

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 3 - children and young people in England with special Educational Needs OR DISABILITIES

Education, health and care plans

Section 37: Education, health and care plans

215. This section sets out what a local authority must do if the education, health and care assessment in section 36 indicates that a child or young person requires an EHC plan for their special educational provision.
216. The local authority is under a duty to make sure that an EHC plan is prepared and then implemented. The EHC plan should specify the short and long term outcomes that it is designed to help the child or young person to achieve and the special educational, health and social care provision that will be made to support them. This could include, for example, access to specialist teaching, speech and language therapy provision, and short breaks.
217. The health care provision to be specified in the EHC plan is that which is reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs. For example, health provision could include therapies, such as occupational therapy, and equipment, such as wheelchairs and continence supplies (see also section 21).
218. The social care provision to be specified in the EHC plan includes any social care provision which must be made for a child or young person under 18 by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970. This could include practical assistance in the home or providing an outing for a child.
219. The social care provision to be specified in the EHC plan also includes other social care provision which is reasonably required by the learning difficulty or disability which results in the child or young person having special educational needs. This may include provision made under section 17 of the Children Act which is not covered by the Chronically Sick and Disabled Persons Act 1970, for example residential short breaks. It may also include adult social care provision for young people aged 18-25 with EHC plans.
220. Other health and social care provision may be included in plans, where local authorities and health commissioners consider this would be beneficial to the child or young person. For example, if a child with an EHC plan for significant dyslexia developed an unrelated illness, it might make sense for them, their parents and the professionals supporting them to co-ordinate their care through the EHC plan.
221. Further detail about the preparation (including time limits), content and maintenance of an EHC plan may be set out in regulations.

222. This section replaces, in England, section 324 of the Education Act 1996.

Section 38: Preparation of EHC plans: draft plan

223. This section sets out the process that must be undertaken by a local authority when preparing a draft EHC plan. The local authority must consult with the child's parents or the young person, to ensure they are involved in the planning process from the outset and their views are taken into account. The local authority must send a copy of the draft EHC plan to the child's parent or the young person and make sure that they are aware of the ways in which they can express their views on the content of the draft EHC plan.

224. The draft EHC plan must not name a specific institution or a type of institution. This is so that parents or young people have the opportunity to request (before the end of the time period which is specified in the notice sent to the parent or young person under *subsection (2)(b)*) that a particular school, further education college in England or other institution is named in the EHC plan before it is finalised. Parents and young people may request any institution of the types listed in *subsection (3)*. Parents and young people will also be able make representations for an independent school or post-16 independent specialist provider not included in this list as is the case under the current legislative framework (although there will be no corresponding duty on the local authority to name such an institution in the EHC plan or for that institution to be under a duty to admit the child or young person). Local authorities may also specify education otherwise than in a school or post-16 institution in an EHC plan where they consider this to be suitable provision.

225. This section replaces, in England, section 323 of the Education Act 1996.

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

226. This section applies where the child's parent or the young person has received a draft EHC plan and requested that a particular institution is named in the EHC plan.

227. The local authority is required to consult any institution that it is considering naming in the EHC plan and, where that institution is maintained by another local authority, the other authority. The local authority must comply with the parent or young person's request unless the child or young person's attendance at the school would not meet their special educational needs, or would be incompatible with the efficient education of others or the efficient use of resources. If it believes that these circumstances apply, the local authority must name the school or other institution, or type of institution, that the local authority considers to be most appropriate for the child or young person (having consulted that institution before naming it in the EHC plan). A copy of the final EHC plan must then be sent to the child's parent or the young person and to the school, college or other institution that has been named in the EHC plan.

228. This section replaces, in England, section 324 and parts of Schedule 27 of the Education Act 1996.

Section 40: Finalising EHC plans: no request for particular school or other institution

229. This section applies where the child's parent or young person has received a draft EHC plan but has not made a request for a particular institution in accordance with section 38(2)(b)(ii). They may have said they would like an independent school, training provider or early years education provider to be named, or they may have indicated no preference at all.

230. In this eventuality, the EHC plan must name the specific institution or type of institution that the local authority considers appropriate. The local authority must consult any school or institution that it is considering naming, and where that institution is maintained by another local authority, that authority, before finalising the EHC plan. A

copy of the final EHC plan must then be sent to the child's parent or the young person and the school or other institution named in the EHC plan.

231. Further duties on the local authority which apply in these circumstances are set out in section 33 (duty to educate within the mainstream sector).
232. This section replaces, in England, section 324 of the Education Act 1996.

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

233. Independent schools that are specially organised to make special educational provision for children with special educational needs, and special post-16 institutions (independent specialist colleges) can be named in an EHC plan. This section gives the Secretary of State the power to approve such institutions and once he has done so parents and young people can express a preference for them under section 38(2), with the resultant conditional duty on the local authority to name the institution in the EHC plan. Approval can only be given if the institution consents. The Secretary of State may withdraw approval and regulations may make provision about the types of institution that can be approved, and the criteria that must be met for such approval. Regulations may also set out the matters to be taken into account in deciding whether to give or withdraw approval and may cover publication of a list of institutions that have been approved by the Secretary of State.

Section 42: Duty to secure special educational provision and health care provision in accordance with EHC plan

234. Where an EHC plan is maintained for a child or young person, the local authority must make sure that the special educational provision set out in it is made. The local authority need not make the special educational provision set out in the EHC plan if the child's parent or the young person makes alternative, suitable arrangements.
235. The responsible commissioning body must make sure that any health provision set out in the EHC plan is made. The "responsible commissioning body" in relation to any specified health care provision means the body (or each body) that is under a duty to arrange the health care provision for the child or young person. This will typically be the relevant clinical commissioning group but may also be the NHS Commissioning Board. The responsible commissioning body need not make the health provision set out in the EHC plan if the child's parent or the young person makes alternative, suitable arrangements.
236. This section replaces and expands, in England, section 324 of the Education Act 1996.

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

237. Where a maintained school, maintained nursery school, Academy, institution in the English further education sector (a further education college or sixth form college), non-maintained special school or independent school or independent specialist college approved by the Secretary of State under section 41 is named in an EHC plan it must admit the child or young person.
238. This section replaces, in England, section 324 of the Education Act 1996.

Section 44: Reviews and re-assessments

239. This section requires local authorities to review a child or young person's EHC plan at least every 12 months. It also sets out when re-assessments must take place. A review is intended to consider whether the provision in the EHC plan is meeting the child or young person's assessed needs and whether they are making progress towards the outcomes identified. A re-assessment means undertaking the assessment process in section 36 again, for example when a child or young person's needs may have changed significantly. Local authorities must consult with the parent of the child, or the young

person, during any review or re-assessment to ensure they are involved in the process from the outset and their views are taken into account.

240. The local authority must carry out a re-assessment if one is requested by the child's parent, the young person or the school, college or other institution that they attend, subject to particular exemptions to be set out in regulations (which might include for example where a previous assessment has been conducted relatively recently). The local authority also has the power to carry out a re-assessment without waiting for one to be requested by a parent or school.
241. In reviewing an EHC plan maintained for a young person aged 19 or over, or deciding whether to reassess their needs the local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved. Many young people will have completed their education and made a successful transition to adulthood before 25. However an EHC plan can remain in place for those who need longer to complete or consolidate their learning to enable them to make a successful transition to adulthood.
242. More detail about the process for reviewing, amending or replacing EHC plans will be provided in regulations including circumstances in which a local authority must or may review an EHC plan (for example, before the end of a specified phase of a child or young person's education, or when a young person becomes NEET, that is, they are not in education, employment or training).
243. This section replaces, in England, section 323 of the Education Act 1996.

Section 45: Ceasing to maintain an EHC plan

244. A local authority may only stop maintaining an EHC plan if they are no longer responsible for that child or young person, for example if the child or young person has moved to another area, or they consider that it is no longer necessary for the EHC plan to be maintained.
245. The section sets out some of the circumstances under which it would no longer be necessary to maintain the EHC plan, for example, where the child or young person no longer requires the special educational provision specified in the EHC plan.
246. When determining that a young person aged 19 or over no longer requires special educational provision, the local authority must have regard to whether the educational or training outcomes specified in the EHC plan have been achieved. This enables a local authority to continue an EHC plan where a young person has dropped out of education (i.e. is not in education, employment or training (NEET)) but would like to return to education or training. Regulations may make further provisions about ceasing to maintain an EHC plan.
247. When an appeal is made against a local authority's decision to cease an EHC plan, the authority must continue to maintain the EHC plan until the time has passed for bringing an appeal or the appeal has been determined by the First tier Tribunal.

Section 46: Maintaining an EHC plan after young person's 25th birthday

248. This section gives local authorities the power to maintain an EHC plan for a young person until the end of the academic year (such date to be prescribed in regulations) in which they become 25, enabling them to take account of individual needs and circumstances.

Section 47: Transfer of EHC plans

249. This section enables regulations to be made regarding the process for transfers of EHC plans, when a child or young person with an EHC plan moves between local authority

areas. This may include a duty on the new local authority to maintain an EHC plan prepared by the previous local authority.

250. This section replaces, in relation to England, paragraph 7(2) of Schedule 27 to the Education Act 1996.

Section 48: Release of a child or young person for whom EHC plan previously maintained

251. If a child or young person who is released from a custodial sentence previously had an EHC plan, or if the local authority is keeping a plan for them under section 70 the local authority that is responsible for the child or young person on their release (which may not be the same local authority that secured the EHC plan originally) must maintain the previous EHC plan and review it as soon as is practicable after release.

Section 49: Personal budgets and direct payments

252. This section requires local authorities to prepare a personal budget for children or young people for whom the local authority maintains an EHC plan or has decided to make an EHC plan, if asked to do so by the child's parent or the young person. A personal budget is an amount available to secure particular provision set out in the EHC plan and provides a way of involving parents or young people in securing that provision.
253. Personal budgets can take the form of direct payments which families can spend themselves or notional budgets which they can devise with the local authority and which the local authority can spend on their behalf at their direction by arranging the provision in the EHC plan – or a combination of both.
254. Regulations will provide details about personal budgets, including provision that may be included in a personal budget or to which a direct payment may relate, the provision of information, support and advice in connection with personal budgets and direct payments, and when, to whom and on what conditions direct payments may or may not be made. Any regulations which authorise direct payments to a parent or a young person must require them to consent before a direct payment can be made. They must also require local authorities to stop making direct payments where that consent is withdrawn.
255. Special educational provision purchased with a direct payment will be treated as provision secured by the local authority for the purposes of fulfilling its duty under section 42(2) to secure the special educational provision in an EHC plan and health care provision purchased with a direct payment will be treated as provision arranged by the commissioning body for the purposes of fulfilling its duty under section 42(3).

Section 50: Continuation of services under section 17 of the Children Act 1989

256. This section inserts a new provision (section 17ZG) into the Children Act 1989.
257. It gives a power to local authorities to continue to provide services they have been providing to a young person before their 18th birthday under section 17 of the Children Act 1989 (services to children in need, their families and others) to the young person when they are 18 and over, where the young person has an EHC plan. The local authority retains discretion over how long it chooses to provide services under section 17 while an EHC plan remains in place. Where the young person no longer has an EHC plan, the local authority no longer has the power to extend the provision of these services to young people over 18.
258. The provision in this section aims to support better transitions between children's and adult services for young people with EHC plans. Guidance on how an authority should use this discretion will be set out in the Code of Practice issued under section 77.