

*This briefing note is specifically targeted at **persons in charge of relevant youth secure accommodation***

The new legal framework

- The new legal framework comes into force on 1st April 2015 (sections 70- 75 of the Children and Families Act (C&F Act) and 'Detained Persons' regulations). This primarily places new duties on the detained child or young person's home local authority.
- The new legal framework for detained children and young people applies to:
 - Children and young people aged 18 and under;
 - Children and young people who have been sentenced or remanded by the courts to a YOI, a STC or a SCH in England;
- Statements of special educational needs or learning difficulty assessments (Section 139A assessments) have been replaced by Education, Health and Care plans (EHC plan).
- For a child or young person who enters custody with an existing EHC plan, their home LA will now be under a new duty to arrange appropriate SEN provision while they are in custody based on their EHC plan. If they have health needs, NHS England must arrange the health provision in their plan.
- Where a child or young person does not have an EHC plan, the young person /child's parent or the person in charge of the custodial institution has the right to request an EHC needs assessment from the home LA. In addition, anyone (e.g. a YOT) can bring a detained person to the attention of the home LA if they are concerned that they have or may have SEN.
- The assessment and development of EHC plans should take place while the child or young person is in custody. The statutory timeframe for this whole process is 20 weeks. Once the plan is finalised, if the child or young person is still in custody their home LA and NHS England will be under duties to arrange their provision as above.
- A child's parent or a young person has the right to appeal to the SEND Tribunal if they do not agree with certain decisions by the LA.
- The Act also includes a general co-operation duty which is a reciprocal duty between the person in charge of the establishment and the home LA.

Powers and duties relating to the person in charge of the custodial establishment

You have the right to:

- Request an EHC needs assessment for a child or young person in custody from their home local authority, if they have not had an EHC needs assessment in the previous 6 months.
- Request the co-operation of a local authority (e.g. requesting a copy of the EHC plan from the LA, if one has not been passed to the establishment via the YOT).

You must:

- Have regard to the SEND Code of Practice (this is statutory guidance). The most relevant section of the Code is in Chapter 10.
- Co-operate with local authorities to ensure that they can fulfil their duties. E.g. the duty on the LA to arrange special educational provision for a child or young person with an EHC plan while they are in custody.
- Co-operate and support the mediation process by providing LAs with access to the detained person for the purpose of mediation sessions (this could be in the establishment, on ROTL or via video link).

You should:

- Ensure that the detained child or young person is able to attend an appeal to the Tribunal if relevant (this could be via video link).
- Receive a final copy of a child or young person's EHC plan from the LA, if it is issued after the child or young person is released.

The home local authority must:

- Notify you if they are considering an EHC needs assessment for a child or young person detained in your establishment. The LA must consult with you and you have a right to express your views to the LA to inform that decision.
- Request advice and information from you about the child or young person as part of the EHC needs assessment, if the LA decides to carry out an assessment. A request will also be made to the education and the health provider in your establishment. You must respond to this request in a timely manner and within 6 weeks.
- Send you a final copy of a child or young person's EHC plan, if it is issued while they are in custody in your establishment.