

Date of resource: August 2014

Transition

From 1 September 2014 until 31 March 2018 the law relating to the education and training of children and young people with special education needs (“**SEN**”) and disabilities will be moving from:

- the “old” SEN legal framework, that contained in the Education Act 1996 (Part IV and Schedules 26 and 27) and section 139A – C of the Learning and Skills Act 2000 (and their related regulations and guidance including the 2001 SEN Code of Practice) (called in this briefing the “**old law**”); to
- the “new” SEN legal framework, that contained in the Children and Families Act 2014 (and its related regulations and guidance including the SEN and Disability Code of Practice 2014) (called in this briefing the “**new law**”).

Keep in mind some legal points:

Essential legal points

- The legal definition of who has SEN (special educational needs) is **at least the same** as it was under the old law – potentially wider.
- The legal definition of what is SEP (special educational provision) is **at least the same** as it was under the old law - potentially wider.
- The legal threshold for when a local authority in England (an “**LA**”) has to carry out a statutory assessment of a child or young person’s needs is **the same** as it is under old law.
- The legal threshold for when an LA has to issue an EHC plan is **at least the same** as it is for issuing a statement of SEN – potentially wider.
- A young person is someone over compulsory school age – broadly 16 years or over.
- A statement will remain legally valid until a final EHC plan is issued by an LA after transition.
- Appeals against the **contents of statements** (Parts 2, 3 & 4) will continue to be heard until April 2018 under the old SEN legal framework.
- The only way to get an EHC plan is to go through an EHC needs assessment. Statements/LDAs (Learning Difficulty Assessments) cannot be “tipped” into an EHC plan. The EHC needs assessment process under the new law could not be triggered before 1 September 2014.

Transition – Moving from “old” to “new” law

What law applies to whom & when?

From September 2014, when the new SEN legal framework is implemented, it is essential to identify which law applies to an individual situation at any given time. During the period where children and young people transition from the old law to the new law there will be at least four separate groups. Start by identifying which group applies as this will determine what will happen.

- Group 1 – Children/young people in early years/school with SEN but no statement or EHC plan
- Group 2: Children/young people with a statement of SEN
- Group 3: Young people with a Learning Difficulties Assessment (“LDA”)
- Group 4: Children/young people with “non-statutory EHC plans” issued by Pathfinder LAs before 1 September 2014

Find the group which applies and read the summaries below.

Group 1: Children/young people in early years/school with SEN but no statement or EHC plan

- These are children/young people who have been identified as having SEN or a disability and have been receiving support on Early years Action (EYA) or Early years Action plus (EYA+) or School Action (SA) or School Action Plus (SA+) under the old SEN legal framework at their school or early years settings.
- Early years providers/schools will have one year (until August 2015) to transfer their individual systems for supporting a child/young person with SEN from the old two stage approach to the new one stage approach which is called “SEN Support”.
- The definition of who has SEN remains at least the same as it was, under the new law. No child/young person should be taken “off the SEN register” or no longer be counted or treated as having SEN unless their individual needs have changed and there is evidence to support that.
- No child/young person should have their support changed or removed as of 1 September 2014 unless their individual needs have changed and there is evidence to support that.
- There are special rules for children/young people in this group where the process towards an assessment or a statement had started but was not yet completed before 1st September 2014. Broadly the old law continues to apply where the process had already started but the LA can, with the consent of the parent/young person apply the new law instead.

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Group 2: Children/young people with a statement of SEN

- Parents of children with statements and young people with statements cannot request an EHC needs assessment under the new law. They have to wait for the transition to take place.
- There is a timetable for transition which sets out by when the EHC needs assessment, which starts off the process, must be carried out and concluded:
 - ⇒ Children transferring to post 16 institutions in 2015 – the LA must carry out and conclude an EHC needs assessment before 31st May 2015;
 - ⇒ Children/young people in year 6 in the next school year beginning after 31st July 2015 or 31st July 2016 - the LA must consult with the child and the child’s parents about whether to secure an EHC needs assessment and have regard to their views. If, following the consultation, the LA does decide to carry out an EHC needs assessment it must be concluded before the end of the school year in which the child is in year 6;
 - ⇒ Children/young people transferring to a **different phase of education** (for what this means, see the note at the end of the briefing) or coming into year 9 during 2016 or 2017 - the LA must carry out and conclude an EHC needs assessment before 15th February in the year in which the transfer to a different phase of education takes place or 31st March where the transfer is to post 16 institution;
 - ⇒ Everyone else – must have an EHC needs assessment by 1st April 2018.
- Within that framework the timing is up to the LA. The LA can choose to transition children/young people more quickly if it wishes and the parent of the child or young person’s consent is **not** required.
- A statement will remain in place during the transition (unless it legally ceases under the existing law) until the transition completes.
- During the transition period (until 1st April 2018) LAs **must under the old law which will still be valid:**
 - ✓ Maintain statements;
 - ✓ Review statements annually;
 - ✓ Have regard to the SEN CoP 2001 in relation to those statements.
- Parents will have the right to request amendments to parts 2, 3 and 4 of the statement at Annual Review and at any other time before a transition takes place.
- The old law will apply when an LA considers such changes and will be applied in any resulting appeal to the SEND Tribunal against the LA’s decision unless

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transition is taking place.

- Parents can request a re-assessment of a child/young person’s needs under the old law. The LA if it agrees can choose to carry out a statutory assessment under the old law or carry out an EHC needs assessment under the new law.

Group 3: Young people with a Learning Difficulties Assessment (“LDA”)

- An LDA is a Learning Difficulties Assessment the “old law” required to be completed for all young people with a statement of SEN before they left school-based education. (It was optional for the LA to carry out an LDA for young people with SEN but without a statement.)
- An LDA **does not** place an LA under a statutory obligation to make the provision it specifies unlike a statement or an EHC plan. An EHC plan does place a statutory duty on an LA to make the special educational provision it specifies and on a health body to make the health provision it specifies.
- No new LDA’s will be issued after 1 September 2014 other than those which were in progress and uncompleted at that date.
- Parents/young people with an LDA can request an EHC needs assessment from 1 September 2014 by requesting it from the LA (use IPSEA’s model letter 1).

Group 4: Children/ young people with “non-statutory EHC plans” issued by Pathfinder LAs before 1 September 2014

- These “non statutory EHC plans” do not have legal force in terms of giving clear rights to the provision specified in them. They cannot be appealed to the Tribunal.
- The clear expectation of the DfE is that LAs will honour the commitment they have made and make the special educational provision specified.
- Where there is **no valid statement** parents/young people can request an EHC needs assessment is carried out from **1 September 2014**.
- Those who still have a **valid statement** will not have that right but they will have the protection of the statement until the transition takes place.
- As long as the assessment process followed by the Pathfinder in issuing the non-statutory EHC plan followed the statutory assessment process under the new law then the EHC needs assessment process should not be too complicated. Many assessment processes followed by Pathfinder LAs – particularly initially – were inadequate and will not do this.

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The Transition process

Local Transition Plans

- An LA should aim to make arrangements under the new law available to children/young people as soon as possible. They must complete the transition for all by 1 April 2018 at the latest.
- It is for individual LAs to decide when a child/YP with a statement will transition within the timetable set out. An LA should develop and publish a first version of its local transition plan for transferring children/young people to the new law in September.

Process of Transition

STATEMENTS TO PLANS

- The transition from a statement to an EHC plan is called a “transfer review” and it requires an EHC needs assessment to be carried out and concluded under the new law.
- At least two weeks’ notice that the EHC needs assessment is going to commence must be given to the parents of the child or to the young person and to the setting currently attended.
- The LA must invite the parent of the child or the young person to attend a meeting with an officer of the authority to discuss the education, health and social care needs of the child or young person.
- The EHC needs assessment process will then be carried out (see our resource “What is an EHC needs assessment”). An LA does not have to seek a particular advice for the EHC needs assessment if it has been provided for any purpose and the person providing that advice, the LA **and the parent/young person is satisfied it is sufficient** for the purposes of the assessment process. Parents/young people **cannot** be compelled to accept advice. An LA can never adopt a blanket approach and say all existing advice is sufficient and will be acceptable in place of an EHC needs assessment.
- When the EHC needs assessment is completed the LA has only two choices. Either:
 - ✓ It decides to issue an EHC plan in which event the finalised EHC plan must be sent to the parent/young person and to any school or other institution named in the plan **within 14 weeks** of the notice given at the beginning (NB. The statement will automatically cease at this time and will not carry on having legal force even if the parent/young person then appeals the EHC plan to the SEND Tribunal – from this point the “old law” will cease to apply to the child/young person and the new law will apply instead.)
 - or**
 - ✓ It decides not to issue an EHC plan in which event the LA must so notify the

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parent/young person **within ten weeks** of the start of the EHC needs assessment. The parent/young person will then have a right of appeal against that decision. The statement will continue until the end of the period during which an appeal can be registered at the SEND Tribunal has expired or if an appeal is registered, until the Tribunal have made their decision.

(There are limited exceptions to complying with these time limits).

LDAS TO PLANS

- The young person can request an EHC needs assessment.
- The law applies as if the young person was a new entrant to the system.
- All young people who receive support as a result of an LDA who continue in further education and training beyond 1st September 2016 must have an EHC plan by that date where one is needed.

Note: What is a transfer to a different phase of education?

- (a) from relevant early years education to school,
- (b) from infant to junior school,
- (c) from primary to middle school,
- (d) from primary to secondary school,
- (e) from middle to secondary school,
- (f) from school to a post-16 institution,
- (g) from mainstream school to special school, or
- (h) from special school to mainstream school.