

## **Section D Appendices**

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## Appendix 1: Special educational needs provision of local authorities

<b>6</b>	<b>The Adoption and Children Act Register</b>	25
(1)	The Adoption and Children Act 2002 is amended as follows.	
(2)	In section 125 (Adoption and Children Act Register)–	
(a)	in subsection (1)(a), after “children who are suitable for adoption” insert “, children for whom a local authority in England are considering adoption”;	30
(b)	in subsection (3), after “search” insert “(subject to regulations under section 128A)”.	
(3)	In section 128 (supply of information for the register), in subsection (4)(b), after “children suitable for adoption” insert “or for whom a local authority in England are considering adoption”.	35
(4)	After section 128 insert –	
	<b>“128A Search and inspection of the register by prospective adopters</b>	
(1)	Regulations may make provision enabling prospective adopters who are suitable to adopt a child to search and inspect the register, for the purposes of assisting them to find a child for whom they would be appropriate adopters.	40
(2)	Regulations under subsection (1) may make provision enabling prospective adopters to search and inspect only prescribed parts of the register, or prescribed content on the register.	

- (3) Access to the register for the purpose of searching and inspecting it may be granted on any prescribed terms and conditions.
- (4) Regulations may prescribe the steps to be taken by prospective adopters in respect of information received by them as a result of searching or inspecting the register. 5
- (5) Regulations may make provision requiring prospective adopters, in prescribed circumstances, to pay a prescribed fee to the Secretary of State or the registration organisation in respect of searching or inspecting the register.”
- (5) In section 97 of the Children Act 1989 (privacy for children involved in certain proceedings), after subsection (6) insert— 10
  - “(6A) It is not a contravention of this section to—
    - (a) enter material in the Adoption and Children Act Register (established under section 125 of the Adoption and Children Act 2002), or 15
    - (b) permit persons to search and inspect that register pursuant to regulations made under section 128A of that Act.”
- (6) Schedule 1 (amendments to the Adoption and Children Act 2002 to provide for the Adoption and Children Act Register not to apply to Wales and Scotland and to remove the requirement to make provision for that register by Order in Council, and other related amendments) has effect. 20

*Contact*

**7 Contact: children in care of local authorities**

- (1) Section 34 of the Children Act 1989 (parental contact etc with children in care) is amended as follows. 25
- (2) In subsection (1), after “subject to the provisions of this section” insert “and their duty under section 22(3)(a)”.
- (3) After subsection (6) insert—
  - “(6A) Where (by virtue of an order under this section, or because subsection (6) applies) a local authority in England are authorised to refuse to allow contact between the child and a person mentioned in any of paragraphs (a) to (c) of paragraph 15(1) of Schedule 2, paragraph 15(1) of that Schedule does not require the authority to endeavour to promote contact between the child and that person.” 30
- (4) In subsection (8), before paragraph (a) insert— 35
  - “(za) what a local authority in England must have regard to in considering whether contact between a child and a person mentioned in any of paragraphs (a) to (d) of subsection (1) is consistent with safeguarding and promoting the child’s welfare;” 40
- (5) In subsection (11) after “Before” insert “making, varying or discharging an order under this section or”.

**8 Contact: post-adoption**

- (1) After section 51 of the Adoption and Children Act 2002 insert –

*“Post-adoption contact***51A Post-adoption contact**

- |  |    |
|--|----|
| (1) This section applies where –   | 5  |
| (a) an adoption agency has placed or was authorised to place a child for adoption, and   |    |
| (b) the court is making or has made an adoption order in respect of the child.   |    |
| (2) When making the adoption order or at any time afterwards, the court may make an order under this section –   | 10 |
| (a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other, or | 15 |
| (b) prohibiting the person named in the order under this section from having contact with the child.   |    |
| (3) The following people may be named in an order under this section –   |    |
| (a) any person who (but for the child’s adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;  | 20 |
| (b) any former guardian of the child;  |    |
| (c) any person who had parental responsibility for the child immediately before the making of the adoption order;  | 25 |
| (d) any person who was entitled to make an application for an order under section 26 in respect of the child (contact with children placed or to be placed for adoption) by virtue of subsection (3)(c), (d) or (e) of that section;   |    |
| (e) any person with whom the child has lived for a period of at least one year.  | 30 |
| (4) An application for an order under this section may be made by –  |    |
| (a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made,   |    |
| (b) the child, or  | 35 |
| (c) any person who has obtained the court’s leave to make the application.   |    |
| (5) In deciding whether to grant leave under subsection (4)(c), the court must consider –  |    |
| (a) any risk there might be of the proposed application disrupting the child’s life to such an extent that he or she would be harmed by it (within the meaning of the 1989 Act),   | 40 |
| (b) the applicant’s connection with the child, and   |    |
| (c) any representations made to the court by –   |    |
| (i) the child, or  | 45 |

- (ii) a person who has applied for the adoption order or in whose favour the adoption order is or has been made.
  - (6) When making an adoption order, the court may on its own initiative make an order of the type mentioned in subsection (2)(b).
  - (7) The period of one year mentioned in subsection (3)(e) need not be continuous but must not have begun more than five years before the making of the application. 5
  - (8) Where this section applies, an order under section 8 of the 1989 Act may not make provision about contact between the child and any person who may be named in an order under this section. 10
- 51B Orders under section 51A: supplementary**
- (1) An order under section 51A –
    - (a) may contain directions about how it is to be carried into effect,
    - (b) may be made subject to any conditions the court thinks appropriate, 15
    - (c) may be varied or revoked by the court on an application by the child, a person in whose favour the adoption order was made or a person named in the order, and
    - (d) has effect until the child’s 18th birthday, unless revoked.
  - (2) Subsection (3) applies to proceedings – 20
    - (a) on an application for an adoption order in which –
      - (i) an application is made for an order under section 51A, or
      - (ii) the court indicates that it is considering making such an order on its own initiative; 25
    - (b) on an application for an order under section 51A;
    - (c) on an application for such an order to be varied or revoked.
  - (3) The court must (in the light of any rules made by virtue of subsection (4)) –
    - (a) draw up a timetable with a view to determining without delay whether to make, (or as the case may be) vary or revoke an order under section 51A, and 30
    - (b) give directions for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
  - (4) Rules of court may – 35
    - (a) specify periods within which specified steps must be taken in relation to proceedings to which subsection (3) applies, and
    - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that the court makes determinations about orders under section 51A without delay.” 40
  - (2) In section 1 of the Adoption and Children Act 2002 (considerations applying to the exercise of powers relating to the adoption of a child), in subsection (7)(a) after “section 26” insert “or 51A”.
  - (3) In section 26 of that Act (children placed, or authorised to be placed, for adoption: contact), omit subsection (5). 45

- (4) In section 9 of the Children Act 1989, in subsection (5)(a) (restrictions on making certain orders with respect to children) after “order” insert “or an order under section 51A of the Adoption and Children Act 2002 (post-adoption contact)”.

*Promotion of educational achievement of children looked after by local authorities* 5

**9 Promotion of educational achievement of children looked after by local authorities**

In the Children Act 1989, in section 22 after subsection (3A) (duty of local authorities to promote the educational achievement of looked after children) insert— 10

“(3B) A local authority in England must appoint at least one person for the purpose of discharging the duty imposed by virtue of subsection (3A).

(3C) A person appointed by a local authority under subsection (3B) must be an officer employed by that authority or another local authority in England.” 15

**PART 2**

FAMILY JUSTICE

**10 Family mediation information and assessment meetings**

- (1) Before making a relevant family application, a person must attend a family mediation information and assessment meeting. 20

- (2) Family Procedure Rules—

(a) may provide for subsection (1) not to apply in circumstances specified in the Rules,

(b) may make provision about convening a family mediation information and assessment meeting, or about the conduct of such a meeting, 25

(c) may make provision for the court not to issue, or otherwise deal with, an application if, in contravention of subsection (1), the applicant has not attended a family mediation information and assessment meeting, and

(d) may provide for a determination as to whether an applicant has contravened subsection (1) to be made after considering only evidence of a description specified in the Rules. 30

- (3) In this section—

“the court” means the High Court or the family court;

“family mediation information and assessment meeting”, in relation to a relevant family application, means a meeting held for the purpose of enabling information to be provided about— 35

(a) mediation of disputes of the kinds to which relevant family applications relate,

(b) ways in which disputes of those kinds may be resolved otherwise than by the court, and 40

- (c) the suitability of mediation, or of any such other way of resolving disputes, for trying to resolve any dispute to which the particular application relates;  
“family proceedings” has the same meaning as in section 75 of the Courts Act 2003; 5  
“relevant family application” means an application that –
  - (a) is made to the court in, or to initiate, family proceedings, and
  - (b) is of a description specified in Family Procedure Rules.
- (4) This section is without prejudice to sections 75 and 76 of the Courts Act 2003 (power to make Family Procedure Rules). 10

#### 11 Welfare of the child: parental involvement

- (1) Section 1 of the Children Act 1989 (welfare of the child) is amended as follows.
- (2) After subsection (2) insert –
  - “(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child’s welfare.” 15
- (3) After subsection (5) insert –
  - “(6) In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned – 20
    - (a) is within this paragraph if that parent can be involved in the child’s life in a way that does not put the child at risk of suffering harm; and
    - (b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child’s life would put the child at risk of suffering harm whatever the form of the involvement. 25
- (7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).” 30

#### 12 Child arrangements orders

- (1) Section 8(1) of the Children Act 1989 is amended as follows.
- (2) Omit the definitions of “contact order” and “residence order”.
- (3) After “In this Act –” insert – 35
  - ““child arrangements order” means an order regulating arrangements relating to any of the following –
    - (a) with whom a child is to live, spend time or otherwise have contact, and
    - (b) when a child is to live, spend time or otherwise have contact with any person;” 40
- (4) Schedule 2 (amendments relating to child arrangements orders) has effect.

**13 Control of expert evidence, and of assessments, in children proceedings**

- (1) A person may not without the permission of the court instruct a person to provide expert evidence for use in children proceedings.
- (2) Where in contravention of subsection (1) a person is instructed to provide expert evidence, evidence resulting from the instructions is inadmissible in children proceedings unless the court rules that it is admissible. 5
- (3) A person may not without the permission of the court cause a child to be medically or psychiatrically examined or otherwise assessed for the purposes of the provision of expert evidence in children proceedings.
- (4) Where in contravention of subsection (3) a child is medically or psychiatrically examined or otherwise assessed, evidence resulting from the examination or other assessment is inadmissible in children proceedings unless the court rules that it is admissible. 10
- (5) In children proceedings, a person may not without the permission of the court put expert evidence (in any form) before the court. 15
- (6) The court may give permission as mentioned in subsection (1), (3) or (5) only if the court is of the opinion that the expert evidence is necessary to assist the court to resolve the proceedings justly.
- (7) When deciding whether to give permission as mentioned in subsection (1), (3) or (5) the court is to have regard in particular to— 20
- (a) any impact which giving permission would be likely to have on the welfare of the children concerned, including in the case of permission as mentioned in subsection (3) any impact which any examination or other assessment would be likely to have on the welfare of the child who would be examined or otherwise assessed, 25
  - (b) the issues to which the expert evidence would relate,
  - (c) the questions which the court would require the expert to answer,
  - (d) what other expert evidence is available (whether obtained before or after the start of proceedings),
  - (e) whether evidence could be given by another person on the matters on which the expert would give evidence, 30
  - (f) the impact which giving permission would be likely to have on the timetable for, and duration and conduct of, the proceedings,
  - (g) the cost of the expert evidence, and
  - (h) any matters prescribed by Family Procedure Rules. 35
- (8) References in this section to providing expert evidence, or to putting expert evidence before a court, do not include references to—
- (a) the provision or giving of evidence—
    - (i) by a person who is a member of the staff of a local authority or of an authorised applicant, 40
    - (ii) in proceedings to which the authority or authorised applicant is a party, and
    - (iii) in the course of the person’s work for the authority or authorised applicant,
  - (b) the provision or giving of evidence— 45



- (i) by a person within a description prescribed for the purposes of subsection (1) of section 94 of the Adoption and Children Act 2002 (suitability for adoption etc.), and
    - (ii) about the matters mentioned in that subsection,
  - (c) the provision or giving of evidence by an officer of the Children and Family Court Advisory and Support Service when acting in that capacity, or 5
  - (d) the provision or giving of evidence by a Welsh family proceedings officer (as defined by section 35(4) of the Children Act 2004) when acting in that capacity. 10
- (9) In this section –
  - “authorised applicant” means –
    - (a) the National Society for the Prevention of Cruelty to Children, or
    - (b) a person authorised by an order under section 31 of the Children Act 1989 to bring proceedings under that section; 15
  - “child” means a person under the age of 18;
  - “children proceedings” has such meaning as may be prescribed by Family Procedure Rules;
  - “the court”, in relation to any children proceedings, means the court in which the proceedings are taking place; 20
  - “local authority” –
    - (a) in relation to England means –
      - (i) a county council,
      - (ii) a district council for an area for which there is no county council, 25
      - (iii) a London borough council,
      - (iv) the Common Council of the City of London, or
      - (v) the Council of the Isles of Scilly, and
    - (b) in relation to Wales means a county council or a county borough council. 30
- (10) The preceding provisions of this section are without prejudice to sections 75 and 76 of the Courts Act 2003 (power to make Family Procedure Rules).
- (11) In section 38 of the Children Act 1989 (court’s power to make interim care and supervision orders, and to give directions as to medical examination etc. of children) after subsection (7) insert – 35
  - “(7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly. 40
  - (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to –
    - (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child, 45
    - (b) the issues with which the examination or other assessment would assist the court,

- (c) the questions which the examination or other assessment would enable the court to answer,
- (d) the evidence otherwise available,
- (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings, 5
- (f) the cost of the examination or other assessment, and
- (g) any matters prescribed by Family Procedure Rules.”

#### 14 Care, supervision and other family proceedings: time limits and timetables

- (1) The Children Act 1989 is amended as follows.
- (2) In section 32(1)(a) (timetable for dealing with application for care or supervision order) for “disposing of the application without delay; and” substitute “disposing of the application—
  - (i) without delay, and
  - (ii) in any event within twenty-six weeks beginning with the day on which the application was issued; and”. 15
- (3) In section 32 (care and supervision orders) after subsection (2) insert—
  - “(3) A court, when drawing up a timetable under subsection (1)(a), must in particular have regard to—
    - (a) the impact which the timetable would have on the welfare of the child to whom the application relates; and 20
    - (b) the impact which the timetable would have on the conduct of the proceedings.
  - (4) A court, when revising a timetable drawn up under subsection (1)(a) or when making any decision which may give rise to a need to revise such a timetable (which does not include a decision under subsection (5)), must in particular have regard to—
    - (a) the impact which any revision would have on the welfare of the child to whom the application relates; and 25
    - (b) the impact which any revision would have on the duration and conduct of the proceedings. 30
  - (5) A court in which an application under this Part is proceeding may extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application, but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly. 35
  - (6) When deciding whether to grant an extension under subsection (5), a court must in particular have regard to—
    - (a) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates, and
    - (b) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings; 40
 and here “ensuing timetable revision” means any revision, of the timetable under subsection (1)(a) for the proceedings, which the court considers may ensue from the extension.
  - (7) When deciding whether to grant an extension under subsection (5), a court is to take account of the following guidance: extensions are not to 45

- be granted routinely and are to be seen as requiring specific justification.
- (8) Each separate extension under subsection (5) is to end no more than eight weeks after the later of –
- (a) the end of the period being extended; and 5
  - (b) the end of the day on which the extension is granted.
- (9) The Lord Chancellor may by regulations amend subsection (1)(a)(ii), or the opening words of subsection (8), for the purpose of varying the period for the time being specified in that provision.
- (10) Rules of court may provide that a court – 10
- (a) when deciding whether to exercise the power under subsection (5), or
  - (b) when deciding how to exercise that power, must, or may or may not, have regard to matters specified in the rules, or must take account of any guidance set out in the rules.” 15
- (4) In section 38 (interim care and supervision orders) –
- (a) in subsection (4) (duration of interim order) omit –
    - (i) paragraph (a) (order may not last longer than 8 weeks), and
    - (ii) paragraph (b) (subsequent order generally may not last longer than 4 weeks), 20  - (b) in that subsection after paragraph (d) insert –  
“(da) in a case which falls within subsection (1)(b) and in which –
    - (i) no direction has been given under section 37(4), and 25
    - (ii) no application for a care order or supervision order has been made with respect to the child, the expiry of the period of eight weeks beginning with the date on which the order is made;”, and  - (c) omit subsection (5) (interpretation of subsection (4)(b)). 30
- (5) In section 11(1) (section 8 orders: court’s duty, in the light of rules made by virtue of section 11(2), to draw up timetable and give directions to implement it) for “rules made by virtue of subsection (2)” substitute “provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))”.
- (6) In section 14E(1) (special guardianship orders: court’s duty, in the light of rules made by virtue of subsection (3), to draw up timetable and give directions to implement it) for “rules made by virtue of subsection (3)” substitute “provision in rules of court that is of the kind mentioned in section 11(2)(a) or (b))”. 35
- (7) In section 32(1) (care and supervision orders: court’s duty, in the light of rules made by virtue of section 32(2), to draw up timetable and give directions to implement it) – 40
- (a) for “hearing an application for an order under this Part” substitute “in which an application for an order under this Part is proceeding”, and
  - (b) for “rules made by virtue of subsection (2)” substitute “provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))”. 45

- (8) In section 109(1) of the Adoption and Children Act 2002 (adoption and placement orders: court’s duty, in the light of rules made by virtue of section 109(2), to draw up timetable and give directions to implement it) for “rules made by virtue of subsection (2))” substitute “provision in rules of court that is of the kind mentioned in subsection (2)(a) or (b))”. 5

## 15 Care plans

- (1) For section 31(3A) of the Children Act 1989 (no care order to be made until court has considered section 31A care plan) substitute—
- “(3A) A court deciding whether to make a care order—
- (a) is required to consider the permanence provisions of the section 31A plan for the child concerned, but 10
- (b) is not required to consider the remainder of the section 31A plan, subject to section 34(11).
- (3B) For the purposes of subsection (3A), the permanence provisions of a section 31A plan are such of the plan’s provisions setting out the long-term plan for the upbringing of the child concerned as provide for any of the following— 15
- (a) the child to live with any parent of the child’s or with any other member of, or any friend of, the child’s family;
- (b) adoption; 20
- (c) long-term care not within paragraph (a) or (b).
- (3C) The Secretary of State may by regulations amend this section for the purpose of altering what for the purposes of subsection (3A) are the permanence provisions of a section 31A plan.”
- (2) In section 31A of the Children Act 1989 (care plans)— 25
- (a) in subsection (1) (where application made for care order, care plan to be prepared within such time as the court may direct) for “the court may direct” substitute “may be prescribed”, and
- (b) after subsection (4) insert—
- “(4A) In this section “prescribed”— 30
- (a) in relation to a care plan whose preparation is the responsibility of a local authority for an area in England, means prescribed by the Secretary of State; and
- (b) in relation to a care plan whose preparation is the responsibility of a local authority in Wales, means prescribed by the Welsh Ministers.” 35
- (3) In consequence of subsection (1), section 121(1) of the Adoption and Children Act 2002 is repealed.

## 16 Care proceedings and care plans: regulations: procedural requirements

- (1) In section 104 of the Children Act 1989 (regulations and orders)— 40
- (a) in subsections (2) and (3A) (regulations within subsection (3B) or (3C) not subject to annulment but to be approved in draft) after “(3B)” insert “, (3BA)”, and

(b) after subsection (3B) insert—

“(3BA) Regulations fall within this subsection if they are regulations made in the exercise of the power conferred by section 31(3C) or 32(9).”

- (2) In section 104A(1) of the Children Act 1989 (regulations made by the Welsh Ministers to be made by statutory instrument) after “Part 3,” insert “section 31A,”. 5

**17 Repeal of restrictions on divorce and dissolution etc where there are children**

- (1) The following are repealed—
- (a) section 41 of the Matrimonial Causes Act 1973 (in proceedings for divorce etc. court is to consider whether to exercise powers under Children Act 1989); 10
  - (b) section 63 of the Civil Partnership Act 2004 (in proceedings for dissolution etc. court is to consider whether to exercise powers under Children Act 1989). 15
- (2) The following amendments and repeals are in consequence of the repeals made by subsection (1).
- (3) In section 9(1)(a) of the Matrimonial Causes Act 1973 (proceedings after decree of divorce: power to make decree absolute is subject to section 41)—
- (a) for “sections” substitute “section”, and 20
  - (b) omit “and 41”.
- (4) In section 17(2) of that Act (grant of decree of judicial separation is subject to section 41) omit “, subject to section 41 below,”.
- (5) Omit paragraph 31 of Schedule 12 to the Children Act 1989 (which substitutes section 41 of the Matrimonial Causes Act 1973). 25
- (6) In section 40(4)(b) of the Civil Partnership Act 2004 (proceedings after conditional order: power to make order final is subject to section 63) omit the words from “and section 63” to the end.
- (7) In section 56(3) of that Act (making of separation order is subject to section 63) omit “, subject to section 63,”. 30

**18 Repeal of uncommenced provisions of Part 2 of the Family Law Act 1996**

- (1) Part 2 of the Family Law Act 1996 (divorce and separation), except section 22 (the only provision of Part 2 which is in force), is repealed.
- (2) In consequence of subsection (1), the following provisions of the Family Law Act 1996 (which relate to provisions of Part 2) are repealed— 35
- (a) section 1(c) and (d),
  - (b) section 63(2)(a),
  - (c) section 64(1)(a),
  - (d) in section 65(5) the words “to rules made under section 12 or”,
  - (e) Part 1 of Schedule 8, except— 40
    - (i) paragraph 16(5)(a), (6)(b) and (7) (which have been brought into force), and
    - (ii) paragraphs 4 and 16(1) (which relate to those provisions),

- (iii) in subsection (7F) for “section 23A” substitute “section 24”.
- (8) In section 31(7D) of the Matrimonial Causes Act 1973 –  
(a) for “apply”, in the first place, substitute “applies”, and  
(b) for “they apply where it” substitute “it applies where the court”.
- (9) Articles 3(2) and 4 of the No. 2 Order, and article 4 of the No. 3 Order, are  
revoked; and in subsection (6) and this subsection –  
“the No. 2 Order” means the Family Law Act 1996 (Commencement  
No. 2) Order 1997 (S.I. 1997/1892), and  
“the No. 3 Order” means the Family Law Act 1996 (Commencement  
No. 3) Order 1998 (S.I. 1998/2572).

### PART 3

#### CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS

##### *Local authority functions: general principles*

#### **19 Local authority functions: supporting and involving children and young people**

In exercising a function under this Part in the case of a child or young person, a local authority in England must have regard to the following matters in particular –

- (a) the views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

##### *Special educational needs etc*

#### **20 When a child or young person has special educational needs**

- (1) A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.
- (2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she –  
(a) has a significantly greater difficulty in learning than the majority of others of the same age, or  
(b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

- (3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made).
- (4) A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home. 5
- (5) This section applies for the purposes of this Part.

**21 Special educational provision, health care provision and social care provision**

- (1) “Special educational provision”, for a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in—
  - (a) mainstream schools in England,
  - (b) maintained nursery schools in England,
  - (c) mainstream post-16 institutions in England, or 15
  - (d) places in England at which relevant early years education is provided.
- (2) “Special educational provision”, for a child aged under two, means educational provision of any kind.
- (3) “Health care provision” means the provision of all forms of health care services (whether or not as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006). 20
- (4) “Social care provision” means the provision made by a local authority in the exercise of its social services functions.
- (5) Health care provision or social care provision which is made wholly or mainly for the purposes of the education or training of a child or young person is to be treated as special educational provision (instead of health care provision or social care provision). 25
- (6) This section applies for the purposes of this Part.

*Children and young people for whom a local authority is responsible*

**22 Identifying children and young people with special educational needs** 30

A local authority in England must exercise its functions with a view to securing that it identifies all the children and young people in its area who have or may have special educational needs.

**23 When a local authority is responsible for a child or young person**

- (1) A local authority in England is responsible for a child or young person if he or she is in the authority’s area and has been—
  - (a) identified by the authority as someone who has or may have special educational needs, or
  - (b) brought to the authority’s attention by any person as someone who has or may have special educational needs. 40
- (2) This section applies for the purposes of this Part.

**24 Duty of health bodies to bring certain children to local authority’s attention**

- (1) This section applies where, in the course of exercising functions in relation to a child who is under compulsory school age, a clinical commissioning group, NHS trust or NHS foundation trust form the opinion that the child has (or probably has) special educational needs. 5
- (2) The group or trust must—
  - (a) inform the child’s parent of their opinion and of their duty under subsection (3), and
  - (b) give the child’s parent an opportunity to discuss their opinion with an officer of the group or trust. 10
- (3) The group or trust must then bring their opinion to the attention of the appropriate local authority in England.
- (4) If the group or trust think a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs the child may have, they must inform the parent of that. 15

*Education, health and care provision: integration and joint commissioning*

**25 Promoting integration**

- (1) A local authority in England must exercise its functions under this Part with a view to ensuring the integration of special educational provision with health care provision and social care provision, where it thinks that this would—
  - (a) promote the well-being of children or young people in its area who have special educational needs, or
  - (b) improve the quality of special educational provision—
    - (i) made in its area for children or young people who have special educational needs, or 25
    - (ii) made outside its area for children or young people for whom it is responsible who have special educational needs.
- (2) The reference in subsection (1) to the well-being of children and young people is to their well-being so far as relating to—
  - (a) physical and mental health and emotional well-being; 30
  - (b) protection from abuse and neglect;
  - (c) control by them over their day-to-day lives;
  - (d) participation in education, training or recreation;
  - (e) social and economic well-being;
  - (f) domestic, family and personal relationships; 35
  - (g) the contribution made by them to society.

**26 Joint commissioning arrangements**

- (1) A local authority in England and its partner clinical commissioning groups must make arrangements (“joint commissioning arrangements”) about the education, health and care provision to be secured for children and young people for whom the authority is responsible who have special educational needs. 40
- (2) In this Part “education, health and care provision” means—



- (a) special educational provision;
  - (b) health care provision;
  - (c) social care provision.
- (3) Joint commissioning arrangements must include arrangements for considering and agreeing – 5
- (a) the education, health and care provision reasonably required by the special educational needs of the children and young people concerned;
  - (b) what education, health and care provision is to be secured;
  - (c) by whom education, health and care provision is to be secured; 10
  - (d) what advice and information is to be provided about education, health and care provision;
  - (e) by whom, to whom and how such advice and information is to be provided;
  - (f) how complaints about education, health and care provision may be made and are to be dealt with; 15
  - (g) procedures for ensuring that disputes between the parties to the joint commissioning arrangements are resolved as quickly as possible.
- (4) Joint commissioning arrangements about securing education, health and care provision must in particular include arrangements for – 20
- (a) securing EHC needs assessments;
  - (b) securing the education, health and care provision specified in EHC plans;
  - (c) agreeing personal budgets under section 48.
- (5) Joint commissioning arrangements may also include other provision.
- (6) The parties to joint commissioning arrangements must – 25
- (a) have regard to them in the exercise of their functions, and
  - (b) keep them under review.
- (7) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section. 30
- (8) A “partner clinical commissioning group”, in relation to a local authority, is a clinical commissioning group whose area coincides with, or falls wholly or partly within, the authority’s area.

*Review of education and care provision* 35

## 27 Duty to keep education and care provision under review

- (1) A local authority in England must keep under review –
- (a) the special educational provision and social care provision made in its area for children and young people who have special educational needs, and 40
  - (b) the special educational provision and social care provision made outside its area for children and young people for whom it is responsible who have special educational needs.

- (2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the special educational needs and social care needs of the children and young people concerned.
- (3) In exercising its functions under this section, the authority must consult –
  - (a) children and young people with special educational needs, and the parents of children with special educational needs, in its area; 5
  - (b) the governing bodies of maintained schools and maintained nursery schools in its area;
  - (c) the proprietors of Academies in its area;
  - (d) the governing bodies, proprietors or principals of post-16 institutions in its area; 10
  - (e) the governing bodies of non-maintained special schools in its area;
  - (f) the advisory boards of children’s centres in its area;
  - (g) the providers of relevant early years education in its area;
  - (h) 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; 15
  - (i) a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible; 20
  - (j) such other persons as the authority thinks appropriate.
- (4) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section. 25
- (5) “Children’s centre” has the meaning given by section 5A(4) of the Childcare Act 2006.

*Co-operation and assistance*

**28 Co-operating generally: local authority functions**

- (1) A local authority in England must co-operate with each of its local partners, and each local partner must co-operate with the authority, in the exercise of the authority’s functions under this Part. 30
- (2) Each of the following is a local partner of a local authority in England for this purpose –
  - (a) where the authority is a county council for an area for which there is also a district council, the district council; 35
  - (b) the governing body of a maintained school or maintained nursery school that is maintained by the authority or provides education or training for children or young people for whom the authority is responsible; 40
  - (c) the proprietor of an Academy that is in the authority’s area or provides education or training for children or young people for whom the authority is responsible;
  - (d) the proprietor of a non-maintained special school that is in the authority’s area or provides education or training for children or young people for whom the authority is responsible; 45

- (e) the governing body of an institution within the further education sector that is in the authority’s area, or is attended, or likely to be attended, by children or young people for whom the authority is responsible;
  - (f) the management committee of a pupil referral unit that is in the authority’s area, or is in England and is or is likely to be attended by children or young people for whom the authority is responsible; 5
  - (g) the proprietor of an institution approved by the Secretary of State under section 41 (independent special schools and special post 16 institutions: approval) that is in the authority’s area, or is attended, or likely to be attended, by children or young people for whom the authority is responsible; 10
  - (h) any other person (other than a school or post-16 institution) that makes special educational provision for a child or young person for whom the authority is responsible;
  - (i) a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible; 15
  - (j) the National Health Service Commissioning Board;
  - (k) a clinical commissioning group –
    - (i) whose area coincides with, or falls wholly or partly within, the authority’s area, or 20
    - (ii) which exercises functions in relation to children or young people for whom the authority is responsible;
  - (l) an NHS trust or NHS foundation trust which provides services in the authority’s area, or which exercises functions in relation to children or young people for whom the authority is responsible; 25
  - (m) a Local Health Board which exercises functions in relation to children or young people for whom the authority is responsible.
- (3) A local authority in England must make arrangements for ensuring co-operation between –
- (a) the officers of the authority who exercise the authority’s functions relating to education or training, 30
  - (b) the officers of the authority who exercise the authority’s social services functions for children or young people with special educational needs, and
  - (c) the officers of the authority, so far as they are not officers within paragraph (a) or (b), who exercise the authority’s functions relating to provision which is within section 30(2)(e) (provision to assist in preparing children and young people for adulthood and independent living). 35
- 29 Co-operating generally: governing body functions** 40
- (1) This section applies where an appropriate authority for a school or post-16 institution mentioned in subsection (2) has functions under this Part.
  - (2) The schools and post-16 institutions referred to in subsection (1) are –
    - (a) mainstream schools;
    - (b) maintained nursery schools; 45
    - (c) 16 to 19 Academies;
    - (d) institutions within the further education sector;
    - (e) pupil referral units;

- (f) alternative provision Academies.
- (3) The appropriate authority must co-operate with each responsible local authority, and each responsible local authority must co-operate with the appropriate authority, in the exercise of those functions.
- (4) A responsible local authority, in relation to an appropriate authority for a school or post-16 institution mentioned in subsection (2), is a local authority in England that is responsible for any child or young person who is a registered pupil or a student at the school or post-16 institution. 5
- (5) The “appropriate authority” for a school or post-16 institution is—
  - (a) in the case of a maintained school, maintained nursery school, or institution within the further education sector, the governing body; 10
  - (b) in the case of an Academy, the proprietor;
  - (c) in the case of a pupil referral unit, the management committee.

*Information and advice*

- 30 Local offer for children and young people with special educational needs** 15
- (1) A local authority in England must publish information about—
    - (a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs, and
    - (b) the provision within subsection (2) it expects to be available outside its area at that time for children and young people for whom it is responsible. 20
  - (2) The provision for children and young people referred to in subsection (1) is—
    - (a) education, health and care provision;
    - (b) other educational provision; 25
    - (c) training provision;
    - (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided;
    - (e) provision to assist in preparing children and young people for adulthood and independent living. 30
  - (3) For the purposes of subsection (2)(e), provision to assist in preparation for adulthood and independent living includes provision relating to—
    - (a) finding employment;
    - (b) obtaining accommodation;
    - (c) participation in society. 35
  - (4) Information required to be published by an authority under this section is to be known as its “local offer”.
  - (5) A local authority must keep its local offer under review and may from time to time revise it.
  - (6) A local authority must from time to time publish— 40
    - (a) comments about its local offer it has received from or on behalf of children and young people with special educational needs, and the parents of children with special educational needs, and
    - (b) the authority’s response to those comments.

- (7) Comments published under subsection (6)(a) must be published in a form that does not enable the person making them to be identified.
- (8) Regulations may make provision about –
- (a) the information to be included in an authority’s local offer;
  - (b) how an authority’s local offer is to be published; 5
  - (c) who is to be consulted by an authority in preparing and reviewing its local offer;
  - (d) how an authority is to involve children and young people with special educational needs, and the parents of children with special educational needs, in the preparation and review of its local offer; 10
  - (e) the publication of comments on the local offer, and the local authority’s response, under subsection (6) (including circumstances in which comments are not required to be published).
- (9) The regulations may in particular require an authority’s local offer to include –
- (a) information about how to obtain an EHC needs assessment; 15
  - (b) information about other sources of information, advice and support for children and young people with special educational needs and those who care for them;
  - (c) information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2); 20
  - (d) information about how to make a complaint about provision mentioned in subsection (2).
- 31 Co-operating in specific cases: local authority functions**
- (1) This section applies where a local authority in England requests the co-operation of any of the following bodies in the exercise of a function under this Part – 25
- (a) another local authority;
  - (b) a youth offending team;
  - (c) the National Health Service Commissioning Board;
  - (d) a clinical commissioning group; 30
  - (e) a Local Health Board;
  - (f) an NHS trust or NHS foundation trust.
- (2) The body must comply with the request, unless it considers that doing so would –
- (a) be incompatible with its own duties, or 35
  - (b) otherwise have an adverse effect on the exercise of its functions.
- (3) A body that decides not to comply with a request under subsection (1) must give the authority that made the request written reasons for the decision.
- (4) Regulations may provide that, where a body is under a duty to comply with a request to co-operate with a local authority in securing an EHC needs assessment or the preparation of an EHC plan, the body must comply with the request within a prescribed period, unless a prescribed exception applies. 40
- 32 Advice and information for parents and young people**
- (1) A local authority in England must arrange for the parents of children for whom it is responsible, and young people for whom it is responsible, to be provided 45

with advice and information about matters relating to the special educational needs of the children or young people concerned.

- (2) The authority must take such steps as it thinks appropriate for making the services provided under subsection (1) known to –
  - (a) the parents of children in its area; 5
  - (b) young people in its area;
  - (c) the head teachers, proprietors and principals of schools and post-16 institutions in its area.
- (3) The authority may also take such steps as it thinks appropriate for making the services provided under subsection (1) known to such other persons as it thinks appropriate. 10

*Mainstream education*

**33 Children and young people with EHC plans**

- (1) This section applies where a local authority is securing the preparation of an EHC plan for a child or young person who is to be educated in a school or post-16 institution. 15
- (2) In a case within section 39(5) or 40(2), the local authority must secure that the plan provides for the child or young person to be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, unless that is incompatible with –
  - (a) the wishes of the child's parent or the young person, or
  - (b) the provision of efficient education for others. 20
- (3) A local authority may rely on the exception in subsection (2)(b) in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole only if it shows that there are no reasonable steps that it could take to prevent the incompatibility. 25
- (4) A local authority may rely on the exception in subsection (2)(b) in relation to a particular maintained nursery school, mainstream school or mainstream post-16 institution only if it shows that there are no reasonable steps that it or the governing body, proprietor or principal could take to prevent the incompatibility. 30
- (5) The governing body, proprietor or principal of a maintained nursery school, mainstream school or mainstream post-16 institution may rely on the exception in subsection (2)(b) only if they show that there are no reasonable steps that they or the local authority could take to prevent the incompatibility. 35
- (6) Subsection (2) does not prevent the child or young person from being educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State.
- (7) This section does not affect the operation of section 58 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions). 40

**34 Children and young people with special educational needs but no EHC plan**

- (1) This section applies to a child or young person in England who has special educational needs but for whom no EHC plan is maintained, if he or she is to be educated in a school or post-16 institution.
- (2) The child or young person must be educated in a maintained nursery school, mainstream school or mainstream post-16 institution, subject to subsections (3) and (4). 5
- (3) The child or young person may be educated in an independent school, a non-maintained special school or a special post-16 institution, if the cost is not to be met by a local authority or the Secretary of State. 10
- (4) The child or young person may be educated in a special school or special post-16 institution during any period in which any of subsections (5) to (9) applies.
- (5) This subsection applies while the child or young person is admitted to a special school or special post-16 institution for the purposes of an EHC needs assessment, if all the following have agreed to his or her admission to the school or post-16 institution— 15
- (a) the local authority which is responsible for him or her;
  - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
  - (c) the child's parent or the young person;
  - (d) anyone else whose advice is required to be obtained in connection with the assessment by virtue of regulations under section 36(11). 20
- (6) This subsection applies while the child or young person remains admitted to a special school or special post-16 institution, in prescribed circumstances, following an EHC needs assessment at the school or post-16 institution. 25
- (7) This subsection applies while the child or young person is admitted to a special school or special post-16 institution, following a change in his or her circumstances, if all the following have agreed to his or her admission to the school or post-16 institution— 30
- (a) the local authority which is responsible for him or her;
  - (b) the head teacher of the school or the principal of the Academy or post-16 institution;
  - (c) the child's parent or the young person.
- (8) This subsection applies while the child or young person is admitted to a special school which is established in a hospital and is— 35
- (a) a community or foundation special school, or
  - (b) an Academy school.
- (9) This subsection applies while the child is admitted to a special school or special post-16 institution that is an Academy, if the Academy arrangements made in respect of the school or post-16 institution permit it to admit children and young people with special educational needs for whom no EHC plan is maintained. 40
- (10) This section does not affect the operation of section 58 (fees payable by local authority for special educational provision at non-maintained schools and post-16 institutions). 45

**35 Children with SEN in maintained nurseries and mainstream schools**

- (1) This section applies where a child with special educational needs is being educated in a maintained nursery school or a mainstream school.
- (2) Those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have special educational needs, subject to subsection (3). 5
- (3) Subsection (2) applies only so far as is reasonably practicable and is compatible with—
  - (a) the child receiving the special educational provision called for by his or her special educational needs, 10
  - (b) the provision of efficient education for the children with whom he or she will be educated, and
  - (c) the efficient use of resources.

*Assessment*

**36 Assessment of education, health and care needs**

15

- (1) A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.
- (2) An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person. 20
- (3) When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan. 25
- (4) In making a determination under subsection (3), the local authority must consult the child's parent or the young person.
- (5) Where the local authority determines that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan it must notify the child's parent or the young person— 30
  - (a) of the reasons for that determination, and
  - (b) that accordingly it has decided not to secure an EHC needs assessment for the child or young person.
- (6) Subsection (7) applies where—
  - (a) no EHC plan is maintained for the child or young person, 35
  - (b) the child or young person has not been assessed under this section during the previous six months, and
  - (c) the local authority determines that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan. 40
- (7) The authority must notify the child's parent or the young person—
  - (a) that it is considering securing an EHC needs assessment for the child or young person, and
  - (b) that the parent or young person has the right to—



- (i) express views to the authority (orally or in writing), and
  - (ii) submit evidence to the authority.
- (8) The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that— 5
- (a) the child or young person has or may have special educational needs, and
  - (b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (9) After an EHC needs assessment has been carried out, the local authority must notify the child’s parent or the young person of— 10
- (a) the outcome of the assessment,
  - (b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and
  - (c) the reasons for that decision. 15
- (10) In forming an opinion for the purposes of this section in relation to a young person aged over 18, a local authority must have regard to his or her age.
- (11) Regulations may make provision about EHC needs assessments, in particular— 20
- (a) about requests under subsection (1);
  - (b) imposing time limits in relation to consultation under subsection (4);
  - (c) about giving notice;
  - (d) about expressing views and submitting evidence under subsection (7);
  - (e) about how assessments are to be conducted;
  - (f) about advice to be obtained in connection with an assessment; 25
  - (g) requiring the attendance of persons of a prescribed description in connection with an assessment;
  - (h) about combining an EHC needs assessment with other assessments;
  - (i) about the use for the purposes of an EHC needs assessment of information obtained as a result of other assessments; 30
  - (j) about the use of information obtained as a result of an EHC needs assessment, including the use of that information for the purposes of other assessments;
  - (k) about the provision of information, advice and support in connection with an EHC needs assessment. 35

*Education, health and care plans*

**37 Education, health and care plans**

- (1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan— 40
- (a) the local authority must secure that an EHC plan is prepared for the child or young person, and
  - (b) once an EHC plan has been prepared, it must maintain the plan.
- (2) For the purposes of this Part, an EHC plan is a plan specifying— 45
- (a) the child’s or young person’s special educational needs;

- (b) the outcomes sought for him or her;
  - (c) the special educational provision required by him or her;
  - (d) any health care and social care provision of a prescribed description required by him or her.
- (3) In making a decision for the purposes of this section in relation to a young person aged over 18, a local authority must have regard to his or her age. 5
- (4) Regulations may make provision about the preparation, content and maintenance of EHC plans.

**38 Preparation of EHC plans: draft plan**

- (1) Where a local authority is required to secure that an EHC plan is prepared for a child or young person, it must consult the child's parent or the young person about the content of the plan during the preparation of a draft of the plan. 10
- (2) The local authority must then –
- (a) send the draft plan to the child's parent or the young person, and
  - (b) give the parent or young person notice of his or her right to – 15
    - (i) make representations about the content of the draft plan, and
    - (ii) request the authority to secure that a particular school or other institution within subsection (3) is named in the plan.
- (3) A school or other institution is within this subsection if it is – 20
- (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an Academy;
  - (d) an institution within the further education sector in England;
  - (e) a non-maintained special school;
  - (f) an institution approved by the Secretary of State under section 41 (independent special schools and special post-16 institutions: approval). 25
- (4) A notice under subsection (2)(b) must specify a period before the end of which any representations or requests must be made.
- (5) The draft EHC plan sent to the child's parent or the young person must not – 30
- (a) name a school or other institution, or
  - (b) specify a type of school or other institution.

**39 Finalising EHC plans: request for particular school or other institution**

- (1) This section applies where, before the end of the period specified in a notice under section 38(2)(b), a request is made to a local authority to secure that a particular school or other institution is named in an EHC plan. 35
- (2) The local authority must consult –
- (a) the governing body, proprietor or principal of the school or other institution,
  - (b) the governing body, proprietor or principal of any other school or other institution the authority is considering having named in the plan, and 40
  - (c) if a school or other institution is within paragraph (a) or (b) and is maintained by another local authority, that authority.

- (3) The local authority must secure that the EHC plan names the school or other institution specified in the request, unless subsection (4) applies.
- (4) This subsection applies where –
- (a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or 5
  - (b) the attendance of the child or young person at the requested school or other institution would be incompatible with –
    - (i) the provision of efficient education for others, or
    - (ii) the efficient use of resources. 10
- (5) Where subsection (4) applies, the local authority must secure that the plan –
- (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person, or
  - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person. 15
- (6) Before securing that the plan names a school or other institution under subsection (5)(a), the local authority must (if it has not already done so) consult –
- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and 20
  - (b) if that school or other institution is maintained by another local authority, that authority.
- (7) The local authority must, at the end of the period specified in the notice under section 38(2)(b), secure that any changes it thinks necessary are made to the draft EHC plan. 25
- (8) The local authority must send a copy of the finalised EHC plan to –
- (a) the child’s parent or the young person, and
  - (b) the governing body, proprietor or principal of any school or other institution named in the plan.
- 40 Finalising EHC plans: no request for particular school or other institution 30**
- (1) This section applies where no request is made to a local authority before the end of the period specified in a notice under section 38(2)(b) to secure that a particular school or other institution is named in an EHC plan.
- (2) The local authority must secure that the plan –
- (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person concerned, or 35
  - (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person.
- (3) Before securing that the plan names a school or other institution under subsection (2)(a), the local authority must consult – 40
- (a) the governing body, proprietor or principal of any school or other institution the authority is considering having named in the plan, and
  - (b) if that school or other institution is maintained by another local authority, that authority.

- (4) The local authority must also secure that any changes it thinks necessary are made to the draft EHC plan.
- (5) The local authority must send a copy of the finalised EHC plan to—
  - (a) the child’s parent or the young person, and
  - (b) the governing body, proprietor or principal of any school or other institution named in the plan. 5

**41 Independent special schools and special post-16 institutions: approval**

- (1) The Secretary of State may approve an institution within subsection (2) for the purpose of enabling the institution to be the subject of a request for it to be named in an EHC plan. 10
- (2) An institution is within this subsection if it is—
  - (a) an independent educational institution (within the meaning of Chapter 1 of Part 4 of ESA 2008)—
    - (i) which has been entered on the register of independent educational institutions in England (kept under section 95 of that Act), and 15
    - (ii) which is specially organised to make special educational provision for students with special educational needs, or
  - (b) a special post-16 institution which is not an institution within the further education sector or a 16 to 19 Academy. 20
- (3) The Secretary of State may approve an institution under subsection (1) only if its proprietor consents.
- (4) The Secretary of State may withdraw approval given under subsection (1).
- (5) Regulations may make provision about giving and withdrawing approval under this section, in particular—
  - (a) about the types of special post-16 institutions which may be approved under subsection (1);
  - (b) specifying criteria which an institution must meet before it can be approved under subsection (1);
  - (c) about the matters which may or must be taken into account in deciding to give or withdraw approval; 30
  - (d) about the publication of a list of all institutions who are approved under this section.

**42 Duty to secure special educational provision in accordance with EHC Plan**

- (1) A local authority that maintains an EHC plan for a child or young person must secure the special educational provision specified in the plan. 35
- (2) Subsection (1) does not apply if the child’s parent or the young person has made suitable arrangements.

**43 Schools and other institutions named in EHC plan: duty to admit**

- (1) Subsection (2) applies if one of the following is named in an EHC plan—
  - (a) a maintained school;
  - (b) a maintained nursery school; 40

- (c) an Academy;
  - (d) an institution within the further education sector in England;
  - (e) a non-maintained special school;
  - (f) an institution approved by the Secretary of State under section 41.
- (2) The governing body, proprietor or principal of the school or other institution must admit the child or young person for whom the plan is maintained. 5
- (3) Subsection (2) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of SSFA 1998.
- (4) Subsection (2) does not affect any power to exclude a pupil or student from a school or other institution. 10

#### 44 Reviews and re-assessments

- (1) A local authority must review an EHC plan that it maintains –
- (a) in the period of 12 months starting with the date on which the plan was first made, and
  - (b) in each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section. 15
- (2) A local authority must secure a re-assessment of the educational, health care and social care needs of a child or young person for whom it maintains an EHC plan if a request is made to it by –
- (a) the child’s parent or the young person, or 20
  - (b) the governing body, proprietor or principal of the school, post-16 institution or other institution which the child or young person attends.
- (3) A local authority may also secure a re-assessment of those needs at any other time if it thinks it necessary.
- (4) Subsections (1) and (2) are subject to any contrary provision in regulations made under subsection (7)(b). 25
- (5) In reviewing an EHC plan maintained for a young person aged over 18, or deciding whether to secure a re-assessment of the needs of such a young person, a local authority must have regard to his or her age.
- (6) During a review or re-assessment, a local authority must consult the parent of the child, or the young person, for whom it maintains the EHC plan. 30
- (7) Regulations may make provision about reviews and re-assessments, in particular –
- (a) about other circumstances in which a local authority must or may review an EHC plan or secure a re-assessment (including before the end of a specified phase of a child’s or young person’s education); 35
  - (b) about circumstances in which it is not necessary for a local authority to review an EHC plan or secure a re-assessment;
  - (c) about amending or replacing an EHC plan following a review or re-assessment. 40
- (8) Regulations under subsection (7) about re-assessments may in particular apply provisions of or made under this Part that are applicable to EHC needs assessments, with or without modifications.

- (9) Regulations under subsection (7)(c) must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended following a review.

**45 Ceasing to maintain an EHC plan**

- (1) A local authority may cease to maintain an EHC plan for a child or young person only if— 5
- (a) the authority is no longer responsible for the child or young person, or
  - (b) the authority determines that it is no longer necessary for the plan to be maintained.
- (2) The circumstances in which it is no longer necessary for an EHC plan to be maintained for a child or young person include where the child or young person no longer requires the special educational provision specified in the plan. 10
- (3) When determining whether a child or young person no longer requires the special educational provision specified in his or her EHC plan, a local authority must have regard to whether the educational outcomes specified in the plan have been achieved. 15
- (4) In determining whether it is no longer necessary for an EHC plan to be maintained for a young person aged over 18, a local authority must have regard to his or her age. 20
- (5) A local authority may not cease to maintain an EHC plan for a child or young person until—
- (a) after the end of the period allowed for bringing an appeal under section 50 against its decision to cease to maintain the plan, where no such appeal is brought before the end of that period; 25
  - (b) after the appeal has been finally determined, where such an appeal is brought before the end of that period.
- (6) Regulations may make provision about ceasing to maintain an EHC plan, in particular about—
- (a) other circumstances in which it is no longer necessary for an EHC plan to be maintained; 30
  - (b) circumstances in which a local authority may not determine that it is no longer necessary for an EHC plan to be maintained;
  - (c) the procedure to be followed by a local authority when determining whether to cease to maintain an EHC plan. 35

**46 Maintaining an EHC plan after young person’s 25th birthday**

- (1) A local authority may continue to maintain an EHC plan for a young person until the end of the academic year during which the young person attains the age of 25.
- (2) “Academic year” means the period of twelve months ending on the prescribed date. 40

**47 Release of child or young person for whom EHC plan previously maintained**

- (1) This section applies where—

- |   |    |
|---|----|
| <ul style="list-style-type: none"> <li style="margin-left: 40px;">(a) a child or young person who has been subject to a custodial sentence is released,</li> <li style="margin-left: 40px;">(b) on the release date, a local authority in England becomes responsible for him or her, and</li> <li style="margin-left: 40px;">(c) an EHC plan was maintained for him or her immediately before the start of the custodial sentence.</li> </ul>  | 5  |
| <ul style="list-style-type: none"> <li>(2) The local authority must –           <ul style="list-style-type: none"> <li>(a) maintain the plan, and</li> <li>(b) review the plan as soon as reasonably practicable after the release date.</li> </ul> </li> </ul>   |    |
| <ul style="list-style-type: none"> <li>(3) Subsection (2)(b) is subject to any contrary provision in regulations under section 44(7)(b).</li> </ul>   | 10 |
| <b>48 Personal budgets</b>  |    |
| <ul style="list-style-type: none"> <li>(1) A local authority that maintains an EHC plan, or is securing the preparation of an EHC plan, for a child or young person must prepare a personal budget for him or her if asked to do so by the child’s parent or the young person.</li> </ul>   | 15 |
| <ul style="list-style-type: none"> <li>(2) The authority prepares a “personal budget” for the child or young person if it identifies an amount as available to secure particular provision that is specified, or proposed to be specified, in the EHC plan, with a view to the child’s parent or the young person being involved in securing the provision.</li> </ul>  |    |
| <ul style="list-style-type: none"> <li>(3) Regulations may make provision about personal budgets, in particular –           <ul style="list-style-type: none"> <li>(a) about requests for personal budgets;</li> <li>(b) about the amount of a personal budget;</li> <li>(c) about the sources of the funds making up a personal budget;</li> <li>(d) for payments (“direct payments”) representing all or part of a personal budget to be made to a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, in order to secure provision to which the budget relates;</li> <li>(e) about the description of provision to which personal budgets and direct payments may (and may not) relate;</li> <li>(f) for a personal budget or direct payment to cover the agreed cost of the provision to which the budget or payment relates;</li> <li>(g) about when, how, to whom and on what conditions direct payments may (and may not) be made;</li> <li>(h) about when direct payments may be required to be repaid and the recovery of unpaid sums;</li> <li>(i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment;</li> <li>(j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.</li> </ul> </li> </ul> | 20 |
| <ul style="list-style-type: none"> <li>(4) If the regulations include provision authorising direct payments, they must –           <ul style="list-style-type: none"> <li>(a) require the consent of a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, to be obtained before direct payments are made;</li> <li>(b) require the authority to stop making direct payments where the required consent is withdrawn.</li> </ul> </li> </ul>   | 40 |
| <ul style="list-style-type: none"> <li>(b) require the authority to stop making direct payments where the required consent is withdrawn.</li> </ul>   | 45 |

- (5) Provision acquired by means of a direct payment made by a local authority is to be treated as provision secured by the authority in pursuance of its duty under section 42(1), subject to any prescribed conditions or exceptions.

**49 Continuation of services under section 17 of the Children Act 1989**

After section 17 of the Children Act 1989 (provision of services for children etc) insert – 5

**“17ZA Section 17 services: continued provision where EHC plan maintained**

- (1) This section applies where, immediately before a child in need reaches the age of 18 – 10
- (a) a local authority is providing services for the child in the exercise of functions conferred by section 17, and
  - (b) an EHC plan is maintained for the child.
- (2) The local authority may continue to provide services for the child in the exercise of those functions after the child reaches the age of 18, but may not continue to do so after the EHC plan has ceased to be maintained. 15
- (3) In this section “EHC plan” means a plan within section 37(2) of the Children and Families Act 2013.”

*Appeals, mediation and dispute resolution*

**50 Appeals**

- (1) A child’s parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 51 (mediation). 20
- (2) The matters are –
- (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;
  - (b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan; 25
  - (c) where an EHC plan is maintained for the child or young person –
    - (i) the child’s or young person’s special educational needs as specified in the plan; 30
    - (ii) the special educational provision specified in the plan;
    - (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;
    - (iv) if no school or other institution is named in the plan, that fact;
  - (d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so; 35
  - (e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44; 40
  - (f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.



- (3) A child’s parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c) –
  - (a) when an EHC plan is first finalised for the child or young person, and
  - (b) following an amendment or replacement of the plan.
- (4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC plans, in particular about –
  - (a) other matters relating to EHC plans against which appeals may be brought;
  - (b) making and determining appeals;
  - (c) the powers of the First-tier Tribunal on determining an appeal;
  - (d) unopposed appeals.

## 51 Mediation

- (1) This section applies where a child’s parent or young person intends to appeal to the First-tier Tribunal under section 50 or regulations made under that section in respect of –
  - (a) a decision of a local authority, or
  - (b) the content of an EHC plan maintained by a local authority.
- (2) But this section does not apply in respect of an appeal concerning only –
  - (a) the school or other institution named in an EHC plan;
  - (b) the type of school or other institution specified in an EHC plan;
  - (c) the fact that an EHC plan does not name a school or other institution.
- (3) The parent or young person may make the appeal only if a mediation adviser has issued a certificate to him or her under subsection (4) or (5).
- (4) A mediation adviser must issue a certificate to the parent or young person if –
  - (a) the adviser has provided him or her with information and advice about pursuing mediation with the local authority, and
  - (b) the parent or young person has informed the adviser that he or she does not wish to pursue mediation.
- (5) A mediation adviser must issue a certificate to the parent or young person if the adviser has provided him or her with information and advice about pursuing mediation with the local authority, and the parent or young person has –
  - (a) informed the adviser that he or she wishes to pursue mediation with the local authority, and
  - (b) participated in such mediation.
- (6) Where the parent or young person has informed the mediation adviser that he or she wishes to pursue mediation with the local authority –
  - (a) the adviser must notify the authority, and
  - (b) the authority must arrange for, and participate in, mediation between it and the parent or young person.
- (7) Regulations may make provision for the purposes of the preceding provisions of this section, in particular –
  - (a) about giving notice;
  - (b) imposing time limits;
  - (c) about exceptions to subsection (3);

- (d) enabling a local authority to take prescribed steps following the conclusion of mediation;
  - (e) about who may attend mediation;
  - (f) where a child’s parent is a party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child; 5
  - (g) about the provision of advocacy and other support services for the parent or young person;
  - (h) requiring a local authority to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit;
  - (i) about the training, qualifications and experience of mediation advisers and mediators; 10
  - (j) conferring powers or imposing requirements on local authorities, mediation advisers and mediators.
- (8) In this section “mediation adviser” means an independent person who can provide information and advice about pursuing mediation with a local authority. 15  
For this purpose, a person who is employed by a local authority in England is not independent.

## 52 Resolution of disagreements

- (1) A local authority in England must make arrangements with a view to avoiding or resolving disagreements within subsection (2). 20
- (2) The disagreements are those about the exercise by the local authority or relevant bodies of their functions under this Part, where the disagreement is between –
- (a) the local authority or a relevant body, and 25
  - (b) the parents of children, and young people, in the authority’s area.
- (3) A local authority in England must make arrangements with a view to avoiding or resolving, in each relevant school or post-16 institution, disagreements within subsection (4).
- (4) The disagreements are those about the special educational provision made for a child or young person with special educational needs who is a registered pupil or a student at the relevant school or post-16 institution concerned, where the disagreement is between –
- (a) the child’s parent, or the young person, and 30
  - (b) the appropriate authority for the school or post-16 institution. 35
- (5) Arrangements within this section must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply. 40  
For this purpose, a person who is employed by a local authority in England is not independent.
- (6) A local authority in England must take such steps as it thinks appropriate for making the arrangements under this section known to –
- (a) the parents of children in its area with special educational needs,
  - (b) young people in its area with special educational needs, and
  - (c) the head teachers, governing bodies, proprietors and principals of 45  
schools and post-16 institutions in its area.

- (7) A local authority in England may take such steps as it thinks appropriate for making the arrangements under this section known to such other persons as it thinks appropriate.
- (8) In this section –
- “relevant body” means – 5
- (a) the governing body of a maintained school, maintained nursery school or institution within the further education sector;
- (b) the proprietor of an Academy;
- “relevant school or post-16 institution” means – 10
- (a) a maintained school;
- (b) a maintained nursery school;
- (c) a post-16 institution;
- (d) an Academy;
- (e) an independent school;
- (f) a non-maintained special school; 15
- (g) a pupil referral unit;
- (h) a place at which relevant early years education is provided.
- (9) For the purposes of this section, the “appropriate authority” for a relevant school or post-16 institution is – 20
- (a) in the case of a maintained school, maintained nursery school or non-maintained special school, the governing body;
- (b) in the case of a post-16 institution, the governing body, proprietor or principal;
- (c) in the case of an Academy or independent school, the proprietor;
- (d) in the case of a pupil referral unit, the management committee; 25
- (e) in the case of a place at which relevant early years education is provided, the provider of the relevant early years education.
- 53 Appeals and claims by children: pilot schemes**
- (1) The Secretary of State may by order make pilot schemes enabling children in England to – 30
- (a) appeal to the First-tier Tribunal under section 50;
- (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability. 35
- (2) An order under subsection (1) may, in particular, make provision –
- (a) about the age from which children may appeal or make a claim;
- (b) in respect of appeals under section 50, about mediation and the application of section 51;
- (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently; 40
- (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
- (e) enabling a person to exercise a child’s rights under an order under subsection (1) on behalf of the child; 45

- (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
  - (g) about the provision of advocacy and other support services to children;
  - (h) requiring notices to be given to a child (as well as to his or her parent);
  - (i) requiring documents to be served on a child (as well as on his or her parent).
- (3) An order under subsection (1) may apply a statutory provision, with or without modifications.
- (4) In subsection (3), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.
- (5) This section is repealed at the end of five years beginning with the day on which this Act is passed.

**54 Appeals and claims by children: follow-up provision**

- (1) The Secretary of State may by order provide that children in England may –
- (a) appeal to the First-tier Tribunal under section 50;
  - (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability.
- (2) The Secretary of State may not make an order under subsection (1) until the end of two years beginning with the day on which the first order is made under section 53(1).
- (3) An order under subsection (1) may, in particular, make provision –
- (a) about the age from which children may appeal or make a claim;
  - (b) in respect of appeals under section 50, about mediation and the application of section 51;
  - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
  - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
  - (e) enabling a person to exercise a child’s rights under an order under subsection (1) on behalf of the child;
  - (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
  - (g) about the provision of advocacy and other support services to children;
  - (h) requiring notices to be given to a child (as well as to his or her parent);
  - (i) requiring documents to be served on a child (as well as on his or her parent).
- (4) An order under subsection (1) may –
- (a) amend, repeal or revoke a statutory provision, or
  - (b) apply a statutory provision, with or without modifications.
- (5) In subsection (4), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.

<b>55</b>	<b>Equality Act 2010: claims against schools by disabled young people</b>	
	In Part 2 of Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement in tribunals in England and Wales), in paragraph 3 (who may make a claim that a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability) for "to the Tribunal by the person's parent" substitute "–	5
	(a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;	
	(b) to the Welsh Tribunal by the person's parent."	
	<i>Special educational provision: functions of local authorities</i>	
<b>56</b>	<b>Special educational provision otherwise than in schools, post-16 institutions etc</b>	10
	(1) A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.	15
	(2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.	
	(3) Before doing so, the authority must consult the child's parent or the young person.	
<b>57</b>	<b>Special educational provision outside England and Wales</b>	20
	(1) This section applies where a local authority in England makes arrangements for a child or young person for whom it maintains an EHC plan to attend an institution outside England and Wales which specialises in providing for children or young people with special educational needs.	
	(2) The arrangements may (in particular) include contributing to or paying –	25
	(a) fees charged by the institution;	
	(b) the child's or young person's travelling expenses;	
	(c) expenses reasonably incurred in maintaining the child or young person while at the institution or travelling to or from it;	
	(d) expenses reasonably incurred by someone accompanying the child or young person while travelling to or from the institution or staying there.	30
<b>58</b>	<b>Fees for special educational provision at non-maintained schools and post-16 institutions</b>	
	(1) Subsection (2) applies where –	35
	(a) a local authority maintains an EHC plan for a child or young person,	
	(b) special educational provision in respect of the child or young person is made at a school, post-16 institution or place at which relevant early years education is provided, and	
	(c) that school, institution or place is named in the EHC plan.	40

- (2) The local authority must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the EHC plan.
- (3) Subsection (4) applies where –
- (a) a local authority is responsible for a child or young person for whom no EHC plan is maintained, 5
  - (b) special educational provision in respect of the child or young person is made at a school, post-16 institution or place at which relevant early years education is provided, and
  - (c) the local authority is satisfied that – 10
    - (i) the interests of the child or young person require special educational provision to be made, and
    - (ii) it is appropriate for education or training to be provided to the child or young person at the school, institution or place in question. 15
- (4) The local authority must pay any fees payable in respect of the special educational provision made at the school, institution or place in question which is required to meet the special educational needs of the child or young person.
- (5) Where board and lodging are provided for the child or young person at the school, post-16 institution or place mentioned in subsection (2) or (4), the authority must also pay any fees in respect of the board and lodging, if satisfied that special educational provision cannot be provided at the school, post-16 institution or place unless the board and lodging are also provided. 20
- 59 Supply of goods and services 25**
- (1) A local authority in England may supply goods and services to –
- (a) the governing body of a maintained school or maintained nursery school in England;
  - (b) the proprietor of an Academy;
  - (c) the governing body of an institution within the further education sector that the authority thinks is or is to be attended by a young person for whom the authority maintains an EHC plan, 30
- but only for the purpose set out in subsection (2).
- (2) The purpose is that of assisting the governing body or proprietor in the performance of –
- (a) any duty imposed on the body under section 61(2) (duty to use best endeavours to secure special educational provision called for by special educational needs); 35
  - (b) in the case of a governing body of a community or foundation special school, any duty imposed on the body. 40
- (3) The goods and services may be supplied on the terms and conditions that the authority thinks fit, including terms as to payment.
- (4) A local authority in England may supply goods and services to another authority or any other person (other than a governing body or proprietor within subsection (1)), but only for the purpose set out in subsection (5). 45

- (5) The purpose is that of assisting the authority or other person in making special educational provision for a child who is receiving relevant early years education, in a case where the authority has decided that the special educational provision is necessary for the child.

**60 Access to schools, post-16 institutions and other institutions** 5

- (1) This section applies where a local authority in England maintains an EHC plan for a child or young person.
- (2) A person authorised by the authority is entitled to have access at any reasonable time to the premises of a school, post-16 institution or other institution at which education or training is provided in pursuance of the plan, for the purpose of monitoring the education or training. 10
- (3) Subsection (2) does not apply to the premises of a mainstream post-16 institution in Wales.

*Special educational provision: functions of governing bodies and others*

## Appendix 2: Improving arrangements for funding pupils and students with high needs

### Chapter 3

## Improving arrangements for funding pupils and students with high needs

### Introduction

84. In March, we announced a new approach to funding provision for pupils and students with high needs. In the corresponding chapter in the March document, we explained in detail this new place plus approach. This chapter confirms the new high needs funding arrangements for 2013-14 and clarifies arrangements for the areas on which we consulted. These include: funding arrangements for independent and non-maintained special schools (INMSSs); hospital education; and some specific details relating to alternative provision (AP).
85. The new high needs funding arrangements will be introduced for all providers in the schools sector in April 2013, including local authority maintained schools, and special and Alternative Provision Academies. They will be phased in for mainstream Academies by September 2013. The new arrangements for providers in the further education (FE) sector will be introduced from the start of the 2013/14 academic year.

### The case for reform

86. Our approach to reform of high needs funding includes not only high needs pupils in the schools sector, but also high needs students in the FE sector. This is to ensure that funding arrangements support the Government's plans to introduce a single approach to assessment and planning for young people with SEN from birth to 25.
87. As we stated in March, funding arrangements need to support the Government's key policy reforms, and the shortcomings inherent in the current system need to be addressed.
88. Put simply, an unreformed high needs funding system would frustrate and impede, rather than facilitate and support, the development of personal budgets, the local offer, and a single assessment and plan from birth to 25. These are key planks of the Government's reforms of SEN and disability provision<sup>5</sup>. Without reform of current funding arrangements for AP, we will not be able to implement the recommendations of Charlie Taylor's review of AP, nor give schools and Academies a greater role in commissioning AP<sup>6</sup>.

### A reformed approach to high needs funding: Place-plus

89. As we described in March, a place-plus approach to high needs funding will ensure that all providers, mainstream and specialist, will be funded on an equivalent basis. This approach has been designed to be straightforward and transparent, so as to encourage flexibility and, where appropriate, improve choice.
90. There are a number of simple steps that have been taken to develop the place-plus approach:
- defining "high needs"** – we have defined the threshold between needs that we would expect to be met through mainstream funding and those where additional funding is

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<sup>5</sup> *Support and aspiration: A new approach to special educational needs and disability: Progress and next steps*, <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00046-2012>

<sup>6</sup> *The Taylor review of alternative provision: Improving alternative provision*, <http://www.education.gov.uk/schools/pupilsupport/behaviour/a00204776/taylor-review-of-alternative-provision>



required. We have set this threshold at around £10,000 of education provision per year. We have deliberately defined high needs with regard to a financial threshold, as opposed to an assessment-based threshold, to avoid creating a potential pressure for additional statutory assessments;

- b. **defining the contribution made by mainstream providers** – mainstream schools, Academies and colleges will be expected to contribute the first £6,000 of the additional education support costs of a high needs pupil;
- c. **introducing an equivalent level of base funding for specialist settings** – specialist pre-16 SEN settings will receive base funding of £10,000 per planned place. Post-16 specialist SEN / learning difficulty and disability (LDD) provision will be funded slightly differently, but on an equivalent basis to mainstream post-16 settings. AP settings will receive base funding of £8,000 per planned place. Base funding will ensure equivalence of funding between providers, and will offer some stability of funding for specialist settings; and
- d. **aligning funding and educational commissioning responsibilities** – above this threshold, commissioners and providers will liaise directly over top-up funding for individual pupils based on their assessed needs.

#### **Funding for mainstream settings**

- 91. We described in March that funding for placements of high needs pupils in mainstream schools and Academies will be very similar to current arrangements. At present, pre-16 mainstream settings receive a clearly-identified notional SEN budget. Using this, schools and Academies are expected to meet the needs of pupils with high-incidence SEN and to contribute up to a certain level to the needs of high needs pupils.
- 92. Under place-plus, mainstream schools and Academies will receive formula funding which will include a notional SEN budget. From this, they will provide a standard offer of teaching and learning for all pupils, including those with high needs. In the March document, we called this core education funding. From their notional SEN budget, they will contribute the first £6,000 of the additional support costs of high needs pupils. By additional support, we mean the additional education provision that a pupil needs in order to access the school's or Academy's offer of teaching and learning. Funding above this level will be agreed with the commissioning local authority and paid in the form of a top-up from its High Needs Block.
- 93. As we announced in March, local authorities will also be able to target additional funding from their High Needs Block at schools and Academies whose formula funding does not adequately reflect the number and/or needs of pupils with SEN in the school.
- 94. Funding for mainstream post-16 settings will operate in a similar manner. Providers will receive per-student funding through the national 16-19 funding formula. They will also receive an allocation of £6,000 per high needs student on roll. The allocation of these two elements will be based on student data from the last full academic year. Above this level, top-up funding will be provided by the commissioning authority from its High Needs Block. This will mean that FE colleges will now discuss funding directly with commissioners.

#### **Funding for specialist SEN settings**

- 95. We announced in March the details of a new approach to funding specialist SEN settings, moving from a predominantly place-led funding system to a place-plus approach. Specialist settings are institutions or places in institutions that are set aside specifically for pupils or students with high needs. They include not only special schools but special units and resourced provision in mainstream schools and Academies.

96. Under place-plus, pre-16 specialist SEN settings will receive base funding of £10,000 per planned place. The aims of introducing this base level of funding are to ensure equivalence across specialist settings and with mainstream settings, as well as providing some stability of funding. Base funding will be passed on directly to maintained providers by the maintaining authority. Academies and other non-maintained providers will receive this funding from the EFA. Top-up funding above this level will be paid by the commissioning local authority on a per-pupil basis.
97. We stated in March that we would like to work towards a position in which independent and non-maintained special schools (INMSSs) received base funding direct from the EFA. We can now confirm that INMSS will receive base funding in this way from April 2013, and will be funded in the same way as other non-maintained specialist settings such as special Academies and special Free Schools.
98. With regard to post-16 specialist SEN and LDD settings, we announced in March that these would be funded in the same way as mainstream post-16 settings: a per-student allocation calculated by the national 16-19 funding formula and an allocation of £6,000 per high needs pupil or student based on data from the last full academic year. As at present, there will be an opportunity for specialist settings to have their allocations reviewed if their current numbers differ significantly from those used to calculate their allocations.
99. We also described in March that there would be a simple process to confirm the number of planned specialist SEN places for 2013-14, and thereafter a simple process for keeping funded places under review. With regard to the former, the EFA has begun to write to local authorities asking them to confirm this information. With regard to the latter, we described in March that the EFA would coordinate a national, annual process through which commissioners and providers will discuss allocations of funded places and notify any proposed adjustments to the EFA. This will enable and encourage planning on a supra-local authority level, and ensure that funding is responsive to local need. Ultimately, this will support the Government's aim that providers that are in demand should be able to expand, while empty places should not be funded indefinitely.

#### **Funding for Alternative Provision settings**

100. We announced in March that we would introduce a place-plus approach for AP settings similar to that for specialist SEN settings. We explained, however, that we did not consider that £10,000 was an appropriate level of base funding for AP settings, and we consulted on whether £8,000 per place was a more appropriate level. We explained that some AP cost less than £10,000 per place per year, and we wanted to avoid over-funding some providers by setting the base level too high.
101. Responses to this consultation question were mixed, with "not sure" the most common response. Many respondents were concerned that providers should receive a greater proportion of funding on the basis of places rather than the pupils placed with them. Nevertheless, in order to support a sharper and more focused approach to commissioning, as recommended by Charlie Taylor, we will set the base level of funding for AP at £8,000 per place.
102. We recognise that there is a lack of reliable data on current per-pupil or per-place spending in AP. As we stated in March, we will consider for future years whether £8,000 per place is the most appropriate level of base funding in light of future data returns on levels of AP funding.
103. Above this base level of funding, top-up funding will be provided by the commissioner on a per-pupil basis. Top-up funding will be based on the pupil's assessed needs, and will be discussed and agreed between the provider and commissioner. In cases of early intervention or fixed-term exclusions, the commissioner will be a mainstream school or Academy, whereas in other instances it will generally be a local authority (though some local authorities delegate this

function to schools or groups of schools).

104. We also consulted in March on what *pro rata* arrangements might be put in place with regard to the payment of top-up funding for short-term and part-time placements. We considered that it was important to balance flexibility of funding with the need to avoid the administrative burden of managing multiple small transactions. Consultation responses showed support for calculating top-up funding for short-term placements on the basis of a half-termly rate, and for part-time placements on a daily rate. We will recommend that, when discussing top-up funding, providers and commissioners will calculate half-termly rates for short-term placements and daily rates for part-time placements.
105. Consultation responses also identified that one aspect of these reforms could potentially provide a perverse financial incentive for mainstream schools and Academies to exclude pupils permanently. In instances of fixed-term exclusions, early intervention or off-site direction the mainstream school or Academy would repay Age Weighted Pupil Unit (AWPU) to the local authority and pay top-up funding to the AP provider. In instances of permanent exclusion, however, the mainstream school or Academy would only repay AWPU.
106. As a result, we will not require mainstream schools and Academies to repay AWPU when placing pupils in AP for the purposes of fixed-term exclusion, early intervention or off-site direction. Mainstream schools and Academies will agree and pay top-up funding to AP settings in such instances. In cases of permanent exclusion, mainstream schools and Academies will repay AWPU.
107. The exclusions trial is at present testing an approach that would see mainstream schools and Academies take on commissioning responsibilities for permanently-excluded pupils. In advance of the outcome of this trial, Charlie Taylor has recommended that local authorities devolve funding to mainstream schools and Academies for permanent exclusions. We consider that this would be a further, complementary way of addressing perverse incentives to exclude permanently.

#### **Top-up funding**

108. We announced in March that top-up funding above the thresholds set out above will be provided by commissioners on a per-pupil or per-student basis. This funding will be based on the pupil's or student's assessed needs, will be agreed between commissioners and providers, and will be provided in or close to the real-time movement of a pupil or student. These direct funding relationships between commissioners and providers will replace inter-authority recoupment.
109. We stated in March that the setting of top-up funding is a matter for local determination, and that local authorities may choose to use local banding frameworks to manage top-up funding. Top-up funding must, however, reflect a pupil's needs and the cost of the provision they receive in a particular setting. This is likely to mean that the level of top-up funding will be different in different settings. Further information about setting top-up rates and frameworks are set out in our operational guidance document.

#### **Hospital education**

110. We stated in March that we were considering future funding for education provision for young people admitted to hospital. We explained that reform was needed so that funding for this provision did not require massive and costly inter-authority recoupment arrangements, while at the same time ensuring the availability of high-quality provision.
111. We recognised, however, that arrangements for this sector would need to be somewhat different to the place-plus approach for other areas of high needs provision. This is because hospital education is not commissioned on the basis of need or parental choice. Instead, it is,

by its very nature, reactive to needs that cannot be planned for and are often the result of injury or illness.

112. We are now able to confirm that, from April 2013, we will put in place a new approach to funding hospital education. We will first work with local authorities to distinguish hospital education provision from other high needs provision more akin to SEN and AP. This will enable us to build up a clear picture of hospital education provision nationally. We will then calculate the current spend on each hospital education setting, and top-slice this from the national DSG. Lastly we will be able to "passport" this funding to providers through the maintaining local authority. This will ensure that hospital schools are funded in a way that does not require inter-authority recoupment, which will therefore come to an end. It will also enable the Education Funding Agency to fund any hospital education providers that convert to Academy status.
113. Any changes in the level of demand for which a particular hospital education provider is required to cater, and thus consideration of any adjustments in funding levels, would be handled by the review process set out above.
114. We intend that these arrangements would also cover hospital education provision for young people aged 16-18 that is provided in the seven secure forensic psychiatric units.
115. Following the implementation of this approach, we will work with the hospital education sector in order to explore whether it is possible to develop a more transparent and consistent national approach to funding different types of provision that are offered in hospital education settings.

### **Appendix 3: SEN learning difficulty and disabilities and alternative provision**

32. We are considering exceptional requests to disapply the MFG only if there is a significant change in a school's circumstances or pupil numbers. As with exceptional factors, the initial opportunity for requests closes at the end of June. We will then issue guidance on what exclusions have or have not been approved, and there will then be a subsequent opportunity to request additional exclusions running from July to September.

33. Exceptional requests to disapply the MFG would only be considered if there is a **significant** change in a school's circumstances or pupil numbers for example, if there has been additional funding in a school's 2012-13 formula budget for pupil number growth in the following academic year. In this case, the pupil numbers to whom the funding relates are not included in the count on which the MFG is based. The EFA will only consider applications where the inclusion of a factor in the MFG will lead to **significant** inappropriate levels of protection. Authorities should, therefore, provide detailed information on the financial effect of the request. We will not consider requests which seek to adjust historic protections. **Authorities will need to consider whether to submit requests to disapply the MFG for specific factors or schools.**

34. The example below shows how the MFG would work under the new arrangements. The school rightly receives protection because it has reduced funding under the formula change. If the baseline had been adjusted for the 2012-13 lump sum, it would not have done so.

		2012-13 £000	2013-14 £000
1	Lump sum used in formula	250	100
2	Formula budget	4000	3950
3	Pupil numbers	1000	1000
	Less exclusions:		
4	Post-16	500	500
5	High Needs	300	300
6	Rates	100	100
7	Lump sum	100	100
8	New delegation	n/a	50
9	Baseline (2-4-5-6-7)	3,000	n/a
10	Baseline level of funding per pupil (9/3)	3.000	n/a
11	Protected level of funding per pupil (10 less 1.5%)	2.955	n/a
12	2013-14 funding after exclusions (2-4-6-7-8)		2,900
13	Guaranteed level of funding (3*11)		2,955
14	MFG top-up (13-12)		55

35. As school budgets will, in future, be based on the October pupil count, the MFG will also need to reflect this date instead of the January count as at present. **There will therefore need to be a rebasing of the school's 2012-13 budget so that this is divided by its October 2011 pupil numbers** to form the baseline against which its 2013-14 budget is compared. The same approach should be used for the MFG.

36. As there could be significant amounts of protection required in some areas as a result of the formula simplification, we will be allowing overall gains for individual schools to be capped as well as scaled back to make it easier to run the formula. At present, there can be transitional arrangements only for changes to individual factors rather than the whole formula. **Authorities and their schools forums will therefore need, as part of their formula modelling, to determine whether and how to limit gains.**

#### **Central services**

37. The table below sets out which services can be retained centrally, and what approval is required. The main change is that funding for significant pupil growth can be retained centrally before the formula is calculated, and that funding for additional classes needed as a consequence of infant class size regulations can be funded as part of this. The requirements are that:

- a. the growth fund can be used only for the purposes of supporting growth in pre-16 pupil numbers to meet basic need, to support additional classes needed to meet the infant class size regulation **and to meet the costs of new schools. These will include the lead-in costs, i.e. to fund the appointment of staff and the purchase of any goods or services necessary in order to admit pupils. It will also include post start-up costs and any diseconomy of scale costs. These pre and post start-up costs should be provided for Academies and Free Schools where they are created to meet basic need;**
- b. the fund must be used on the same basis for the benefit of both maintained schools and recouplement Academies;
- c. any funds remaining at the end of the financial year must be added to the following year's DSG and reallocated to maintained schools and Academies through the local formula;
- d. local authorities will be required to produce criteria on which any growth funding is to be allocated. These should provide a transparent and consistent basis (with differences permitted between phases) for the allocation of all growth funding. The criteria should both set out the circumstances in which a payment could be made and provide a basis for calculating the sum to be paid; and

- e. local authorities will need to propose the criteria to the Schools Forum and gain its agreement before growth funding is allocated. The local authority will also need to consult the Schools Forum on the total sum to be top-sliced from each phase and must regularly update the Schools Forum on the use of the funding.

38. Authorities will need to seek approval from forums to retain central funding for services in lines (c) and (d) below.

<p>(a) Has to be delegated; cannot be de-delegated but schools can buy into a traded service on an individual basis where relevant</p>	<ul style="list-style-type: none"> <li>• Threshold and performance pay</li> <li>• 14-16 practical learning options</li> <li>• Primary/special school meals</li> <li>• Extended services</li> </ul>
<p>(b) Has to be allocated through formula but can be de-delegated for maintained mainstream schools (approval is by the relevant phase members of the schools forum). Maintained Special Schools and Academies may contribute to and benefit from these services on an individual basis if the LA chooses to offer the service more widely.</p>	<ul style="list-style-type: none"> <li>• Contingencies (including schools in financial difficulties <b>and deficits of closing schools</b>)</li> <li>• Free school meals eligibility</li> <li>• Insurance</li> <li>• Licences/subscriptions (but see under (c) for copyright)</li> <li>• Staff costs – supply cover</li> <li>• Support for minority ethnic pupils and underachieving groups</li> <li>• Behaviour support services</li> <li>• Library and museum services</li> </ul>
<p>(c) Can be centrally retained before allocating formula with agreement of schools forum</p>	<ul style="list-style-type: none"> <li>• Funding for significant pre-16 pupil growth (any underspend has to be added to the following year's formula allocations), <b>including new schools set up to meet basic need, whether maintained, Academy or Free School</b></li> <li>• <b>Funding to enable all schools to meet the infant class size requirement</b></li> <li>• <b>Carbon reduction commitment</b></li> <li>• Equal pay back-pay</li> <li>• Places in independent schools for non-SEN pupils</li> <li>• <b>Remission of boarding fees at maintained schools and Academies</b></li> <li>• <b>Copyright licensing (not in regulations but we will be issuing general disapplication to cover the new arrangements)</b></li> </ul>



<p>(d) Can be centrally retained before allocating formula but no new commitments or increases in expenditure from 2012-13 (schools forum approval is required to confirm the amounts on each line)</p>	<ul style="list-style-type: none"> <li>• Admissions</li> <li>• Servicing of schools forum</li> <li>• Capital expenditure funded from revenue</li> <li>• Contribution to combined budgets (including expenditure shown under miscellaneous if appropriate)</li> <li>• Schools budget centrally funded termination of employment costs</li> <li>• Schools budget funded prudential borrowing costs</li> <li>• <b>Schools budget funded SEN transport costs</b></li> </ul>
<p>(e) Can be centrally retained only by agreement of individual schools</p>	<p>Schools can buy into any service with funding from their delegated budget; the service would then be provided by the authority on a buyback or traded basis. This could provide additional income on top of what is centrally retained in boxes (c) and (d) above.</p>

#### Optional de-delegation for maintained schools

39. There are some services where maintained schools will be able to decide that some funding should be taken out of their pre-16 formula budgets before they receive them and moved to central funding. These are:

- a. contingencies (including support for schools in financial difficulties, new/closing/amalgamating schools, closing school deficits);
- b. administration of free school meals (FSM) eligibility;
- c. insurance;
- d. licences/subscriptions;
- e. staff costs – supply cover (long-term sickness, maternity, trade union and public duties);
- f. support for minority ethnic pupils or underachieving groups;
- g. behaviour support services; and
- h. library and museum services.

40. For each of these, it would be for the schools forum members in the

relevant phase (primary or secondary) to decide whether that service should be retained centrally. The decision would apply to all maintained schools in that phase and would mean that the funding for these services was removed from the formula before school budgets were issued. There could be different decisions made for each phase. **Authorities will, therefore, need to discuss with forum members representing maintained schools whether there are any services in paragraph 39 which the schools wish to be retained centrally.** Academies would, of course, be free to buy back into local authority services, as is the case for maintained schools where funding remains delegated.

41. **For each service retained centrally, authorities will need to make a clear statement of how the funding is being taken out of the formula** (for example – primary insurance £20 per pupil, secondary behaviour support services £30 per FSM pupil). There should be a clear statement of how contingencies and other resources will be allocated. Academies will continue to receive a share of funding for these services in their delegated budget.

42. Where a school converts during the year, the authority can retain any de-delegated funding until the following September or April, whichever comes first. This will help services to plan their future operations. At that point, the Academy will receive the full formula allocation and this will be recouped.

43. Where there has been agreement that a school is entitled to a contingency allocation, that agreement should be honoured if it converts to an Academy at any point in the year. We may take such decisions into account in making recoupment adjustments.

44. Special schools will not in future have delegated budgets on the same basis as primary and secondary schools. They will get £10,000 per place pre-16, plus top-up funding for each pupil they have, from the commissioner to make up the rest of their budget (for 16-24, the National Funding Formula plus £6000 will apply – see paragraph 60). The principle of the new system for high needs pupils is to make costs comparable between schools so that they don't distort placements, so de-delegation is not consistent with this framework. Any existing central budgets can be transferred to the high needs block and form part of the top-up. The schools concerned can of course contribute to pooled arrangements or buy back a service out of their budgets.

#### **Pupils and students with high needs aged from birth to 25**

45. The documents on school funding reform published in March and June set out a new approach to funding provision for pupils and students with high needs. Pupils and students with high needs include pupils aged from birth to 19 with high-level SEN; pupils of compulsory school age in alternative provision (AP); and those aged 16-25 with high-level learning difficulties or disabilities (LDD). This new approach defines high needs pupils and students as those who require provision costing more than about £10,000 per year in total. This threshold will distinguish between the needs that we expect will be met through mainstream funding and the point at which additional high needs

funding is provided. There are, therefore, a number of key implementation tasks that local authorities will need to carry out in order to adapt current arrangements to this new threshold for high needs.

46. In the section that follows, we explain these key implementation tasks. We distinguish between tasks that we consider to be essential and that local authorities **must** undertake before April 2013, and those tasks that local authorities **may** or that we recommend local authorities **should** undertake. The “may” and “should” tasks are those that will contribute towards the successful operation of the new arrangements, but could, if necessary, be developed after April 2013 and during the first year of this new approach.

## Appendix 4: Reform of funding for high needs pupils

### Overview: Reform of high needs funding

	Pre-16 SEN and AP		Post-16 SEN and LDD
	Mainstream settings	Specialist settings	All settings
Element 1: Core education funding	Mainstream per-pupil funding (AWPU)	Base funding of £10,000 for SEN and £8,000 for AP placements, which is roughly equivalent to the level up to which a mainstream provider would have contributed to the additional support provision of a high needs pupil. Base funding is provided on the basis of planned places.	Mainstream per-student funding (as calculated by the national 16-19 funding system)
Element 2: Additional support funding	Contribution of £6,000 to additional support required by a pupil with high needs, from the notional SEN budget	Contribution of £6,000 to additional support provision of a high needs pupil. Base funding is provided on the basis of planned places.	Contribution of £6,000 to additional support required by a student with high needs
Element 3: Top-up funding	"Top-up" funding from the commissioner to meet the needs of each pupil or student placed in the institution		



Department  
for Education

This diagram appeared as Figure 1 (p.43) of *School funding reform: Next steps towards a fairer system*.

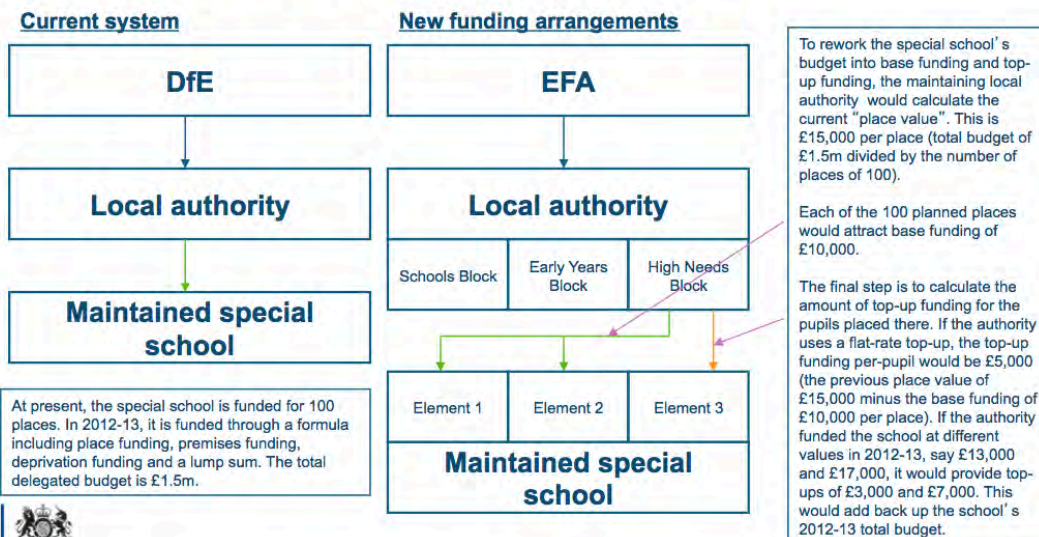
## Pre-16 mainstream settings

<b>Element 1:</b> Core education funding	<b>Mainstream per-pupil funding (AWPU)</b>	<p>Providers will continue to receive a clearly-identified notional SEN budget as part of their delegated budget. This budget will be provided by the maintaining local authority (for maintained schools) or the EFA (for Academies).</p> <p>From this funding, mainstream providers will be expected to contribute the first £6,000 of the cost of additional educational support required by a high needs pupil. By additional education support, we mean the support a pupil requires above what would be funded by mainstream per-pupil funding.</p> <p>To illustrate, if a school received AWPU of £4,500, the contribution a mainstream setting would be expected to make would be £10,500 (AWPU+£6,000). If the AWPU was £5,500, the contribution would be £11,500 (again, AWPU+£6,000).</p>
<b>Element 2:</b> Additional support funding	<b>Contribution of £6,000 to additional support required by a pupil with high needs, from the notional SEN budget</b>	<p>Top-up funding will be:</p> <ul style="list-style-type: none"> <li>• provided direct to the provider from the commissioning local authority;</li> <li>• provided in or close to the pupil's real-time movement; and</li> <li>• be based on the pupil's assessed needs.</li> </ul>
<b>Element 3:</b> Top-up funding	<b>"Top-up" funding from the commissioner to meet the needs of each pupil placed in the institution</b>	



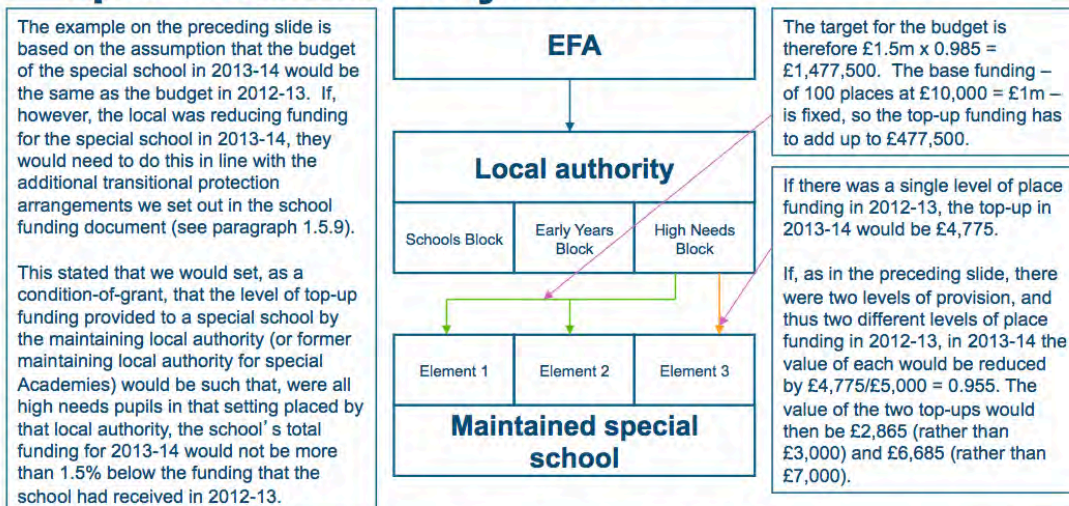


# Reworking the budget of a maintained special school



Department for Education

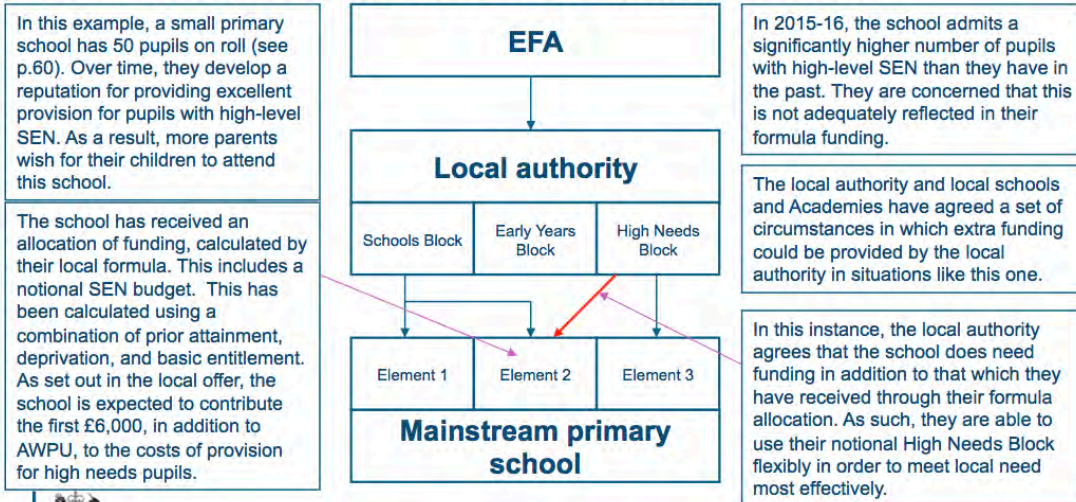
# Additional transitional protection for a special school in year one



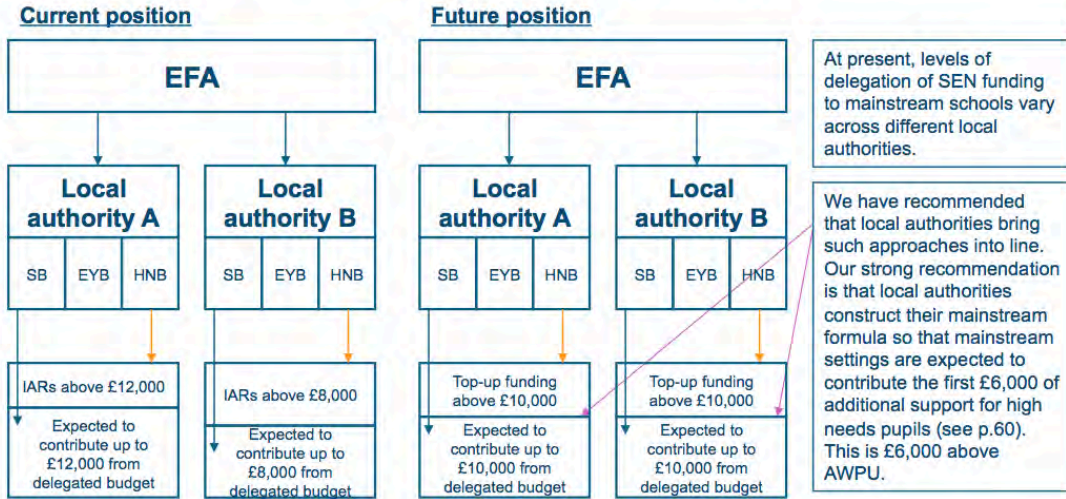
Department for Education

It is important to note that this additional protection applies to pupils placed by the maintaining or former maintaining local authority. When funding the placement of a pupil in schools that an authority maintains or used to maintain, the level of per-pupil top-up funding in 2013-14 must be such that the sum of base and top-up funding would not be more than 1.5% less than the "place value" (total budget divided by the total number of places) in 2012-13.

## A small mainstream primary school receives a significantly higher number of pupils with SEN that is not reflected in the local formula



# Greater consistency in levels of delegation of SEN funding to mainstream schools



Department for Education

The diagram above shows two local authorities aligning their current approaches to delegating SEN funding. For the purposes of this example, we have assumed that the level of AWPU in both local authorities is £4,000.



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## **Appendix 6: Extracts from School Funding Reform Operational Guidance**

### **Reform of funding for high needs pupils and students: Operational implications for educating institutions**

#### **Defining High Needs**

Young people who need educational provision that costs more in total, including the basic provision given to all pupils and students, than about £10,000 per year.

Pupils and students with high needs include:

- pupils aged from birth to 19 with high-level special educational needs (SEN)
- pupils of compulsory school age in alternative provision (AP)
- those aged 16-25 with high-level learning difficulties or disabilities (LDD) including those aged 19-25 who are subject to a learning difficulty assessment.

#### **The new approach to high needs funding: Place Plus**

- Mainstream providers (schools, Academies, FE colleges) will be expected to contribute the first £6,000 of the additional educational support provision from their notional SEN budget (over and above the cost per pupil provided by the educating institution).
- Specialist SEN / LDD settings will receive a base level of funding of £10,000 per planned place for pupils pre-16.
- AP settings will receive a base level of funding of £8,000 per planned place.
- Top-up funding above these levels will be provided on a per-pupil basis by the commissioner placing the pupil.

### **2013-14 revenue funding arrangements: Operational guidance for local authorities**

#### **Pupils and students with high needs aged from birth to 25**

47. There are three key implementation tasks that local authorities must undertake before April 2013:

- a. mainstream pre-16 formula funding (by October 2012)
- b. places in specialist SEN and AP settings (by September 2012)
- c. reworking providers' budgets as place-plus so as to set top-up rates for 2013-14 (by April 2013).

## Mainstream settings

49. By October 2012, local authorities must:

- a. decide on the level up to which mainstream schools and Academies will contribute to the provision for pre-16 high needs pupils
- b. identify the notional SEN budget mainstream schools and Academies will receive
- c. define the financial contribution that mainstream providers will make for high needs pupils and students in terms of the provision that they will offer.

## Specialist SEN, LDD and AP settings

- [Special schools
- Special units and resourced provision in mainstream schools
- Pupil referral units (to have delegated budgets by April 2013)
- Other maintained AP.]

53. For post-16 SEN and LDD provision, in July we will provide further information about the national average per-student 16-19 national funding formula allocation.

55. We know that there are aspects of local authorities' high needs provision that is not arranged in the form of places, for example out-of-school support services. In these instances, local authorities may fund this provision from their High Needs Block as a separate arrangement.

## Top-up funding

57. The way top-up funding is set and agreed is a matter for local determination.

56. Top-up funding will be provided on a per-pupil or per-student basis, based on the assessed needs of the pupil or student, and agreed between the commissioner and provider.

59. The simplest way of calculating rates of top-up funding for specialist SEN and AP settings is as set out below:

- a. re-calculate a provider's budget as base and top-up funding:
  - i. calculate the total budget of the provider (e.g. £1.5m);
  - ii. divide the total budget by the number of places (e.g. 100) to derive a "place value" (e.g. £15,000); and
  - iii. subtract the relevant base level of funding (e.g. £10,000 for pre-16 SEN) to derive the top-up rate (£5,000)
- b. agree with the provider that this rate will be used when placing pupils in 2013-14; and
- c. recommend to other commissioners.

## Appendix 7: Executive summary from Support and Aspiration: A new approach to special educational needs and disability

# Executive summary

### Case for change

1. Every child deserves a fair start in life, with the very best opportunity to succeed. Currently, life chances for the approximately two million children and young people in England who are identified as having a special educational need (SEN), or who are disabled, are disproportionately poor.
2. Disabled children and children with SEN tell us that they can feel frustrated by a lack of the right help at school or from other services. For children with the most complex support needs, this can significantly affect their quality of life. Hundreds of thousands of families have a disabled child or a child with SEN, and parents say that the system is bureaucratic, bewildering and adversarial and that it does not sufficiently reflect the needs of their child and their family life.
3. Whilst the circumstances of children, young people and their parents differ greatly; from young people requiring a few adjustments in class to children with life-limiting long-term conditions, families have many shared concerns. The system to support children and young people who are disabled or who have SEN often works against the wishes of families. Children's support needs can be identified late; families are made to put up with a culture of low expectations about what their child can achieve at school; parents don't have good information about what they can expect and have limited choices about the best schools and care for their child; and families are forced to negotiate each bit of their support separately.

### Our vision

4. Our proposed reforms respond to the frustrations of children and young people, their families and the professionals who work with them. We want to put in place a radically different system to support better life outcomes for young people; give parents confidence by giving them more control; and transfer power to professionals on the front line and to local communities.
5. **To support better life outcomes for young people** from birth to adulthood we will help professionals: identify and meet children's needs early by ensuring that health services and early education and childcare are accessible to all children; work in partnership with parents to give each child support to fulfil their potential; and join up education, health and social care to provide families with a package of support that reflects all of their needs. We propose:
  - **a new approach to identifying SEN** in early years settings and schools to challenge a culture of low expectations for children with SEN and give them effective support to succeed. A new single early years setting- and school-based category of SEN will build on our fundamental reforms to education which place sharper accountability on schools to make sure that every child fulfils his or her potential; and

- **a new single assessment process and 'Education, Health and Care Plan' by 2014** to replace the statutory SEN assessment and statement, bringing together the support on which children and their families rely across education, health and social care. Services will work together with the family to agree a straightforward plan that reflects the family's ambitions for their child from the early years to adulthood, which is reviewed regularly to reflect their changing needs, and is clear about who is responsible for provision. The new 'Education, Health and Care Plan' will provide the same statutory protection to parents as the statement of SEN and will include a commitment from all parties to provide their services, with local assessment and plan pathfinders testing the best way to achieve this.
6. **To give parents confidence by giving them more control** over the support their family receives, we will introduce more transparency in the provision of services for children and young people who are disabled or who have SEN. Parents will have real choice over their child's education and the opportunity for direct control over support for their family. We propose:
- **local authorities and other services will set out a local offer of all services available** to support children who are disabled or who have SEN and their families. This easy-to-understand information for parents will set out what is normally available in schools to help children with lower-level SEN, as well as the options available to support families who need additional help to care for their child; and
  - **the option of a personal budget by 2014** for all families with children with a statement of SEN or a new 'Education, Health and Care Plan', many of whom will have complex support needs. Key workers will be trained to advise families and help them navigate the range of help available across health, education and social care.
7. **To transfer power to professionals on the front line and to local communities** we will: strip away unnecessary bureaucracy so that professionals can innovate and use their judgement; establish a clearer system so that professionals from different services and the voluntary and community sector can work together; and give parents and communities much more influence over local services. We propose to:
- **give parents a real choice of school**, either a mainstream or special school. We will remove the bias towards inclusion and propose to strengthen parental choice by improving the range and diversity of schools from which parents can choose, making sure they are aware of the options available to them and by changing statutory guidance for local authorities. Parents of children with statements of SEN will be able to express a preference for any state-funded school – including special schools, Academies and Free Schools – and have their preference met unless it would not meet the needs of the child, be incompatible with the efficient education of other children, or be an inefficient use of resources. We will also prevent the unnecessary closure of special schools by giving parents and community groups the power to take them over; and



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- **introduce greater independence to the assessment of children's needs**, testing how the voluntary and community sector could coordinate assessment and input from across education, health and social care as part of our proposals to move to a single assessment process and 'Education, Health and Care Plan'.
8. We must provide the best quality of life possible to the most vulnerable children and young people in our society. Many of the reforms we propose in this document focus on helping families with children who have the most complex support needs, including those with life-limiting long-term conditions. We know that the vast majority of these children will have their disability identified before or shortly after their birth. Here, we set out our ambition to: put early support in place for parents to help them navigate the system and influence their child's package of care; to provide ongoing respite care and short breaks for children to help families cope with their day-to-day caring responsibilities; and to help families who are worried about their child's future and independence.
  9. Central government cannot achieve this ambitious programme of reform through directing and managing change itself. The vision set out in this Green Paper is informed by the views and expertise of families and national and local organisations working with them. The proposals we set out are for widespread consultation as well as practical testing in local areas. From September 2011, local pathfinders will help demonstrate the best way to achieve our key reforms. This Green Paper marks an important milestone in the development of the Government's approach to supporting children and young people with SEN or who are disabled and their families.
  10. We set out our detailed proposals and questions for consultation in five chapters: early identification and support; giving parents more control; learning and achieving; preparing for adulthood; and services working together for families. The final section of this Green Paper explains our next steps and how to respond to our consultation. Based on the feedback we receive, we will set out our detailed plans by the end of the year, and how these reforms and the ongoing testing in local areas will form part of the Government's broader agenda for public service reform.

### Early identification and support

11. Identifying children's support needs early is vital if they are to thrive, and enables parents and professionals to put the right approach in place quickly. Graham Allen's review of early intervention highlighted the value of intervening as soon as possible, not just for children and their families, but also for wider society.
12. Too often, the particular support that children and their families require is put in place needlessly late. Although some impairments are normally identified at birth or soon after, other types of need emerge as children grow up. Not knowing why children are developing differently can be tremendously stressful for the child and for their parents. And even when needs have been identified, parents tell us that it can feel like a struggle to get the right support for their family from education, health and social care services. It can be slow and complicated, with different services working in isolation and each having its own approach.

13. We must put in place a system which works well for every child and every family. The proposals in this chapter are intended to ensure high quality early identification and intervention for all children where they need it, such as the health and development review for children aged between 2 and 2½ years, as well as effective integrated support for children with the most complex needs. Our proposals would mean that:
- professionals from health services, such as health visitors, and from early years settings work with parents to assess the development of all children to clarify where they need additional support or a different approach;
  - high quality early education and childcare is accessible to all children; and
  - by 2014, children and young people who would currently have a statement of SEN or learning difficulty assessment will have a single assessment process and 'Education, Health and Care Plan' for their support from birth to 25. The new plan will afford parents the same statutory protection as the statement of SEN. All the services on which the child and their family rely would work together with the family to agree an 'Education, Health and Care Plan' which reflects the family's needs and ambitions for the child's future covering education, health, employment and independence. The plan will be clear about who is responsible for which services, and will include a commitment from all parties across education, health and social care to provide their services.
14. To work towards this:
- we will test how to reform radically the statutory SEN assessment and statement. Local pathfinders will explore the best replacement, including whether the voluntary and community sector could coordinate assessment and bring greater independence to the process; and
  - before introducing the new single assessment process and 'Education, Health and Care Plan', for statements of SEN, we intend to reduce the time the current statutory assessment process takes and explore how to tackle delays in the provision of advice for the statutory assessment.

## Giving parents control

15. Early intervention from all the services on which families rely is essential, but the effectiveness of this support is undermined if it doesn't reflect each family's unique circumstances. Parents know their child best. As well as giving their own love and care, parents rely on health services, early years settings, schools and other people to help look after their child and help him or her have a happy childhood and fulfil his or her potential. Disabled children and children with SEN may require a different approach in these health and education settings to their peers, or extra support from social care or specialist services. It is crucial to families that these services work well together and that parents are empowered to make decisions about their child. Unfortunately, this is not what many families experience.

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16. Children, young people and their parents have a variety of different circumstances, but many families share a concern that the system can feel impenetrable, bureaucratic and inefficient, and does not sufficiently reflect their family life. Parents may feel that their choices are limited and their options don't always meet the basic needs of their child. This is particularly the case where a child relies on specialist services or equipment – such as incontinence pads, computer software and wheelchairs – to support their physical and communication needs to help improve the quality of their life. These problems may also be compounded by disadvantage, and some parents might have poor health, live in poverty, or have difficult family circumstances on top of juggling a range of support for their child.
17. Our aim is to give parents more control over support for their child and family. This will mean ending the frustration, complexity and confrontation inherent in today's system, which in itself can undermine family life. The proposals in this chapter are intended to extend parents' influence, build their confidence in the system and minimise its adversarial nature, and would mean that:
  - local authorities and other local services communicate a clear local offer for families to clarify what support is available and from whom;
  - parents have the option of personalised funding by 2014 to give them greater control over their child's support, with trained key workers helping them to navigate different services;
  - parents have access to transparent information about the funding which supports their child's needs;
  - parents of disabled children continue to have access to a short break from caring while their child enjoys activities with their peers;
  - parents have a clear choice of school; and
  - if local authorities and parents disagree, they always try mediation first, to resolve problems in a less adversarial way than having to take their case to the Tribunal.
18. As first steps towards this aim:
  - local authorities and health services will explore how to extend the scope of personalised funding;
  - we will give parents the right to express a preference for any state-funded school, including Academies and Free Schools.

### Learning and achieving

19. Parents' confidence that their child's needs are being met is vital to making the system feel less adversarial. A central piece of this jigsaw is the capacity and commitment of the education system to give every child and young person the chance to succeed. Every child, whether in a mainstream or special setting, deserves a world-class education to ensure that they fulfil their potential.

Everyone who works with disabled children and children with SEN should have high expectations of them and the skills to help them to learn.

20. But the system doesn't always work in the way it should for disabled children and young people and those with SEN. Too many face significant barriers to their progress and achieve less well than their peers at school and in further education. Disabled children and children with SEN are more likely to be bullied or excluded than their peers. They also tell us that they want to be educated by people who understand their impairments, without fear of being stigmatised by their peers and in an environment where poor behaviour is not tolerated.
21. To provide the best opportunities for all children and young people, we must confront the weaknesses of our education system. Children's needs should be picked up as early as possible, but teachers tell us that they have not always had training to identify children's needs, or to provide the right help. Head teachers have been overwhelmed with top-down initiatives rather than having the freedom to drive improvements.
22. Previous measures of school performance created perverse incentives to over-identify children as having SEN. There is compelling evidence that these labels of SEN have perpetuated a culture of low expectations and have not led to the right support being put in place.
23. In our Schools White Paper, *The Importance of Teaching*, we set out our vision to match the best education systems in the world. Building on that, our proposals in this Green Paper will mean that:
  - teachers and other staff in schools and colleges are well trained and confident to: identify and overcome a range of barriers to learning; manage challenging behaviour; address bullying; and intervene early when problems emerge;
  - schools will have additional flexibility to support the needs of all pupils, and will have additional funding to support disadvantaged pupils through the pupil premium;
  - teachers feel able to identify effectively what a child needs to help them to learn and to plan support to help every child progress well, reflecting the specific needs of children with SEN and those who may just be struggling with learning and need school-based catch-up support which is normally available;
  - parents have the information they need about how the school is supporting their child;
  - schools are more clearly accountable to parents, governors and Ofsted; and
  - special schools share their expertise and services to support the education, progress and development of pupils in other special and mainstream schools, leading to a greater choice of specialist provision.

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### 24. To work towards this:

- we intend to tackle the practice of over-identification by replacing the current SEN identification levels of School Action and School Action Plus with a new single school-based SEN category for children whose needs exceed what is normally available in schools; revising statutory guidance on SEN identification to make it clearer for professionals; and supporting the best schools to share their practices. This will help teachers to spot quickly and accurately any barriers to learning and provide the right support to help each child progress;
- we will introduce an indicator in performance tables which will give parents clear information on the progress of the lowest attaining pupils;
- starting with those judged by Ofsted to be outstanding, all maintained special schools will in due course have the opportunity to become Academies; and
- parents and members of local communities will be able to establish new special Free Schools.

### Preparing for adulthood

25. By 2015, all young people will continue in education or training until the age of 18. Schools and colleges play a key role in helping young people make successful transition to adulthood, but young people also need wider opportunities and support to make the most of their future and give them the best chance of a fulfilling adulthood with employment, good health and independence. However, many young people who are disabled or who have SEN can face additional challenges during their teenage years. Too often the opportunities and support available to disabled young people and young people with SEN fall short of what they need to make a successful transition to adult life.
26. Like school-aged children, young people who are disabled or who have SEN and their parents tell us that to get the help they need they have to cope with disjointed and confusing assessment processes from their local authority, school or college and health providers. Too often, professionals working with these young people are not encouraged to focus on young people's ambitions for adulthood and how best to help them prepare. Such poor planning of support is exacerbated by a lack of choice and opportunities for young people: for example, a limited choice of entry-level courses in further education that do not build on what has gone before, or prepare young people for life and work; poor quality work experience; and a lack of supported employment opportunities to help them prepare for, find and retain work. In addition, the transition from children's to adult health services is often badly coordinated, which can lead to a deterioration in young people's health.

27. Our goal is for disabled young people and young people with SEN to have the best opportunities and support so that as far as possible they can succeed in education and their careers, live as independently and healthily as they are able to and be active members of their communities. For a small number of young people, independent living may not be possible, and their families may be anxious about their ongoing care responsibilities. For these young people, we want to ensure the best quality of life with support for them to fulfil their potential and support for their parents and carers.
28. We recognise the challenge of realising our ambitions, and we will take forward a programme of action across government and with local partners, setting out more detail by the end of this year, so that by 2015 disabled young people and young people with SEN will have:
- early and well-integrated support for, and advice on, their future as part of the proposed birth to 25 single assessment process and 'Education, Health and Care Plan', spanning education, health, social care, and support into employment;
  - access to better quality vocational and work-related learning options to enable young people to progress in their learning post-16;
  - good opportunities and support in order to get and keep a job; and
  - a well-coordinated transition from children's to adult health services, and we will explore the feasibility of annual health checks from GPs for all disabled young people from the age of 16.

### **Services working together for families**

29. The reforms we set out in this Green Paper aim to provide families with confidence in, and greater control over, the services that they use and receive. For too many parents, their expectations that services will provide comprehensive packages of support that are tailored to the specific needs of their child and their family are not matched by their experiences, just as frontline professionals too often are hampered and frustrated by excessively bureaucratic processes and complex funding systems.
30. Rather than directing change from Whitehall, we want to make it easier for professionals and services to work together, and we want to create the conditions that encourage innovative and collaborative ways of providing better support for children, young people and families. The proposals in this chapter would mean that:
- by developing stronger local strategic planning and commissioning arrangements, local authorities and local health services will play a pivotal role in ensuring that children and young people with SEN or who are disabled receive high quality support, and that parents are able to make informed choices about what is right for their family;

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- frontline professionals will have the freedom to work together to develop better services for children, young people and families; and
  - the way in which services for children and young people with SEN or who are disabled are funded will facilitate integrated and collaborative approaches by local professionals, be more transparent to parents, and secure better value for money.
31. To work towards this we propose to:
- work with the health sector and with the new Health and Wellbeing Boards to consider how the needs of children and young people with SEN or who are disabled can best be taken into account through the Joint Strategic Needs Assessment, joint health and wellbeing strategies, guidelines and standards from the National Institute for Health and Clinical Excellence (NICE), and health service outcomes frameworks;
  - work with the GP consortia pathfinders to explore the best ways of providing support for the commissioning of healthcare services for children and young people with SEN or who are disabled and their families;
  - reduce bureaucratic burdens by simplifying and improving the statutory guidance for all professionals working with children and young people with SEN or who are disabled from birth to 25 so that it is clear, accessible and helpful, and withdrawing guidance that does not provide useful support to professionals;
  - work with the educational psychology profession and local commissioners to review the future training arrangements for educational psychologists;
  - encourage greater collaboration between local professionals and services and across local boundaries;
  - extend the freedom and flexibility with which funding can be used locally;
  - provide targeted funding to voluntary and community sector organisations that have a strong track record of delivering high quality services, and publish a national SEN and disabilities voluntary and community sector prospectus that will set out the key areas in which we will make further funding available to voluntary and community sector organisations;
  - work with a group of local authorities to explore whether and how a national banded framework for funding provision for children and young people with SEN or who are disabled could improve transparency to parents while continuing to allow for local flexibility; and
  - explore how the different funding arrangements for special educational provision pre-16 and post-16 might be aligned more effectively so as to provide a more consistent approach to support for children and young people from birth to 25.

## **Next Steps**

32. The ambitious vision for reform set out in this Green Paper includes wide ranging proposals to improve outcomes for children and young people who are disabled or have SEN, minimise the adversarial nature of the system for families and maximise value for money.
33. This publication marks the start of a four month period of consultation and a period of testing proposals in local areas from September 2011. We will work across government and with local and national partners to set out detailed plans by the end of the year. This will form the basis for any necessary legislative changes to be taken forward from May 2012 at the earliest.