such as the hearing screening test which is used to check the hearing of all new-born babies, enable the very early identification of a range of medical and physical difficulties such as spina bifida and cerebral palsy, and sensory impairments, such as vision and hearing and deaf-blindness. Health services, including paediatricians, the family's general practitioner, and health visitors, work with these families, and support them in understanding their child's needs and working on their behalf to ensure they can access early support. Where the health services anticipate that the child will have SEN when they start school, they can refer early to education services, so that families can start receiving educational advice, guidance and intervention.

There are several forms of support and provision for this age group. Examples are:

- Early Support is a programme underpinned by a set of principles that aim to improve the delivery of services for disabled children, young people and their families. It enables services to coordinate their activity better and provide families with a single point of contact and continuity through key working.
- Portage is a home-visiting educational service for pre-school children with additional support needs and their families. It is based on the principle that parents are the key figures in the care and development of their children and offers a carefully structured system to help parents become effective teachers of their own children. Parents and children receive regular home visits from their Portage visitor.
- Educational psychologists or specialist teachers such as a teacher of the deaf or visual impairment, or an early years support worker. These specialists may visit families at home, their role being to support parents and the child, answering questions, discussing communication, clarifying needs, and offering practical support.

Through early years providers - As part of their practice, providers will plan and offer activities which help the child reach their full potential. While children develop at their own pace, if a child's progress in any prime area (personal social emotional development, communication and language, physical development) gives cause for concern, practitioners must discuss this with the child's parents and/or carers and agree how to support the child. Practitioners must consider whether a child may have an SEN or disability which requires specialist support. They should link with, and help families to access, relevant services from other agencies as appropriate.

Progress check at age two - Practitioners must review the progress of 2 year olds and provide parents and/or carers with a written summary of their child's development in the prime areas. The summary must identify strengths and where there is a concern that a child may have a developmental delay (an indication of SEN or disability). If there are concerns, or an identified SEN, practitioners should develop a targeted plan to support the child's learning and development. Professionals should be involved as necessary. If a child moves settings between the ages of two and three, the progress check must be undertaken where the child spends most time.

[Note: From 2015] The integrated review - As part of the Healthy Child Programme, health visitors currently check 2 year old children's physical development. The Government is committed to implementing a single integrated review from 2015. The integrated review will identify the child's progress, strengths and needs and enable appropriate intervention and support for children and their families, where progress is less than expected

Assessment at the end of the Early Years Foundation Stage Profile (EYFS Profile) - In the final year of the Early Years Foundation Stage (EYFS) in which the child reaches five and no later than 30 June in that term, the EYFS Profile must be completed for each child. The Profile provides a picture of a child's progress against expected levels and their readiness for Year 1. The Profile must reflect: on-going observation; all relevant records held by the setting; discussions with parents and carers, and any other adults whom can offer a useful contribution. It must inform plans for future activities and identify any additional support needed.

5.5 The four primary areas of special educational need

Areas of Special Educational Need

There is a wide spectrum of difficulties that can lead to a child experiencing problems in learning and being assessed as having a special educational need. However, the spectrum can be narrowed into four areas of SEN, which helps schools and others to plan their provision, and to focus on interventions that are relevant and of good quality.

Although four areas of primary need are identified here, it is recognised that many children and young people experience difficulties that do not fit easily into one area, and may have needs which span two or more areas. It is important to carry out a detailed assessment of individual children and young people and their situations to make accurate judgements of their needs and provide appropriate interventions.

Schools and other providers should also ensure that they regularly review the appropriateness of their provision, including their behaviour policies as behavioural difficulties do not necessarily mean that a child has a special educational need.

The four primary areas of need are:

1. Communication and interaction;
2. Cognition and learning;
3. Emotional, social and behavioural development;
4. Sensory and/or physical.

Communication and interaction;

[Note: Further information to follow]

Cognition and learning;

[Note: Further information to follow]

Emotional, social and behavioural development;

[Note: Further information to follow]

Sensory and/or physical needs

[Note: Further information to follow]

5.6 Additional SEN Support in schools, early years and colleges

The operation of Additional SEN Support

It is the responsibility of educational settings in consultation with parents, and, where appropriate, the young person, to decide whether a child or young person requires Additional SEN Support. They must ensure that children and young people who receive Additional SEN Support have an identified SEN and that their progress has not been hampered by weak teaching or poor attendance.

All mainstream educational settings, alternative provision Academies and Pupil Referral Units have a legal duty (in the Children and Families Bill), to use their best endeavours to secure that children and young people with SEN get the special educational provision they need. Schools should ensure that all those who teach or support children and young people with SEN are aware of their needs. This information is helpful in planning provision effectively to meet the needs of all children and young people with SEN. Educational settings are also expected to account to Ofsted for the progress of all children and young people with SEN or who are disabled.

Many of the children who are not progressing as expected, or are falling behind their peers can be supported, and have their needs met, through normal teaching and learning strategies, modification to teaching approaches and to classroom organisation, or through provision of ancillary equipment and aids.

However, for those who have SEN and who require support and/or interventions that are additional to or different from those normally provided as part of the differentiated

curriculum offer and strategies, will need Additional SEN Support. A child or young person should be provided with such support following discussion with parents about the identified needs, the support to be provided, and how improved outcomes can be achieved.

Identification and Assessment

The educational setting should have a clear approach to assessing SEN which is known by all staff. This should include the use of effective tools and early assessment materials, as well as arrangements to draw on more specialised assessments from external agencies and professionals. These should be agreed and set out as part of the local offer.

Before providing a child or young person with the Additional SEN Support, a rigorous assessment of SEN should be undertaken by the institution using all available evidence/data sources, such as attainment and historical data, the child or young person's development in comparison to their peers, information from parents and, if relevant, advice from external support services. The main areas of need that characterise pupils with SEN are set out in section 5.4.

Features of Additional SEN Support

Initial identification

All educational settings should accurately identify children or young people with SEN and should consider which children and young people have particular needs which might need additional or different provision in order to achieve their outcomes. As part of a graduated approach to tackling need they should first:

- consider their core teaching and adapt that to meet needs of the cohort as a whole;
- ensure that parents of children are fully engaged, consulted and informed and agreement is reached on how the child's needs will be met;
- ensure that the child or young person is fully engaged, consulted and informed and agreement is reached on how their needs will be met.

Where this identifies that a child or young person requires additional educational provision, from the school or from others:

- there should be a plan that focuses on what outcomes are expected and the support that the school, college and any relevant agencies will provide;
- reviews of progress should be held at least once a term;

- where relevant, external services and providers should work with settings to meet the needs of children and young people with SEN; and
- settings should review the effectiveness of what is happening and consider the need for a further assessment and any whether there should be changes to the support provided. Consideration should be given to requesting an assessment for an EHC plan if progress is not being made and outcomes are not improving.

Additional SEN Support in Early Years Providers

Early education practitioners working with children should monitor and review the progress and development of all children to differentiate between children who need support to catch up with their peers and those who need Additional SEN Support involving a more tailored approach to address a specific SEN, which is impacting on their ability to learn and develop.

Additional SEN Support in Schools and Colleges

Schools and colleges should plan, monitor and review their support arrangements for children and young people with SEN.

They should ensure they accurately identify children and young people with SEN who require additional or different levels of support from that which is normally provided. In particular, schools should take account of the support provided by early years providers, building on this and to ensure that momentum is maintained with a child's progress.

Likewise, post-16 institutions should take into account the support provided within school settings, where it is known to them. They should ensure that opportunities in further education enable young people to build on previous achievements and maintain their progress towards a successful transition to adulthood.

To ensure children and young people with SEN receive the right levels of support and intervention to help them to achieve good outcomes, schools and colleges should create a sharper focus on helping teachers to differentiate between:

- Those children and young people who need support to catch up with their peers; and
- Those children and young people who need a more tailored approach to address a specific SEN that is impacting on their ability to learn.

Monitoring Progress

All settings should monitor the impact of their interventions and whether adequate progress has been made. Where sufficient progress has not been made, settings should consider increasing the intensity and the frequency of the support and review the need for increased expertise.

Where sufficient progress has been made they should consider tailoring support to reflect the progress made and review whether Additional SEN support for the child or young person should be continued.

Reviewing progress [Note: replacement to current Individual Education Plans]

Funding to support children and young people who require Additional SEN Support

All schools are provided with resources in their delegated budget that they can use to support those with additional needs, including children and young people with SEN. This is determined by a local formula discussed with the Schools Forum. Similarly, colleges receive an allocation for both low level and high level needs of Additional Learning Support calculated on the basis of a 16-19 formula.

In addition, local authorities receive funding within their Dedicated Schools Grant which can be used to provide additional funds to early years providers, schools and colleges for children and young people with high needs and to provide support services such as for those with sensory impairment.

Funding arrangements for Additional SEN Support will be agreed locally.

5.7 The Special Educational Needs Co-ordinator (SENCO)

Governing bodies of maintained mainstream schools, maintained nursery schools and the proprietors of Academy schools (including free schools) must ensure that there is a qualified teacher designated as Special Educational Needs (SEN) co-ordinator (SENCO) for the school.

The SENCO must be a qualified teacher working at the school. A newly appointed SENCO must be a qualified teacher and where they have not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, they must achieve the National Award in Special Educational Needs Coordination within 3 years of appointment.

The role of the SENCO in schools

The SENCO has an important role to play with the head teacher and governing body, in determining the strategic development of the SEN policy and provision in the school. The SENCO will have day-to-day responsibility for the operation of SEN policy and coordination of specific provision made to support individual children with SEN and those who have EHC plans. The SENCO provides professional guidance to colleagues and will work closely with staff, parents and carers, and other agencies. The SENCO should be aware of the services provided under the Local Offer and be able to work with professionals providing an independent support role to the family to ensure that children with SEN receive appropriate support and high quality teaching

The key responsibilities of the SENCO may include:

- Overseeing the day-to-day operation of the school's SEN policy;
- Coordinating provision for children with SEN;
- Liaising with, advising and contributing to the in-service training of fellow teachers and other staff;
- Liaising with the relevant designated teacher where a looked after pupil has SEN;
- Advising on graduated approach to providing Additional SEN Support;
- Ensuring that the records of all children with SEN are kept up to date;
- Liaising with parents of children with SEN;
- Liaising with early years providers and secondary schools, educational psychologists, health, social care, and independent or voluntary bodies who may be providing SEN support and advice to a child and their family;
- Being a key point of contact with external agencies, especially the LA and LA support services;
- Liaising with potential next providers of education to ensure a young person and their parents are informed about options and a smooth transition is planned;
- Collaborating with curriculum coordinators so that the learning for all children is given equal priority;
- Ensuring with the head teacher and school governors that the school meets its responsibilities under the Equality Act (2010) with regard to reasonable adjustments and access arrangements.

The SENCO is responsible for ensuring that the school can track and record support plans and decisions for all the children with SEN in the school. SENCOs can be particularly effective when part of the leadership team.

The role of the SENCO in early years provision

[Note: Further information to follow]

The SENCO's role in supporting transition arrangements

The SENCO will play an important part in planning for children with SEN transferring between schools and phases of their education including entry to a college or a provider in the further education sector. Early planning is essential. The SENCO will need to liaise with those responsible for admissions, curriculum and support for young people with

SEN, and ensure that the receiving school, college or other institution has all the relevant information including the strengths, capability, progress and aspirations of the young person.

Transition between early years and school

[Note: Further information to follow]

Transition school and post-16

[Note: Further information to follow]

Further Education – workforce skills

[Note: Further information to follow]

5.8 Further information

Best Endeavours

The governing bodies, proprietors and management committees of mainstream schools, maintained nursery schools, pupil referral units and institutions within the further education sector must use their “best endeavours” to make the special educational provision called for by a child or young person’s SEN. Using their “best endeavours” means that within the resources available to them these bodies must do their best to meet a child or young person’s SEN.

Informing parents and young people

Where a school, maintained nursery school, Academy or PRU begins to make special educational provision for a child or young person without an EHC plan they must tell the child’s parent or the young person that special educational provision is being made. This is to ensure that parents and young people are in a position to play an informed role in decisions about their child’s or their own provision.

SEN information report

The governing bodies of maintained schools and maintained nursery schools and the proprietors of Academy schools have a legal duty to publish information on their websites about the implementation of the governing body’s or the proprietor’s policy for pupils with SEN. Governing bodies and proprietors must also publish information about the arrangements for the admission of disabled pupils, the steps taken to prevent disabled pupils being treated less favourably than others, the facilities provided to assist access of disabled pupils and their accessibility plans. The information published must be updated annually and any changes to the information occurring during the year must be updated as soon as possible. The information should relate to provision set out in the local offer.

Colleges should build a relationship with all students with learning difficulties and disabilities without a plan and will wish to ensure the young person is aware of support they are receiving.

Early education for two-year-olds from lower income families

There is a legal duty on local authorities to, from September 2013, secure funded early education places for two-year-olds who are either looked after by the local authority or from lower income families. Around 20% of two-year-olds (some 130, 000 children) will be eligible for 570 hours of funded early education, which may be taken as 15 hours per week, for example **[Note: The Government has also made a commitment to extend the duty to cover more children from September 2014, to around 40% of two-year-olds (some 260,000 children)].**

[Note: This section will be updated once eligibility criteria for 2014 have been published in spring 2013. One of the criteria proposed in the recent Government consultation was that, from September 2014, a two-year-old would be eligible for 570 hours of funded early education if they have a current statement of special educational needs, an Education, Health and Care plan or they attract Disability Living Allowance (DLA)]

5.9 External Support and Wider Support for Education Settings

The Educational Psychologist

One source of external support that schools and colleges can seek is from the local educational psychology service. These specialists provide on-going advice about children and young people with EHC Plans to education settings and to parents, as well as contributing to school and college understanding of practical interventions that will support progress and well-being. Educational psychologists also contribute to staff training and development.

Child and Adolescent Mental Health Services (CAMHS)

CAMHS can provide advice, support and consultation to family members, carers and workers from health, social care, educational and voluntary agencies. Some children and young people identified as having SEN may benefit from referral to specialist CAMHS for the assessment and treatment of their mental health problems. A variety of working arrangements exist between schools and local health partner organisations to facilitate co-operative partnerships and clear joined up care pathways to support individual children, young people and their families.

Specialist support teachers or support services

There is a range of specialist teachers who provide advice, direct support and guidance consultation to children and young people with a range of SEN. In particular, specialist teachers for children with hearing and visual impairment, including deafblindness, and those with physical impairment, support schools in modifying their curriculum and environment to ensure needs can be met. SEN support services may be commissioned by local authorities and delivered in a range of ways, including through schools.

Behaviour support teams

Behaviour support teams work to support children and young people with emotional and social difficulties in school. They provide early intervention and preventative work at whole school, group and individual level, and support schools in meeting the needs of those with more complex needs.

Youth Offending Teams

Youth Offending Teams (YOTS) work with young offenders (under 18) and those at risk of offending. YOTs are responsible for a range of youth justice services, including compiling pre-sentence reports, supervision of young offenders serving sentences in the community and supervision of those released from custody. Local authorities must ensure that Youth Offending Teams are involved in local commissioning arrangements. It is good practice to involve should involve the relevant probation services for young offenders who are aged 18 or over.

Other roles which support children and young people with SEN

- Speech and language therapists
- Occupational therapists
- Physiotherapists

[Note: Further information to follow]

5.10 Transitions points and preparing for adulthood

Discussions focusing on the wider aspirations of a child or young person should take place at an early stage with the child or young person and their parents/carers. They should consider progression, wherever possible encouraging education and training that will lead to greater independence and, where appropriate, employment. Person-centred planning should be at the heart of the discussion, which should include an in depth analysis of appropriate education and training provision for the young person, and promote where appropriate, independence and a future career.

Person-centred transition planning should begin as early as possible. The transition review should be a seamless transition from previous reviews and must allow time for the commissioning of any necessary provision and support to take place. It should build on existing plans which will have already been agreed with the child or young person and be integral to their learning and career guidance.

The role of Impartial Information, Advice and Guidance and transparent decision making for children and young people

Schools have a duty to secure independent, impartial careers guidance for pupils in years 9-11. [Note: This duty will be extended to years 8-13 from September 2013 and an equivalent requirement extended to 16-18 year olds in colleges through funding agreements.] Guidance secured under the duty must include information on the full range of 16-18 education or training options, including further education and Apprenticeships.

The Department for Education has issued statutory guidance which includes a clear requirement for schools to secure access to independent face-to-face support where this is the most suitable support for young people to make successful transitions - particularly children from disadvantaged backgrounds, or those who have SEN, learning difficulties or disabilities. A practical guide includes further information and models of good practice to help school meet their requirements under the duty.

Local authorities also have a duty to support all vulnerable young people aged up to 19 (and up to the age of 25 if they have an EHC plan) to participate in education, employment or training. Local authorities should have a relationship with schools and colleges in their area in order to support the joint delivery of an offer of a place in education or training.

Information Sharing

It is important that information about the young person's previous education and training is shared with the further education provider. Schools, colleges and local authorities should work together to ensure that all appropriate information is passed onto the new provider before the student begins the programme of learning.

5.11 Children and young people in specific circumstances

Children with health needs

Alternative provision is education arranged by local authorities or schools for children and young people who, because of behaviour, illness or other reasons, would not otherwise receive suitable education. It should provide education on par with that of mainstream, along with appropriate support to meet the needs of individual children and young people. Children unable to attend school because of health needs should be able to access suitable and flexible education appropriate to their needs. The nature of the provision must be responsive to the demands of what may be a changing health status.

Local authorities must:

- Arrange suitable full-time education (or as much education as the child's health condition allows) for children of compulsory school age who, because of illness, would otherwise not receive suitable education.

Local authorities should:

- Provide such education as soon as it is clear that the child will be away from school for 15 days or more, whether consecutive or cumulative. They should liaise with appropriate medical professionals to ensure minimal delay in arranging appropriate provision for the child.
- Ensure that the education children receive is of good quality, as defined in the statutory guidance Alternative Provision (2013), allows them to take appropriate qualifications, prevents them from slipping behind their peers in school and allows them to re-integrate successfully back into school as soon as possible.
- Address the needs of individual children in arranging provision. ‘Hard and fast’ rules are inappropriate: they may limit the offer of education to children with a given condition and prevent their access to the right level of educational support which they are well enough to receive. Strict rules that limit the offer of education a child receives may also breach statutory requirements.

Local authorities should not:

- Have processes or policies in place which prevent a child from getting the right type of provision and a good education.
- Withhold or reduce the provision, or type of provision, for a child because of how much it will cost (meeting the child’s needs and providing a good education must be the determining factors).
- Have policies based upon the percentage of time a child is able to attend school rather than whether the child is receiving a suitable education during that attendance.
- Have lists of health conditions which dictate whether or not they will arrange education for children or inflexible policies which result in children going without suitable full-time education (or as much education as their health condition allows them to participate in).

The full guidance is available from here:

<http://media.education.gov.uk/assets/files/pdf/s/health%20needs%20statutory%20guidance%20for%20las.pdf>

Young Offenders

Where children and young people have identified needs it is important that information about those needs is shared with those who are responsible for education in custody. This will enable the right support to be put into place as soon as possible.

Local authorities should put appropriate arrangements in place to ensure that this information can be provided without delay to ensure that education providers in detention have access to all relevant information and can arrange appropriate provision for the

young person from the start of their detention. The Youth Offending Team (YOT) will notify a young person's local authority about their detention, transfer or release and will facilitate the transfer of information. The Skills Funding Agency requires its providers who deliver education and training in the adult secure estate ("OLASS providers") to exchange information as prisoners move around the system.

Identifying SEN in custody

A significant proportion of young offenders have some level of SEN, which might only be identified once they have entered custody. If a local authority in which a young offenders' institution is located thinks a child or young person under the age of 18 has special educational needs, they must notify the young person's home local authority on release (in accordance with section 562H of the Education Act 1996) and, if necessary, a full assessment will be carried out on release. Similarly, an education provider in an adult prison who identifies SEN in a young person aged 18-25 should notify the young person's home local authority on release so that, if necessary, a full assessment can be carried out.

Education in Custody for young people under 18

Youth Offending Teams (YOTs) must notify the local authority in which the child or young person is detained (host) and the local authority in which the young person normally resides, (home) when a child or young person (under 18) has become subject to a detention order or if they are being transferred between relevant youth accommodation (Section 39A of the Crime and Disorder Act 1998).

The home local authority is under a duty to monitor the education and training of all children or young persons (under 18) in detention and to take such steps as they consider appropriate to promote the fulfilment of his or her learning potential while they are detained and on their release (Section 562B of the 1996 Education Act). Where the local authority was maintaining an EHC plan for a child or young person detained in a young offender institution, the home local authority may supply appropriate goods and services to the local authority where the young person is detained or to the actual person providing the special educational provision [Section 562D of the 1996 Education Act].

If the young person had an EHC plan immediately before custody the local authority maintaining the plan must inform the host local authority. This information should also be shared with the YOT and the young offenders' institution (YOI). The host local authority should work with the YOI to ensure that appropriate special educational provision is in place for the young person] as soon as possible. Appropriate provision is the provision that was in place immediately before custody and set out in the EHC plan or provision that is as close as possible to that set out in the EHC plan.

If the host local authority, working with the home local authority, the Youth Offending Team, and the young offenders' institution decide that the provision set out in the EHC plan is no longer appropriate the host local authority should put in place special

educational provision that it considers to be appropriate for the young person. This might be the case, where for example a young person has had a plan for a number of years and has recently been re-assessed – indicating that their needs have changed, but where the plan has not yet been amended before the person entered custody.

Education on release from custody for young people under 18

The YOT must notify the host and home local authority when it becomes aware that someone is due to be released from relevant youth accommodation. If the young person had an Education Health and Care Plan before custody the responsible LA has a duty to maintain and review the Plan. Local authorities must work with the Youth Offending Team when undertaking this duty to decide whether the EHC plan still accurately reflects the young person's needs. Where possible this review should take place as early as possible when planning for release and in any event within a month of release from custody.

On transition from youth justice to adult secure estate

A young person still in custody after their eighteenth birthday can be transferred into the adult estate. In line with the National Offender Management Service (NOMS) Transitions Protocol on managing transitions in custody, the youth justice establishment should ensure that all relevant SEN information is passed to the young adult YOI prior to transfer taking place.

Education in custody for young people aged 18 and over

There is no requirement for people to stay in education or training after the age of 18. Where young people with SEN opt to continue their education in custody it is important that they have access to appropriate special educational provision. The Chief Executive of Skills Funding has a duty to encourage those in adult detention to participate in education and training and to have regard to the needs of those with learning difficulties. If the young person had an EHC plan immediately before custody the LA should pass the information to those providing education in prison and work with them to ensure that appropriate special educational provision is in place for them as soon as possible.

Education on release from custody for young people aged 18 and over

If young people with an EHC plan immediately before custody plan to continue their education on release, the OLASS provider and the National Careers Service provider should liaise to ensure the responsible local authority is aware so that they can review the EHC plan. Where appropriate those reviews can take place before release.

Not all young people engage in education in custody. Local authorities should therefore consider provision for children young people with SEN in custody, or who are just coming out of custody.

[Note: Sections to be included on the following]

Children of Service Personnel

Mobility and movement for children of Service personnel

Home education

Looked after Children

Information on the Virtual School Head

Children in Need (with a section 17 assessment)

6 Assessments and Education, Health and Care Plans

[Draft indicative regulations/policy statements for Committee relevant to this chapter are:

- *The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41;*
- *Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;*
- *Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45;*
- *Policy statement on regulations (Personal Budgets), Clause 48;*
- *Policy statement on parents and young people lacking capacity, Clause 68;*
- *Policy statement on transitional arrangements, Clause 107.]*

6.1 Introduction

The great majority of children and young people with SEN will have their needs met within their local mainstream school or college (as set out in the information on identification and support in Chapter 5).

Local authorities should work closely with children, young people and their parents to plan for their future, as part of an on-going process, which continues to identify and meet the needs of children and young people as they develop and grow.

In a small number of cases, planning will identify a need to conduct formal assessments of education, health and care needs, leading to an Education Health and Care (EHC) plan. A statutory assessment should not be the first step in the planning process; rather it should flow from planning undertaken with parents and young people. The statutory assessment process must be co-ordinated across education, health and care to ensure a cohesive experience for children, parents and young people. Information from existing relevant assessments should be used and professionals should share information so that families do not have to keep giving the same information to different professionals.

EHC plans are integrated support plans for children and young people with SEN from 0 to 25. They are focused on achieving outcomes and helping children and young people make a positive transition to adulthood, including into paid employment and independent living. They will be produced in partnership with parents, children and young people and will be based on a coordinated approach to the delivery of services across education, health and care.

Statutory assessment itself will not always lead to an EHC plan. The information gathered during an assessment may indicate ways in which the school, college or other

provider can meet the child or young person's needs without the need for any special educational provision to be made by the local authority in accordance with an EHC plan. This section includes information on determining whether an EHC assessment and EHC plan is required.

6.2 Timescales

The EHC planning and assessment process should be carried out in a timely manner. The time limits set out here (and in associated regulations) represent the maximum time that should be taken; wherever possible, steps should be completed more quickly.

The whole assessment and planning process, from the point an assessment is requested or that a child or young person comes to the local authority's notice to the completion of an EHC plan, should take no more than 20 working weeks (subject to exemptions set out below).

Specific requirements

- a. Local authorities must respond to any requests for a statutory EHC assessment within a maximum of 6 working weeks, during which time they must seek the views of the parents or young person and offer them the opportunity to submit any evidence relating to the decision. They must then inform the parents or young person, the educational provider and the relevant health commissioner – usually the clinical commissioning group of whom the patient's GP is a member - of their decision as to whether to undertake an education, health and care assessment.
- b. When local authorities request advice as part of the assessment process, those giving the advice must reply within a maximum of 6 weeks.
- c. Children, young people and their parents must be involved and consulted throughout the assessment and planning process; they must be given at least 15 days to consider and provide views on the final draft of the EHC plan and to request that a particular school or other institution be named in it.

Exemptions

Local authorities do not need to comply with the time limits above in circumstances in which it is not reasonable to expect the bodies concerned to meet those time scales.

The local authority need not respond to any requests for a statutory EHC assessment within a maximum of 6 working weeks if it is impractical to do so because:

- a. the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 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 1 week before the date on which it re-opens;

- b. the authority has requested advice from the head of SEN in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;
- c. exceptional personal circumstances affect the child or his parent, or the young person; or
- d. the child or his 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 6 week period.

The local authority need not complete the whole assessment and planning process within a maximum of 20 working weeks if it is impractical to do so because:

- a. the authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning 1 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 1 week before the date on which it re-opens;
- b. the authority has requested advice from the head of SEN in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning 1 week before any date on which that provider was closed for a continuous period of not less than 4 weeks from that date and ending 1 week before the date on which it re-opens;
- c. exceptional personal circumstances affect the child or his parent, or the young person; or

the child or his parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks during 20 week period.

Bodies providing advice as part of the assessment process need not comply with the time limit if it is impractical to do so because:

- a. exceptional circumstances affect the child, the young person or the child's parent during that 6 week period;
- b. 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 6 week assessment window; or
- c. the child or young person fails to keep an appointment for an examination or a test made by the body during the 6 week assessment window.

Parents or the young person should be told if any of these exemptions apply, so that they understand the reason for any delays. Local authorities should aim to keep delays to a minimum and as soon as the conditions that led to an exemption no longer apply the local authority should endeavour to complete the process as quickly as possible. Any remaining components of the process must be completed within their prescribed periods, regardless of whether exemptions have delayed earlier components.

6.3 Requesting an assessment

A child's parent, a young person or a person acting on behalf of a school or post-16 institution may request that a local authority conduct an education, health and care needs assessment.

In addition, anybody can bring a child or young person who has (or may have) SEN to the attention of their local authority, and the local authority must consider whether an assessment is required. This might include, for example, health and social care professionals, youth offending teams or probation trusts and those responsible for education in custody.

All requests and referrals for assessment must be considered as quickly as possible by the local authority, regardless of their source.

6.4 Considering whether an assessment is necessary

Following a request, the local authority must determine whether an assessment is necessary. In doing so, they must ensure parents and young people are fully consulted and given the opportunity to share their views and submit evidence.

In considering whether a statutory assessment is necessary, local authorities should pay particular attention to:

- a. The views, wishes and feelings of the child and parents or young person
- b. Evidence of the child or young person's academic attainment and their rate of progress
- c. Evidence provided by the school, post-16 institution or others involved with the young person as to the nature, extent and cause of the child or young person's learning difficulties (for example communication and interaction difficulties, behaviour emotional and social development, and sensory or physical needs)
- d. Evidence of action already taken by the school or post-16 institution to meet and overcome those difficulties, and provision made
- e. Evidence that where some progress has been made, it has only been as the result of much additional effort and instruction at a sustained level over and above that which is usually provided through Additional SEN Support.

- f. Evidence of the child or young person's physical, emotional and social development and health needs.
- g. Where a young person is aged over 18, their age and whether remaining in education or training would help them to progress, building on what they have learned before and helping them to make a successful transition to adult life.

The local authority must inform the child's parent or young person of their decision within a maximum of 6 weeks of receiving a request for an assessment (or otherwise becoming responsible for the child or young person under Clause 23 of the Children and Families Bill). The local authority must give its reasons for this decision. If the local authority intends to conduct an assessment, it must also ensure the child's parent or the young person are aware of how they will be involved. If the local authority decides not to conduct an assessment it must inform the parents or young person of their right to appeal that decision and of the requirement for them to consider mediation.

6.5 Conducting co-ordinated assessments and planning

It is important that children, young people and families experience a straightforward and joined-up process which leads to timely, well-informed decisions. The following principles should be taken into account when conducting co-ordinated planning and assessments:

[Note: Further information to be added to this section on how professionals from education, health and social care should work together to ensure a fully co-ordinated assessment process]

- a. Children, young people and their parents should be at the centre of the process, and their views on how, when and to what extent they would like to engage are important and should be taken into account;
- b. The assessment and planning process should be as streamlined as possible;
- c. There should be a 'tell us once' approach to sharing information, so families and young people do not have to repeat the same information to different agencies. Local authorities should be pro-active in ensuring that where there is existing, relevant information about the child or young person, within the local authority or different agencies, they use this rather than requesting further information or assessment. Local authorities should minimise unnecessary disruption and take account of the needs of the child, young person and their family. For example: where families are required to attend multiple appointments with different professionals, these should be co-ordinated or combined where possible; and children and young people with challenging behaviour may need special arrangements for appointment times or venues;
- d. Local authorities and clinical commissioning groups are required (under the Children and Families Bill) to work together to arrange local services to meet the

education, health and care needs of children and young people with SEN. They must ensure the integration of education, health and care provision where this would improve the well-being of children and young people with SEN. Joint commissioning arrangements must include arrangements to secure education, health and care needs assessments. Local education, health and care services must work together effectively to reach agreement on key outcomes with families and to agree the appropriate joint provision across services to deliver the agreed outcomes. Approaches to integrated working may range from single planning meetings to development of shared services to ensure effective co-ordination of assessment and support.

- e. Although assessments should be co-ordinated across agencies, provision of individual services should not be delayed when completing an EHC assessment. The EHC assessment and planning process may take up to 20 weeks from initial request/referral to issuing a completed EHC plan. 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.
- f. Practitioners in all services, including education, health and social care, should be engaged and committed to the assessment and planning process and, where necessary, trained to support families and young people themselves to make informed decisions. In particular the LA should consider the support that parents and young people need in order to take part effectively in the assessment process. Families who have particularly complex needs, requiring the involvement of many different agencies may need support in understanding and contributing to the assessment process. Local authorities must consider providing additional practical support, such as keyworking support, to families who might not be able to take part in the process without such support;
- g. Assessment and planning should be an on-going process, which continues to identify and meet the needs of children, young people and families as they develop, ensuring support and provision is planned and delivered in a way that enables children and young people to progress and achieve agreed outcomes.

Whilst many people will contribute to the planning and assessment process, one person should work closely with the young person and their parent/carer and be responsible for co-ordinating the information and the process. The process should actively be supported by senior leadership teams monitoring the quality and sufficiency of the assessments produced through robust quality assurance systems. Young people and their parents should have confidence that those overseeing the assessment process will be impartial and act in their best interests. **[Note: This section will be developed further]**

6.6 Sharing information

Agencies must share information to facilitate joined up working. The principles of information sharing between agencies around children and young people with SEN are:

Principles of information sharing

[Note: Further information to follow]

Local authorities

- Sharing of individual data
- Sharing of strategic data

[Note: Further information to follow]

Information sharing between Education, Health and Social Care and other agencies and settings

- Between early years, schools, colleges and other providers in advance of transition
- Health and Social Care
- Youth Offending Teams

[Note: Further information to follow]

Information sharing across borders

Children and young people with SEN may move across local authority or country borders during the assessment process and when they have an EHC plan. It is important that information on their assessment and plan is shared appropriately by the relevant agencies.

The local authority the child or young person is moving from should share the information and advice they have already gathered with the local authority the child or young person is moving to. This authority must take account of and use this information.

The movement of children and young people may include:

- across local authority borders
- between England and the devolved administrations
- children of service personnel moving between areas

Responsibilities for children and young people educated out of area

[Note: Further information to follow]

6.7 Advice for education, health and care assessments

When conducting an education, health and care assessment for the first time, local authorities must seek advice from relevant professionals:

- a. Educational advice from the head teacher or principal of the early years provider, school or post-16 or other institution attended by the child or young person. Where this is not available, the authority should seek advice from a person it is satisfied has experience of teaching children or young people with special educational needs.
- b. If the child or young person is either visually or hearing impaired, or both, the educational advice must be given after consultation with a person who is qualified to teach pupils with these impairments, if the person giving the educational advice is not qualified to do this.
 - c. Medical advice from a person nominated by the Clinical Commissioning Group which exercises functions in relation to the child or young person, or from health care professionals where relevant.
- d. Psychological advice from an educational psychologist.
- e. Advice from social care professionals within the local authority.
- f. Any other advice which the local authority considers appropriate for the purpose of arriving at a satisfactory assessment, for example from a youth offending team or probation service, or in the case of Service children, the Children's Education Advisory Service; and
- g. Advice from anybody else the parent or young person thinks the local authority should consult, for example a lead support worker.

The local authority should consider with the parent, young person and the parties listed above the level of advice needed in order to enable a satisfactory assessment of needs to take place. For example where a child or young person with SEN does not appear to have significant health or social care needs, a full health and social care assessment may not be necessary.

6.8 Determining whether an EHC plan is necessary

The local authority should prepare an EHC plan when it considers that the special educational provision needed to meet the child or young person's needs cannot

reasonably be provided within the resources normally available to mainstream early years providers, schools and post 16 institutions.

In determining whether a plan is necessary, the local authority should consider all the information gathered during the EHC assessment and relate it to any evidence presented by the school, other educational institution or others at the time of any request or referral for assessment.

If the local authority decides that a statutory EHC plan is not necessary, it must notify the parents or young person and the early years provider, school or post-16 institution, and give the reasons for its decision. The local authority must also tell the parents or young person of their right to appeal to the SEN Tribunal against the decision and set out the time limits for appeal, the availability of parent partnership and disagreement resolution services, and the fact that the parent or young person must be offered mediation. The local authority should ensure that the parents or young person are aware of the resources available to meet SEN within mainstream provision and other support set out in the local offer.

The local authority should consider providing feedback collected during the assessment process, such as evidence from professionals, which the parents, young person, early years provider, school or post-16 institution may find useful. This information can then inform how the outcomes for the child or young person can be achieved through special educational provision already made by the early years provider, school or college and co-ordinated support from other agencies. It may be appropriate for the format of the summary to broadly follow the statutory format of the EHC plan, although it will be essential to make clear the different legal status of the two documents.

Children and young people without a statutory EHC plan remain entitled to services to meet their reasonable health or care needs under other legislation, including section 3 of the NHS Act 2006, which places CCGs under a statutory duty to provide the health services to meet the reasonable needs of a child with a complex health need, and the Equality Act, which requires schools, colleges and local authorities to make reasonable adjustments to policy and practice, including providing auxiliary aids and services such as specialised computer programmes, hoists and sign language interpreters.

Young people aged 19-25

Where a young person is aged over 18, local authorities must take their age into account when deciding whether special education and an EHC plan is necessary.

Support can continue up to age 25 for those young people who need to take longer to complete or consolidate their education or training. This includes the right to request an assessment of SEN and the provision that might result from that assessment. However, it may not be in the best interests of every young person to stay in education until they are

25. Many young people will want to complete their education and progress into adult life and work much sooner than this. Local authorities will need to make a judgement, in close consultation with parents and the young person, about whether or not agreed outcomes have been met, and the young person has been prepared and enabled to make a successful transition to adulthood.

Some young people with complex needs will primarily require on-going health and/or care support. In such circumstances it is right that these young people receive the support and care that they need via Health Services and/or Adult Care and Support. For others, following time on an Apprenticeship or a Supported Internship the best option may be to leave formal education and access the support and training available to help them to secure a job through the welfare system. Some young people may want to enter Higher Education where local authorities' general duties with regard to securing educational provision no longer apply. In these cases, maintaining an EHC plan would not be appropriate.

6.9 Preparing an Education, Health and Care Plan

Local authorities should have regard to the following principles when preparing an EHC plan:

[Note: Further information to be added to this section on how professionals from education, health and social care should work together to ensure a fully co-ordinated planning process]

- a. Decisions about the content of EHC plans should be transparent and involve parents and young people themselves.
- b. EHC plans should be clear, concise, readable and accessible to parents, children, young people and providers/practitioners.
- c. EHC plans should be person-centred, evidence-based and focussed on outcomes (both short term outcomes and longer term aspirations for children and young people). An outcome is not the delivery of support or a service; it is what that support or service is trying to help the child or young person achieve. Outcomes need to be specific, measurable, achievable and time-bound.
- d. EHC plans should be specific about the interventions that will make a difference towards securing the agreed outcomes, and the provision needed to support this. They should not simply be a list of services. This can only be done by a careful assessment of the child or young person's needs and the setting in which they may be educated. Provision should be detailed and specific and should normally be quantified (for example, in terms of the level of support and who will provide it) but it must be clear how the type and level of provision will support the agreed

outcomes. There will be cases where some flexibility will be required to meet the changing needs of the child or young person.

- e. EHC plans should be written in a way that means they could be used in any local area, particularly the assessment information and agreed outcomes.
- f. EHC plans should support preparation for key transition points, including from early years providers to primary school, primary to secondary school, school to college or training and from education into the adult world. Plans must be “forward looking” – e.g. anticipating, planning and commissioning for important transition points in a child or young person’s life. This is vital to ensure children, parents and young people know which educational institution they are going to next, what they are going to study – and why that will help them achieve their longer term outcomes - and that relevant services, equipment and other support are identified, commissioned and in place by the time the transition takes place.
- g. The content of EHC plans should be used by local authorities and their partners to inform commissioning of future individual strategic support and provision in their area.
- h. EHC plans should explore how informal (family and community) support as well as formal support from statutory agencies can be used to achieve agreed outcomes.

Content of EHC plans

The exact format of an EHC plan will be determined locally, so that plans can best meet the needs of children, young people and their families. To ensure that all plans are as clear as possible, and to make things easier for families who move between local areas, there are some distinct sections that must be in all plans. They are:

- a. The views, interests and aspirations of the child and their parents or young person.
- b. The child or young person’s SEN.
- c. The outcomes sought for him or her.
- d. The special educational provision required by him or her. Where provision is to be delivered through a direct payment the plan should set the needs and outcomes to be met by the direct payment and how this will be done under the arrangements for the direct payment.
- e. Any health and social care provision [of a prescribed description] required by him or her. [Note: Health and social care provision to be defined when new duty on health to ensure provision of services in EHC plan has been cleared by Bill committee]

- f. Any additional provision, e.g. support for finding employment, housing or for participation in society
- g. 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.

Exemplars of EHC plans developed by the SEN pathfinders will be made available to support local authorities in considering the best format for EHC plans locally.

Local authorities should agree a process for how different agencies input into draft EHC plans, and how information about the content of plans collectively in a local area can inform the commissioning of education, health, care and other services (e.g. housing and employment support).

[Note: When the new duty on health commissioners to ensure provision of healthcare services specified in EHC plans has been cleared by the bill committee, it will be referenced here]

[Note: Information on the interface with statutory adult social care plans set out in the draft Care and Support Bill will be referenced here]

Speech and Language Therapy

Case law has established that speech and language therapy can be regarded as either educational or non-educational provision, or both, depending upon the health or developmental history of each child. It could therefore be included in the Plan as either educational or health provision or both.

However, since communication is so fundamental in learning and progression, addressing speech and language impairment should normally be recorded as educational provision unless there are exceptional reasons for not doing so. The Children and Families Bill, clause 21 (5) makes clear that where health provision is wholly or mainly for the purposes of education and training it is to be treated as education provision.

Local authorities and their partner clinical commissioning groups must make arrangements to secure education, health and care provision for children and young people with SEN.

Power to continue children's social care services to those aged 18-24

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. Where the young person no longer has an EHC plan, the local authority no longer has the power to extend the provision of these services to young people over 18.

This will enable local authorities to agree with young people when the most appropriate time for transition to adult services will be, avoiding key pressure points such as exams or a move from school to college. Poorly timed and planned transition to adult services will have a detrimental effect on achievement of outcomes and may result in young people requiring far longer to complete their education or dropping out altogether. This can have a negative impact on their health and care needs and it is in the vested interests of both local authorities and young people that the transition between children's and adult's services is managed and planned carefully.

6.10 Expressing a preference for a particular school, college or other institution

Parents of children with an EHC plan and young people with such a Plan have a right to express a preference that they attend a particular school, college or other institution of the following type:

- a. maintained school (mainstream or special), Academy, Free School;
- b. Special Academy or Special Free School;
- c. non-maintained special school;
- d. further education or sixth form college
- e. independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published on a list available to all parents and young people)

If a parent or young person expresses a preference for a particular school or college in these groups the local authority must comply with that preference and name the school or college on the EHC plan unless it would:

- a. be unsuitable for the age, ability, aptitude or SEN of the child or young person; or
- b. the attendance of the child or young person there would be incompatible with the efficient education of others; or the efficient use of resources

The local authority must consult the governing body, principal or proprietor of school or college concerned and consider their comments very carefully before deciding whether to name them on the child or young person's Education, Health and Care Plan, sending them a copy of the draft Plan. If another local authority maintains the school, they too should be consulted.

The local authority should expect the school or college, and where relevant the other local authority, to respond in 15 working days unless the period falls within a school or college holiday that is longer than 2 weeks. Where a school or college is named on an EHC plan they must admit the child or young person.

Parents and young people may make representations for places at independent schools or Independent Specialist Providers that are not on the list mentioned above and the local authority must consider their request. The local authority is not under the same conditional duty to name the independent school or independent specialist provider but must have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents' wishes so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. If a local authority is minded to name the independent school or independent specialist provider on the child or young person's EHC plan it must make sure that they will admit them before it can name them on the Plan.

Where no preference is expressed for a particular school or college

Where a parent or young person does not express a preference for a particular school or college, or they do so and their preference is not met, the local authority has a duty to provide for a mainstream setting in the child or young person's EHC plan unless it would be:

- a. against the wishes of the parent or young person; or
- b. incompatible with the efficient education of others.

Where the local authority considers a mainstream place to be incompatible with the efficient education of others it must demonstrate that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility by the school or college or local authority. What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

- a. whether taking the step would be effective in removing the incompatibility;
- b. the extent to which it is practical for the school, college or local authority to take the step;
- c. the extent to which steps have already been taken in relation to a particular child or young person and their effectiveness;
- d. the financial and other resource implications of taking the step; and
- e. the extent of any disruption that taking the step would cause.

[Note: This section to be developed further]

Transport costs for children and young people with EHC plans

The parents or young person's preferred school or college might be further away from their home than the nearest school or college that can meet the child or young person's SEN. In such a case, the LA can name the nearer school or college if that would be deemed appropriate by the LA. The LA could name the school or college preferred by the parents or the young person on condition that the parents or young person agreed to meet all or part of the transport costs.

The school or college named in a child or young person's EHC plan must be capable of meeting the child or young person's SEN. LAs should not, therefore, promulgate general transport policies that seek to limit the schools or colleges for which parents of children, or young people, with EHC plans may express a preference if free transport is to be provided.

Transport should only be recorded in the EHC plan in exceptional cases where the child has particular transport needs. In most cases LAs will have clear general policies relating to transport for children and young people with SEN that should be made available to parents and young people, and should be included in the local offer. Such policies would need to set out those transport arrangements which are over and above those required by section 508B of the 2006 Education and Inspections Act.

Where the LA names a residential provision at some distance from the family's home, the LA should provide transport or travel assistance; the latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.

Transport costs may be provided as part of a personal budget arrangement as agreed.

Building full time programmes

In agreeing the content of an EHC plan, local authorities should consider the need to provide a full package of provision and support – including for independent study - that covers five days a week where that is appropriate to meet the young person's needs. This provision and support does not all have to be at one provider and could be a combination of time at different providers and periods outside education institutions with appropriate support.

When commissioning provision, local authorities should have regard to how young people learn and the additional time and support they may need to undertake coursework and homework as well as time to socialise with their college peers within the college environment. In some cases, courses normally offered over three days may need to be spread over four to five days to enable the young person to maximise their learning outcomes. Local authorities will need to work with providers and young people to ensure there is a range of quality opportunities that can be tailored to individual needs.

Children educated at parents' expense

Parents may choose to place a child with an EHC plan in an independent school or a non-maintained special school at their own expense. If parents choose to make such provision for their child, the LA must be satisfied that the school is able to make special educational provision for the child that meets their SEN before it is relieved of its duty to arrange provision in an appropriate school.

The LA is not required to specify the name of a school in the child's EHC plan where they are satisfied that the child's parents have made suitable arrangements but they must, in those circumstances, state the type of provision. The LA is, whether or not a school is named in the EHC plan, still under a duty to maintain the child's EHC plan and to review it annually.

6.11 Personal Budgets in EHC plans

A personal budget is an amount of money identified by the local authority to deliver all or some of the provisions set out in an EHC plan. By having a say in the way this budget is used, a parent or young person can control elements of their support. Personal budgets should reflect the holistic nature of an EHC plan, covering education, health and care services as appropriate, where additional and individual support is agreed through the planning process.

Personal budgets should be based on clear, agreed outcomes. The decision making process to establish and agree a budget should be transparent and challengeable.

Parents and young people can request a personal budget once the authority has confirmed an EHC plan is necessary, or when the authority is undertaking a statutory review of an existing EHC plan. Local authorities must consider this request, and offer information to parents to help them to decide whether they wish to make such a request.

What can be included in a personal budget?

The personal budget can include funding from education, health and social care sources. Local authorities and their partners must set out arrangements for the local agreement of personal budgets in their joint commissioning arrangements. Where local governance or pooling arrangements exist, funding in a personal budget can be used to commission joint provision across all three services.

Personal budgets in education should relate to needs that are significant enough to need additional and individual support above and beyond that which is normally available and funding to meet these needs, from the high needs block (element 3), should be considered for inclusion in a personal budget. Funds that are delegated to schools and colleges will not normally be in scope for inclusion in a personal budget, unless the institution has previously agreed to this. Personal budgets must not be used to fund a school place

Setting and agreeing the personal budget

Details of personal budgets should be set out clearly within an EHC plan, including the amount of the budget and what it will be used for. Funding for special educational provision must be set at a level that will deliver the specified provision. Local authorities should include details of any proposed personal budget in the draft plan that is shared with parents.

Mechanisms for delivery of a personal budget

Parents should be given three options for the control of their budget:

- a. Notional arrangements – where the authority retains the funds but the parent/young person directs its usage;
- b. Third party arrangements – where funds are paid to an individual or another organisation on behalf of the parent/young person and they manage the funds;
- c. Direct Payments – where individuals receive the cash to purchase services themselves.

Direct Payments

Direct payments are cash payments made directly to parents, young people or their representatives, allowing them to arrange their own provision. Regulations governing the use of direct payments for special educational provision place a number of requirements on both local authorities and parents before a direct payment can be agreed. These include requirements:

- a. To consider the impact on other service users and value for money;
- b. To seek agreement of educational establishments where a service funded by a direct payment is delivered on their premises;
- c. To make arrangements to monitor and review the payment;
- d. For direct payments to be paid into a separate bank account unless the payment is a one off.

The regulations also prohibit certain people from receiving cash payments (such as those subject to Drug or Alcohol rehabilitation orders).

Information advice and support

Information on how to request a personal budget and eligibility criteria must be provided as part of the local offer. Local authorities should provide information, advice and support for parents and young people themselves in understanding what a personal budget entails and how it can be used. Information should include sources of independent advice

available to families and should provide support on both the take-up and management of a personal budget (especially when this is delivered through a direct payment).

6.12 Children and young people in specific circumstances

Young Offenders

Youth Offending Teams (YOTs) work with young offenders (under 18) and those at risk of offending. YOTs are responsible for a range of youth justice services, including compiling pre-sentence reports, supervision of young offenders serving sentences in the community and supervision of those released from custody. Local authorities must ensure that Youth Offending Teams are involved in supporting assessments and the development of EHC plans for a child or young person who has been in custody, is serving a sentence in the community or if they have been identified as being at risk of offending. If the young person is aged 18 or over Local Authorities should involve the relevant probation services.

Children of Service Personnel

At each key transition or decision-making point, local authorities and professionals need to consider whether mobility or deployment issues around the family are likely to affect the outcomes for the service child or young person.

For service children with EHC plans, or those undergoing EHC assessments, where mobility is an issue, local authorities should work with each other and with the family and the MoD's Directorate Children & Young People (DCYP) Children's Education Advisory Service (CEAS). This is to ensure good advance planning and a smooth transition to appropriate educational provision.

[Note: Further information to follow including information in the sections below]

Looked after Children

Children in Need (with a section 17 assessment)

Children and YP in Pupil Referral Units or Home Tuition

Home education

6.13 Finalising an EHC plan

The local authority must send a draft EHC plan to the child's parents or the young person and give them at least 15 days to give views on the content and to request that a particular school or other institution be named in the plan.

When changes are suggested to the proposed plan and agreed by the local authority and the parents or young person, the final plan should be amended and issued immediately. Every effort should be made to ensure that parents or young person understand the significance of any changes and the nature of the provision that is proposed to meet the

child or young person's SEN. When the plan is issued parents and young people must be given notice of their rights of appeal to the Tribunal and the time limits for lodging an appeal, the availability of mediation, parent partnership and disagreement resolution services, and the fact that the parents' or young person's right of appeal cannot be affected by any disagreement resolution procedure. Parents or the young person may appeal against the description in the EHC plan of SEN, the special educational provision, and the school or other provider named, or if no school or other provider is named, that fact.

Where parents or young people are unwilling to agree changes to the proposed plan, or where the local authority refuses changes proposed by parents of young people, the authority may nonetheless proceed to issue the final EHC plan. It must, however, inform the parents or young person of the option to access mediation and to appeal to the SEN Tribunal with respect to the provision specified in the Plan, including the school that has been named, and of the procedures to be followed if they wish to do so. The final plan should also be issued to the governing body, proprietor or principal of any school or other institution named in the EHC plan, and to the clinical commissioning group that exercises functions in relation to the child or young person.

6.14 Maintaining an EHC plan

When an EHC plan has been made for a child or young person, the local authority must inform the head teacher or principal of the educational institution that they will attend. The head teacher or principal should ensure that those teaching or working with the child or young person are aware of their additional needs and have arrangements in place to meet them. Institutions should also ensure that teachers/lecturers monitor and informally review the child or young person's progress during the course of a year.

Local authorities must arrange the special educational provision and may arrange the social care provision specified in the plan, from the date on which the plan is made. Clinical commissioning groups must arrange the health services specified in the plan, from the date on which the plan is made.

If a child or young person's SEN change, a review must be held as soon as possible to ensure that the provision specified in the EHC plan is still appropriate.

6.15 Reviewing an EHC plan

EHC plans can be used as effective tools for on-going monitoring of progress and can be reviewed regularly in whole or in part – particularly where agreed dates for specific outcomes to be achieved have been reached before an annual review is due.

Local authorities must arrange for a review of a child or young person's EHC plan at least annually, and beginning within 12 months of the date it commenced. Professionals across education, health and care must co-operate with local authorities during review processes.

Where a young person is aged over 18, local authorities must take their age into account when reviewing their support and deciding whether a Plan should continue to be maintained.

As part of the review, local authorities and the relevant educational institution must cooperate to ensure a review meeting takes place. The local authority can require the relevant educational institution to convene the meeting on the local authority's behalf where appropriate, and provide a report on the child or young person. The following requirements apply:

- a. The child and child's parents or young person must be invited and given at least two weeks' notice of the date of the meeting. The meeting must take account of their views, wishes and feelings and children and young people should be supported to engage in the review.
- b. Representatives of education, health and care relevant to the child or young person's plan must be invited, including youth offending teams where relevant, and given at least two weeks' notice of the date of the meeting.
- c. The meeting must focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to these.

If following the review meeting the plan must be amended, there must be a clear process of consultation with the child, young person and their parents, as well as those professionals and others who fed into the plan. All parties must be given 2 weeks to consider and reply.

Local authorities must then provide the parent or young person, and the relevant educational institution, with a revised copy of the plan and give them 2 weeks to consider and comment on it.

Transfer between phases of education

A plan must be reviewed and amended in reasonable time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.

At the latest the review and amendment must be completed by 15 February in the calendar year of the transfer. The key transfers are:

- a. Early years providers to infant school;
- b. Infant school to junior school;

- c. Primary school to middle school;
- d. Primary school to secondary school;
- e. Middle school to secondary school; or
- f. Secondary school to a further education, specialist or sixth form college, or training provider (including onto an Apprenticeship)

A plan should also be reviewed prior to the final exit from formal education or training (i.e. when outcomes will have been achieved and the plan will cease). The plan should set out what will be happening as part of the transfer to adulthood

Young people who move in and out of education, including those who are excluded or who become NEET

Where a young person is of compulsory participation age, an EHC plan should be maintained for them if they are excluded from education or training or leave voluntarily. The focus of support should be to reengage that young person in full time educational participation.

Where a young person is aged 18 or over leaves education before the end of their course or before the outcomes in their EHC plan have been met, the local authority should review their EHC plan. If this review determines that the young person wants to complete their education and that re-engaging them in education or training is in their best interests, then support should be maintained to help them do so.

Where a young person who had an EHC plan before entering custody is released from custody the EHC plan must be maintained and reviewed. Local authorities should start the review when planning for the young person's release and in all cases within a month of the young person leaving custody.

6.16 Re-assessments

When conducting a re-assessment of an EHC plan following a request for re-assessment by a parent, young person, school or post-16 institution, the local authority must:

- a. Take account of and use existing information where it is still relevant;
- b. Engage professionals across education, health and care;
- c. Fully engage the child and the child's parents or the young person, taking account of their views, wishes and feelings;
- d. Where a young person is aged over 18, take their age into account when re-assessing their continued participation in education.

A local authority can refuse requests for re-assessments if less than 6 months have passed since the assessment was conducted, however they can re-assess sooner than this if they think it necessary.

Where a local authority instigates a re-assessment rather than by a parent, young person, school or post-16 institution, it must follow the same process as above, except that it only needs to consult those professionals across education, health and care it considers appropriate, taking into consideration which of the educational, health care and social care provision is being re-assessed. It must still fully engage the child and the child's parents or the young person, taking account of their views, wishes and feelings.

[Note: Information will be included here on the requirement for health professionals to be able to request a re-assessment following changes to the Bill to include a new duty on health to provide services in EHC plans and has been cleared by Committee]

6.17 Preparing for the transition to adulthood

Local authorities should ensure that early transition planning is in place for all young people with an EHC plan focusing on positive outcomes and how to achieve them. Person-centred planning should be at the heart of this discussion, focusing on an in-depth analysis of the appropriate learning provision for the young person to help them meet their outcomes. The planning process should raise young people's and parent's expectations reinforcing and promoting notions of work and independent living with clear and achievable outcomes.

EHC plans reviewed after the age of 19 should plan for phased transition into the key life outcomes listed, with a greater emphasis on pathways to independent living and links to job seeking, for example Job Centre Plus.

When the child or young person is expected to leave education or training within the next two years, the review meeting must consider what provision is required to assist in preparing the young person for adulthood and independent living. Local authorities and learning providers should support young people to a smooth transition to adulthood so they are prepared when their EHC plan ends. Both providers and local authorities should give advice to young people and help them to understand what support is available to them after they complete their education, including support to find work, housing support and on-going health and social care support. Good transition planning should plan clear hand-overs to new professionals and services so that young people and parents know and are confident in who they are dealing with and where they need to go for help.

When a young person takes up a place in higher education, their Education Health and Care Plan will cease. However transition planning should include how health and social care support will be maintained, where it is still required. For some young people, the same local authority will continue to provide their care and support others will be

supported by the local authority they are moving to. This will depend on the circumstances of their case. The Ordinary Residence guidance published by the Department of Health provides a number of examples to help local authorities in making these decisions.

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113627 Local authorities should also ensure that young people are aware of the support available to them through the Disabled Students Allowance and how they can claim it.

[Note: Further information on how this will work under the changes set out in the draft Care & Support Bill will be provided here].

6.18 Ceasing an EHC plan

A local authority may cease to maintain an EHC plan in the following circumstances:

- the local authority are no longer responsible for the child or young person, for example if they have moved to another local authority area;
- if they determine that special educational provision is no longer needed;
- a young person aged 16 or over takes up paid employment (including employment with training but excluding Apprenticeships);
- if the young person enters Higher Education; or
- a young person aged 18 or over leaves education and no longer wishes to engage in further learning.

In making this decision, the local authority must consult with child's parent or the young person and take into account whether the educational outcomes specified in the EHC plan have been achieved. They must also, for a young person aged 18 or over, have regard to their age. Local authorities must not simply cease to maintain Plans once a young person reaches 18.

The local authority should continue to maintain their EHC plan where it is clear that:

- the young person wants to remain in education or training so they can complete or consolidate their learning – including accessing provision that will help them make a successful transition to adulthood;
- special educational provision is still needed;
- agreed outcomes set out in their EHC plan have not yet been achieved; and
- remaining in education or training would enable them to progress and achieve those outcomes – and others that may subsequently be agreed.

Where a young person aged 18 or over leaves education or training and does not enter employment, the local authority should review their EHC plan, applying the criteria listed above. Where these are applicable, the local authority should maintain the plan and seek to re-engage the young person in education or training as soon as possible.

A local authority may not cease to maintain an EHC plan for a young person still of compulsory participation age who leaves education but does not start paid employment. The Plan must be maintained and the local authority should take appropriate steps to re-engage the young person in education or training.

Where a local authority is considering ceasing to maintain a child or young person's EHC plan it must:

- a. inform the child's parent or the young person that it is considering ceasing to maintain the child or young person's EHC plan; and
- b. consult the child's parent or the young person;
- c. consult the school or other institution that is named in the EHC plan.
- d. where, following that consultation the local authority determines to cease to maintain the child or young person's EHC plan, notify the child's parent or the young person and the institution named in the child or young person's EHC plan of that decision.

Where the child's parent or young person disagrees with the local authority's decision to cease their EHC plan, they may appeal to the Tribunal. Local authorities must continue to maintain the EHC plan until the time has passed for bringing an appeal or the appeal has been resolved.

7 Resolving disputes

[Draft indicative regulations/ policy statement for Committee relevant to this chapter are:

- *The Special Educational Needs (Appeal) Regulations, Clause 50;*
- *The Special Education Needs (Mediation) Regulations, Clause 51;*
- *Policy statement on Children's Right to Appeal Pilots, Clause 53 and 54.]*

7.1 Early resolution of disagreements

It is in the best interests of children and young people for decisions about what provision is right for them to be made as soon as possible. In most cases this is achieved through providers, local authorities and clinical commissioning groups working closely with parents and young people.

However, there will be occasions where agreement cannot be reached and it is always preferable for these situations to be resolved as soon as possible, for example through discussion between the parties, or school, college or local authority complaints procedures. Early resolution of disagreements benefits parents and young people by avoiding unnecessary stress, and providers and local authorities by avoiding potentially costly disputes.

Where agreement cannot be reached on education matters through these complaints procedures disagreement resolution services are available in each local authority area to deal with disagreements between parents and young people on the one hand and schools, post-16 institutions and local authorities on the other. Where parents or young people have received decisions from local authorities about assessments and Education, Health and Care plans and they do not agree with them, they can make an appeal to the First-tier Tribunal (SEND) and in most cases they will be contacted by a mediation adviser who will provide them with information about mediation. If the parent or young person wants to go to mediation it will be arranged by the local authority, otherwise they can register an appeal with the Tribunal straightaway.

7.2 Local complaints procedures

Early education providers' and schools' complaints procedures

[to be developed]

Local authority complaints procedures

[to be developed]

Local Government Ombudsman

[To be developed]

7.3 Disagreement resolution arrangements

Disagreement resolution services

Local authorities must arrange for disagreement resolution services to be available to parents and young people. The service must be independent of the local authority and any local authority employees can't be involved.

The service is to help avoid and resolve disagreements about two types of complaints. The first is between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, further education institutions or the proprietors of Academies about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN. These duties include duties on the local authority to keep their education and care provision under review and the duty on governing bodies and proprietors to do their best to meet children and young people's SEN. The second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person.

Local authorities must make the availability of disagreement resolution services known to parents, young people, heads, governing bodies proprietors and principals of schools and post-16 institutions in their areas. Use of the disagreement resolution services has to be with the agreement of both parties. Use can be made of the services at any time, including after an appeal has been registered with the Tribunal. Failure to use the disagreement resolution services has no effect on parents' and young people's right to appeal to the Tribunal and no inference will be drawn by the Tribunal if the parties to a dispute have not used the disagreement resolutions services.

Effective disagreement resolution services

In delivering an effective disagreement resolution service, local authorities:

- should take responsibility for the overall standard of the service;
- should have clear funding and budgeting plans for the service: parents and young people should not be charged for the use of this service;
- should ensure that the service is impartial and it **must** be independent of the local authority;
- should ensure that the service has a development plan which sets out clear targets and is regularly reviewed;

- **must** make the arrangements for disagreement resolution and how they will work known to parents and schools in their areas and should make the arrangements known to others they think appropriate;
- should ensure that the independent persons appointed as facilitators have the appropriate skills, knowledge and expertise in disagreement resolution; an understanding of SEN processes, procedures and legislation; have no role in the decisions taken about a particular case, nor any vested interest in the terms of the settlement; are unbiased; maintain confidentiality; carry out the process quickly and to the timetable decided by the parties;
- should establish protocols and mechanisms for referring parents to disagreement resolution;
- should ensure that those providing the service receive appropriate initial and on-going training and development to enable them to carry out their role effectively;
- should establish a service level agreement for delivering the service which ensures sufficient levels of resources and training, and sets out the appropriate standards expected of, and the responsibilities delegated to, the provider. There should be appropriate arrangements for overseeing, regularly monitoring and reviewing the performance of the service, taking account of local and national best practice; and
- should seek feedback from the service to inform and influence local authority and provider decisions on SEN policies, procedures and practices.

7.4 Mediation

Mediation information and advice

Parents and young people who wish to make an SEN appeal to the First-tier Tribunal (SEND) may only do so after they have contacted an independent mediator. The issues which may be appealed against to a Tribunal are set out under ‘appeals’ above. When the local authority sends the notice accompanying their decision in relation to a matter which can be appealed to the Tribunal to parents or young people, they have to include contact details for an independent mediator. The mediator will provide information on mediation. The information will normally be provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other avenues if the parent or young person prefers that.

Where the parent or young person decides not to go to mediation following contact with the mediation adviser the adviser will issue a certificate, within three working days, saying that information has been provided. Parents and young people are not able to register an appeal at the Tribunal without a certificate.

Exceptions to the requirement to contact a mediation adviser

Parents and young people do not have to contact the mediation adviser if their appeal is solely about the name of the school or other institution named on the plan, the type of school or other institution specified in the plan or the fact that no school or other institution is named. Parents and young people will have had the opportunity to request a school or other institution and there would have been the opportunity to discuss this in detail with local authority. The mediation information and advice arrangements do not apply to disability discrimination claims.

Going to mediation

Once the information and advice has been provided it is for the parent or young person to decide whether they want to go to mediation. If they do then the mediation provider will contact the local authority and the local authority must arrange a mediation session within 30 calendar days. If the parent or young person wants to go to mediation then the local authority **must** also take part.

A mediation session or sessions which arise out of these arrangements must be conducted by independent mediators. In addition to the mediator, the parent or young person will attend and a representative or representatives of the local authority. The parent or young person will be able to be accompanied by friend, adviser or advocate and, in the case of parents, the child if that would be appropriate. In cases where parents are the party to the mediation and it is not appropriate for the child to attend in person the mediator must take reasonable steps to get the views of the child. Once mediation is completed the mediator must issue a certificate within three working days which says that this is the case. If the parent or young person still wants to appeal following the mediation they must send the certificate to the Tribunal when they register their appeal. The certificate will not set out any details about the mediation – simply stating it is completed and when.

Effective services for mediation and mediation information and advice

[Note: Further information to follow]

Registering an appeal with the Tribunal

Parents and young people have two months to register an SEN appeal with the Tribunal, from the date of receiving a notice from the local authority with a decision that can be appealed. In the great majority of cases where parents and young people have to contact a mediation adviser before registering an appeal there will be time for the appeal to be registered before the two month deadline, even in cases which go to mediation. In some cases parents and young people will not be in a position to register the appeal within the two month limit. The Tribunal has the power to accept appeals outside the two month time limit.

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 outcomes of any mediation.

The local authority will pay reasonable travel expenses and other expenses to the parent or young person taking part in mediation. This will include phone call costs in excess of the local rate.

7.5 Parents' and young people's right to appeal to the First-tier Tribunal (SEND) about EHC assessments and Education, Health and Care Plans

Who can appeal to the Tribunal about EHC assessments and plans

Parents and young people (over compulsory school age until the end of the academic year in which they reach age 25), can appeal to the First-tier Tribunal (Special Educational Needs and Disability) about EHC assessments and EHC plans, following contact with a mediation adviser in most cases (see below).

What parents and young people can appeal about

Parents and young people can appeal to the Tribunal on:

- a decision by a local authority not to carry out an EHC needs assessment or re-assessment;
- a decision by a local authority that it is not necessary to make special educational provision in accordance with a plan following an EHC assessment;
- the description of a child or young person's SEN specified in a plan, the special educational provision specified, the school or other institution or type of school or other institution specified in the plan or that no school or other institution is specified;
- a decision by a local authority not to amend or replace an EHC plan following a review or re-assessment;
- a decision by a local authority to cease to maintain a plan.

Conditions related to appeals

The following conditions apply to appeals:

- appeals have to be registered with the Tribunal within two months of the local authority sending a notice in connection with one of the matters that can be appealed to the Tribunal;

- the right to appeal a refusal of an assessment will only be triggered where the local authority has not carried out an assessment in the previous six months;
- when the parent or young person is appealing about a decision to cease to maintain the plan the local authority has to maintain the plan until the Tribunal's decision is made;
- the parent or young person can appeal to the Tribunal when the EHC plan is first finalised or following an amendment or replacement of the plan.

Decisions the Tribunal can make

The Tribunal has prescribed powers under the Children and Families Bill to make certain decisions in relation to certain appeals. The Tribunal can dismiss the appeal, order the local authority to carry out an assessment, to make and maintain a plan or to maintain a plan with amendments. The Tribunal can also ask the LA to reconsider or correct a weakness in the plan. Local authorities have time limits within which to comply with decisions of the Tribunal.

7.6 Disability discrimination claims

Venues for claims

The parents of disabled children and disabled young people in school have the right to make disability discrimination claims to the First-tier Tribunal (SEND) if they feel their children or they themselves have been discriminated against by schools or local authorities when carrying out some of their education functions. Claims must be made within six months of the alleged instance of discrimination. The parents of disabled children, on behalf of their children, and disabled young people in school can make a claim against maintained, maintained nursery, non-maintained, independent and most Academy schools about alleged discrimination in the matters of exclusions, the provision of education and associated services and the making of reasonable adjustments, including the provision of auxiliary aids and services. They can also make claims to the Tribunal about admissions to independent and non-maintained special schools and most Academies. Claims about admissions to maintained schools are made to local admissions panels.

Disability discrimination claims by young people against post-16 institutions, by parents about early years provision and about treatment of them as a parent in respect of being provided with an education service for their child, are made to the county courts.

Guidance on how to make a disability discrimination claim to the Tribunal is available at <http://www.justice.gov.uk/forms/hmcts/send> .

Exclusion

The Government issues statutory guidance on school exclusion, which can be found on the Departmental website. The guidance sets out details of the permanent exclusion review panel process, including parents' right to ask for an SEN expert to attend. In addition, claims for disability discrimination in relation to permanent and fixed-period exclusions may be made to the First-tier Tribunal (SEND).

Local authorities have a duty to arrange suitable, full time education for pupils of compulsory school age who would not otherwise receive such education, including from the sixth day of a permanent exclusion. Schools have a duty to arrange suitable, full time education from the sixth day of a fixed period exclusion. In carrying out their duties schools and local authorities must ensure that this education is in line with a pupil's Education, Health and Care plan, if one is in place.

7.7 The First-tier Tribunal (SEND)

The Special Educational Needs and Disability Tribunal (the SEND Tribunal) forms part of the First-tier Tribunal (Health, Education and Social Care Chamber). Tribunals are overseen by Her Majesty's Courts and Tribunals Service.

The role and function of the tribunal

The SEND Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people's assessments and Education, Health and Care Plans. It also hears disability discrimination claims against schools.

The Tribunal seeks to ensure the process of appealing is as user-friendly as possible, and seeks to avoid hearings that are overly legalistic or technical. It has always been the Tribunal's aim to ensure that a parent or young person should not have to engage legal representation when appealing a decision.

How to appeal

When appealing to the Tribunal parents and young people should identify the decision that they are appealing against and the date when the local authority's decision was made. The parent or young person that is appealing (the appellant) will be required to give the reasons why they are appealing. The reasons do not have to be lengthy or written in legal language but should explain why the appellant disagrees with decision. If there is any information or evidence which supports the appeal, the appellant should include it when they submit their appeal form.

When the appeal is registered with the Tribunal a copy will be sent to the local authority. The local authority will also receive a copy of the directions that set out the time limits for sending documents or providing details of witnesses; these will apply to all parties. Once the appellant's case is fully prepared they will receive a date for the hearing. Hearings are heard throughout the country at various Her Majesty's Courts and Tribunals Service buildings. The Tribunal will try to hold hearings as close to where the appellant lives as

possible. Appeals are heard by a panel of Tribunal members who have been appointed because of their knowledge and experience of children with SEN and disabilities.

A DVD is available from the Tribunal that gives appellants some guidance on what happens at a hearing

Timescales following the hearing

Both the young person or parent making the appeal and the local authority should receive a copy of the Tribunal's decision and reasons by post within 10 working days of the hearing. Along with the decision notice the Tribunal will send a leaflet which will explain the application process for permission to appeal the Tribunal decision to the Upper Tribunal, if the appellant considers that the decision made was wrong in law.

Step by step guidance on the process of appealing to the Tribunal and what it involves can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

7.8 Legal Aid

If a parent or young person has decided to appeal against a decision concerning SEN provision for their child, legal aid may be available to assist with that appeal. Before someone can be granted legal aid they must satisfy a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of succeeding.

Legal aid can provide advice and assistance in preparing an appeal to the First-tier Tribunal (SEN and Disability), but it does not cover having a lawyer act as a formal legal representative before the Tribunal (that is, advocacy).

If the parent or young person's appeal to the Tribunal is unsuccessful, and they wish to mount a further appeal to the Upper Tribunal (or beyond to the Court of Appeal or Supreme Court), then legal aid can provide advice, assistance and having a lawyer act as their formal legal representative and speak for them.

A parent or young person seeking access to legal aid for a SEN case can go online via www.gov.uk/legal-aid to find out if they are eligible. Alternatively they can contact the Civil Legal Advice (CLA) service on 0845 345 4 345. If the CLA assesses a person as eligible, the legal advice will be provided by phone, online or by post, unless the specialist advice provider assesses them as unsuitable to have advice in this way.

The following groups will be exempt from having to apply via CLA: young people under 18 and those assessed by the gateway in the previous 12 months as requiring face-to-face advice and who have a further linked problem and are seeking further help from the same face-to-face provider.

7.9 NHS Complaints – Healthwatch

[Note: This section to be developed]

7.10 Complaints about social services provision

[Note: this section to be developed]