

A summary of the draft provisions

To help with understanding of the reforms our [Special Educational Consortium](#) has produced a summary of some of the key provisions within the draft legislation on reform of provision for children and young people with Special Educational Needs (SEN).

Definitions and scope (provisions 1-4)



- The definition of a learning difficulty and special educational provision will remain the same as in the Education Act 1996;
- The definition of SEN, and the definition of those for whom the local authority is responsible, will be extended to young people as well as children. Young people are defined as being over compulsory school age but under 25;
- The local authority will be given a duty to identify all the children in their area with SEN. This duty is wider than the current duty in the Education Act 1996, which only requires Local Authorities (LAs) to identify children where they may need to determine the special educational provision (i.e. children who may need a statement of SEN). Importantly, this duty will not include a duty to identify disabled children or those with a health condition unless they need special educational provision;
- Provision 4 makes local authorities responsible for all the children and young people in their area with SEN. Again, this duty is more expansive than the current one. The intention is that the provisions in this draft Bill should apply to all children with SEN, not just children with education, health and care (EHC) plans. However, again, this will not include disabled children or those with a health condition unless they need special educational provision;
- All the references to mainstream schools include academies (including free schools) and maintained schools.

Local integration and information (provisions 5-12)

- Named partners will be required to cooperate in relation to meeting the education, health and care needs of children and young people with SEN. Partners include all special and mainstream schools and colleges, local authorities (including in relation to social services), providers of alternative provision and key health agencies (8 and 9);
- Local authorities will be required to promote integration in the exercise of their functions, specifically between education, health, and social care services, in order to improve children's wellbeing. This applies to provision made outside an LA's area (5);
- Local authorities will be required to keep education and social care provision under review, including whether local provision is "sufficient" to meet local need. It must have regard to the joint health and wellbeing strategy when undertaking this (7);
- Local authorities and clinical commissioning groups "must" make arrangements for joint commissioning. This includes arrangements for considering and agreeing reasonable provision to meet the needs of all children with SEN in the area, and specifically for children with EHC plans. LAs and clinical commissioning groups have to have regard to these agreements, and also to the joint health and wellbeing strategy, when undertaking their functions (6);
- If health providers decide not to cooperate with any specific request from an LA they must respond in writing, in prescribed timescales, setting out why (10);
- Local authorities will be required to produce information on the education, health and care services "it expects" to be available locally (the local offer). This will include information in relation to provision available outside its area. The details of what the local offer should include and who should be consulted will be defined in regulations. There will be a complaints mechanism in relation to the local offer although there are no details of how this will work (11);
- Local authorities must ensure there is advice and information available locally for parents and young people (12).

Education, health and care needs assessment and EHC plans (provisions 16-28)

- Statements of SEN are replaced with education, health and care plans (EHC plans).

Most of the provisions in relation to EHC plans remain the same as for statements;

- The threshold for an EHC plan is the same as for a statement – effectively that a school is unable to meet a child’s special educational needs. Regulations may set out how this assessment must be conducted and how it might be combined with other assessments. The plan will cease when a young person is no longer in education or training;
- The duty on the local authority to secure the educational provision set out in an EHC plan is the same as it is currently with a statement;
- Health and social care needs must be explicitly recorded in the EHC plan. There are no new duties on health and social care in relation to delivering what is in a EHC plan, though there is a duty to co-operate with the local authority, see above;
- The section 139A assessment (Learning Difficulty Assessments) ceases to apply and is replaced with a re-assessment/annual review of the EHC plan;
- EHC plans extend all the statutory rights currently in a statement into the further education and training sector for the first time. Young people in apprenticeships are not covered;
- Rights of appeal to the Tribunal remain the same but is extended to further education.

Education providers (provisions 40-43)



- All of the provision of the Bill will apply to academies in full;
- Schools will continue to be required to have an SEN coordinator (40);
- Schools will still be required to inform parents and young people if they believe their child has SEN (41);
- Schools and post-16 institutions will still be required use their ‘best endeavours’ to meet SEN (42);
- Schools must publish information on how they meet the needs of disabled children and children with SEN (43).

Inclusion (provisions 13-14)

- The presumption in favour of a mainstream education is retained, and extended to academies and further education.

Personal budgets (provision 26)



- Local authorities must prepare a personal budget in relation to an EHC plan where a request has been made by the parent and the young person. In some circumstances this may include the making of a direct payment;
- The details of this provision will be set out in regulations.

Mediation (provision 29)

- The parent or young person will be required to participate in mediation before they can appeal to the Tribunal. The mediator must be independent of the LA.
- Regulations may set out:
 - in what circumstances mediation is not necessary;
 - the training and qualifications required by mediators
 - how the voice of children and young people should be sought;
 - time limits.



SEN Code of Practice (provision 44)

- There will be a revised Code of Practice.
- Unlike the current Code of Practice, the draft will not be laid before Parliament.

Special Educational Needs Code of Practice

LEAs, Head Teachers and Governors of Schools, early education practitioners and other interested parties.
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Related Documents:
The Education Act 1996