

Factsheet #22: Implementation and Transitional arrangements

The first key date for implementation of the new system created by the Children and Families Act 2014 was **1 September 2014**. From that date, no new assessments for statements or learning difficulty assessments will be offered by local authorities. All new requests for an assessment from this date will be considered under the new legislation and those requiring support will receive it through an EHC plan.

The reformed mediation and appeals process, the option of a personal budget for those with an EHC plan and each local authority's initial "Local Offer" must also be available from this date – see separate factsheets on this issue.

However there is not an instant transfer to the new system in every respect from 1 September 2014. Given the size of the task, it is necessary for a phased process of transition to be in place. This factsheet summarises the key elements of this transitional process from the old system to the new system.

Importantly, all local authorities must have a local transition plan in place by 1 September 2014 – see further below.

When will transfer take place?

Statistics published by the Department of Education estimated that in January 2013, there were 229,390 pupils (2.8%) across all schools in England had statements of SEN.

Whilst there may understandably be an eagerness to ensure that children and young people benefit from the new system as soon as possible, this must be balanced with ensuring that new assessments and plans are of good quality and are not rushed through.

The government has published advice on implementation setting out the timeframes over which transfer should take place:

- Between **1 September 2014 and April 2018** all children and young people with **statements of SEN** must transfer to the new system following a process called 'transfer review'
- As young people with **learning difficulty assessments** are considered to have fewer rights and less protection under existing laws they are a priority group for transfer to the new system and the final date by which they should have EHC plans in place is **1 September 2016**. **Young people with LDAs will not go through the 'transfer review' process but will need to make a new request for an EHC needs assessment under the new legal framework from 1 September.**

Between 1 September 2014 and 1 September 2015, local authorities **must** transfer children and young people with statements to the new arrangements **prior** to them transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship. This **must** be done by 31 May 2015.

In addition, local authorities should prioritise transfer for the following groups of children and young people with statements in 2014/15:

- those transferring from early years settings to school (including where the child remains at the same institution);
- those transferring from an infant to a junior school;
- those transferring from primary to middle school;
- those transferring from primary to secondary school;
- those transferring from middle to secondary school;
- those transferring from mainstream to a special school or vice versa;
- children in year 9;
- all children in year 6, not just those who are transferring from one institution to another (in 2014/15, local authorities **must** take account of the wishes of families of children in year 6 in determining whether to conduct a transfer review in that academic year);
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014,
- those moving between one local authority and another; and

- those who receive direct payments, under the SEN Direct Payments Pilot Scheme, for SEN provision in their statement or Learning Difficulties Assessment (they must be transferred to EHC plans by 30 September 2015 if their direct payments are to continue).

Between 1 September 2015 and 1 April 2018, local authorities must transfer children and young people with statements to the new arrangements in year 9 and prior to them transferring from:

- early years settings to school (including where the child remains at the same institution);
- an infant to a junior school;
 - primary to middle school;
 - primary to secondary school;
 - middle to secondary school.
- transferring from school (including school sixth forms) to a post-16 institution or an apprenticeship;
- mainstream to a special school or vice versa.

In addition to complying with the requirements set out above, local authorities will be expected to prioritise transfer for the following groups of children and young people from a September 2016 to 31 March 2018:

- all children with statements in year 6, not just those who are transferring from one institution to another;
- all children and young people in year 11, not just those who are moving into further education;
- children and young people leaving custody;
- children and young people issued with non-statutory EHC plans before 1 September 2014, and
- those moving between one local authority and another.

Where there is a pending Tribunal appeal under the Education Act 1996 which was issued prior to 1 September 2014, the local authority cannot commence the transfer until the Tribunal has concluded. Where the appeal is against a decision not to assess, where the Tribunal upholds the appeal rather than orders that an assessment under the 1996 Act is conducted, the Tribunal will have a power to require the local authority to carry out an EHC needs assessment.

The legal force of existing statements and learning difficulty assessments remains as at present until all children and young people have completed the transition to EHC plans.

The government has made clear that they expect that all children and young people who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan – no child or young person should lose their statement and not have it replaced with an EHC plan simply because the system is changing. The same applies to young people with learning difficulty assessments.

The Local Transition Plan

To help parents understand what is happening locally, each local authority must publish by 1 September an initial version of their “Local Transition Plan” which must include:

- The numbers of children and young people expected to transfer each year during transition
- The order in which children and young people will be transferred
- Information for young people in further education and training who receive support as a result of a LDA
- Details of the transfer review process
- Sources of independent information and advice

The transfer review process for children and young people with Statements of SEN

In the academic year of transfer to the new system, the annual review of the statement must be replaced with a "Transfer Review". Parents and schools must receive at least 2 weeks' notice of the transfer review commencing.

The local authority must maintain the child or young person's statement until the transfer review has taken place. However, from beginning of transfer review, rights of appeal on statements cease and parents/young people must use rights under new system.

The transfer review will require the local authority to undertake an Education, Health and Care Needs Assessment (EHC needs assessment).

An EHC needs assessment should be a joined up assessment considering the child or young person's health, social care and special educational needs. In carrying out assessments and making EHC plans, local authorities must have regard to:

- The views, wishes and feelings of the child, young person or parent
- The importance of their full participation in decisions
- The importance of their being provided with the necessary information and support to participate
- The need to support the child or young person to achieve the best educational or other outcomes.

Local authorities should not seek advice if an advice has already been provided and both the local authority and parents or young person are satisfied it is sufficient.

As part of the 'transfer review' local authorities must ensure that the child's parents or the young person are invited to a meeting to contribute to the transfer review. This must take place as part of the 'transfer review' in advance of the EHC plan being finalised. At least two weeks' notice of the date of the meeting must be given.

Following the EHC needs assessment, the local authority must decide whether an EHC plan is necessary and if so issue a draft plan for parents or the young person to provide comments on. The EHC plan must be finalised within 18 weeks of the start of the transfer review (although note exceptions).

If the local authority decides not to secure an EHC plan following the transfer review:

- they must notify parents or young person within 14 weeks of start of review
- the existing statement must remain in place until the outcome of the Tribunal appeal.

Arrangements for transfer of young people with learning difficulty assessments

Requests for assessment for young people who are receiving additional support as a result of learning difficulty assessments must be dealt with as if they are a new entrant into the system. From 1 September 2014, local authorities should take all reasonable steps to inform young people in further education or training with learning difficulty assessments of their options and provide information on obtaining an EHC needs assessment and plan.

Local authorities have 6 weeks to respond to request for an EHC needs assessment and must make a plan, where necessary, within 20 weeks of the original request.

There is a right of appeal if the local authority decides not to issue a EHC plan to a young person who previously has a learning difficulty assessment, as there is in every case.

Where the local authority decides that it is not necessary to make an EHC plan, the young person should continue to receive provision as set out in their learning difficulty assessment pursuant to s139A of the Learning and Skills Act 2000 as planned.

Arrangements for transfer of children with non statutory EHC plans issued before 1 September 2014

It is understood that there were approximately 2500 children and young people across 31 pathfinder authorities who had non statutory EHC plans that were issued as part of the government's pilot scheme.

Where a non-statutory EHC plan rather than a statement was issued in advance of 1 September 2014 the local authority became responsible for the child or young person under the Children and Families Act 2014 on 1 September. Local authorities were, therefore, required to determine whether a statutory EHC needs assessment was necessary for these children and young people.

If the child also had a statement, they should have been transferred in 2014/2015 in accordance with the transfer review process outlined above and had the same rights as other children with statements until transferred.

What if the assessment was already in progress on 1 September 2014?

Where a local authority was considering a request for an assessment or re-assessment on 1 September 2014, the Education Act 1996 (i.e. SEN assessment for a statement) applied unless the local authority and the child's parents or the young person agreed to treat it as a request for an EHC needs assessment.

Where a local authority was conducting a Learning Difficulty Assessment on 1 September 2014, the local authority may have issued an EHC plan with the young person's agreement.

Where local authorities continued to assess and issue a statement under the Education Act 1996, they should have anticipated the requirements for EHC needs assessments to reduce burden of transfer reviews.

If the child or young person had been assessed under Education Act 1996, the statement should have complied with requirements under Education Act unless the local authority considered the assessment was sufficient to produce an EHC plan and parent or young person agreed.

Parents of children with statements continue to be able to request re- assessments under the 1996 Act rather than the 2014 Act during the transition period. However, where a re-assessment is needed and the local authority is able to, they can conduct an EHC needs assessment and transfer the child/young person to the new system.

Introduction of SEN Support

The new SEN Support arrangements came into force from 1 September 2014. All education settings should have reviewed children and young people who were on school action and school action plus (and equivalents) and put in place SEN Support. This included setting clear targets for progress, agreeing what support should be provided and tracking how it is working. Special educational provision should continue for children and young people who need it. It may change only if: their learning needs have changed; or the educational setting has changed its universal offer.

It was anticipated that most children on School Action / School Action Plus would have transferred to the SEN support category by spring 2015, with all pupils moving to SEN support by September 2015.

Further information on transitional arrangements, can be found in the DfE guidance 'Transition to the new 0-25 special educational needs and disability system'.