**Children and Young People Aged 0-25 with Special Educational Needs and Disabilities**

**SCOPE OF THIS CHAPTER**

This procedure sets out the specific provision under the Children and Families Act 2014 in relation to children and young people aged 0-25 with Special Educational Needs or disabilities and their carers. For the purposes of the Act, ‘young person’ is someone aged 16-25. The Care Act 2014 introduced changes to adult care and support. This also includes transitions for young disabled people into adulthood, and support to carers.

**RELATED GUIDANCE**

For children who are Looked After or Previously Looked After and have SEN, please refer to **Statutory guidance: Designated Teacher for Looked After and Previously Looked After Children**

### RELATED CHAPTER

**Placing and Visiting Children with Special Educational Needs and Disabilities or Health Conditions in Long-Term Residential Settings Procedure**

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**1. Principles**

The Children and Families Act 2014 takes forward the reform programme set out in **Support and Aspiration: A New Approach to Special Educational Needs And Disability: Progress And Next Steps** by:

* Extending the Special Educational Needs (SEN) system from birth to 25 and giving children, young people and their parents greater control and choice in decision-making;
* Replacing Statements of Special Educational Needs and learning difficulty assessments with birth- to-25 Education, Health and Care Plans;
* Offering families Personal Budgets - young people and parents of children who have Education, Health and Care Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding;
* Creating a duty for joint commissioning which requires local authorities and health bodies to work in partnership when arranging provision for children and young people with Special Educational Needs;
* Requiring local authorities to involve children, young people and parents in reviewing and developing provision for those with Special Educational Needs and to publish a Local Offer of services;
* Extending the entitlement to an assessment to all young carers under the age of 18 regardless of who they care for or the type and frequency of this care;
* Giving Parent Carers the right to a stand-alone assessment.

Local authorities should adopt a key working approach, which provides children, young people and parents with a single point of contact to help ensure the holistic provision and co-ordination of services and support.

The local authority must engage other partners it thinks appropriate to support young people with SEN and disabilities. This might include voluntary organisations, CAMHS, local therapists, Jobcentre Plus and their employment support advisers, training/apprenticeship/supported employment providers, housing associations, careers advisers, leisure and play services. Local authorities and Clinical Commissioning Groups (CCGs) should consider the role that private, voluntary and community sector providers can play in delivering services.

Local authorities must review the special educational provision and social care provision in their areas for children and young people who have SEN or disabilities and the provision made for local children and young people who are educated out of the area, working with the partners to their joint commissioning arrangements. The local authority must consult with children and young people with SEN or disabilities and their parents. Joint commissioning arrangements must consider the needs of children and young people with SEN and disabilities.

OFSTED’s Chief Inspector stresses the importance of ensuring that all placements for all children with SEN are made with due diligence. Before any placement the local authority should carry out all necessary checks to make certain that schools are registered with the Department for Education.

The Designated Medical Officer provides the point of contact for local authorities, schools and colleges seeking health advice on children and young people who may have SEN or disabilities, and provides a contact for CCGs or health providers so that appropriate notification can be given to the local authority of children under compulsory school age who they think may have SEN or disabilities.

The Act gives significant new rights directly to young people once they reach the end of compulsory school age (the end of the academic year in which they turn 16). When a young person reaches the end of compulsory school age, local authorities and other agencies should normally engage directly with the young person rather than their parent, ensuring that as part of the planning process they identify the relevant people who should be involved and how to involve them. Most young people will continue to want, or need, their parents and other family members to remain involved in discussions and decisions about their future. Some young people, possibly some parents, will not have the mental Capacity to make certain decisions or express their views.

A 3 year review by the Law Commission recommended that the past 60 years of legislation relating to adults and their care and support needs should be simplified and streamlined. This resulted in the Care Act 2014, which came into force commencing in April 2015. The Act legislates as to how Local Authorities must provide services to adults requiring care and support that will enable them to achieve the outcomes that matter to them in their life. This legislation sees a change from the “duty to provide services” to “meeting needs” – it promotes the idea of what an individual needs rather than a 'one size fits all' approach. It introduces what is commonly being referred to as the 'Wellbeing Principle', and it applies in all cases where a local authority is carrying out an assessment on an individual and when it is providing a care and support function.

The Care Act 2014 applies equally to adults with care and support needs and their carers. It also applies to children with disabilities and their carers, when they reach the transition stage from children’s into adults’ services.

The Care Act emphasises prevention and delaying the need for support. Local Authorities are expected to establish information and advice services locally that will be easily accessible to all adults requiring care and support as well as carers. Needs or Carers assessments must be carried out whenever it appears that one is necessary. Once an assessment has been made there’s a duty on local authorities to produce a care and support plan and to offer a personal budget. The individual service user must be closely involved throughout this process. The Act also sets out a duty to review Care and Support plans to ensure that they continue to meet the needs of the person.

**2. Duty to Provide Information, Advice and Support**

Both the Children and Families Act 2014 and the Care Act 2014 impose upon local authorities a duty to provide children and young people with information, advice and support relating to their SEN or disability, and transition, including matters relating to health and social care. It must include information, advice and support on the take-up and management of Personal Budgets. This information, advice and support should be provided through a dedicated and easily identifiable service. Information, advice and support services should be impartial, confidential and accessible and should have the capacity to handle face-to-face, telephone and electronic enquiries.

Local authorities must take steps to make these services known to children and young people/their parents in their area; head teachers, proprietors and principals of schools and post-16 institutions in their area, and others where appropriate.

Advocacy services must be available to young people going through the transition phase.

The Local Offer must include details of how information, advice and support related to SEN and disabilities can be accessed and how it is resourced. It must also include a short breaks duty statement giving details of the local range of services and how they can be accessed, including any eligibility criteria (in accordance with the Breaks for Carers of Disabled Children Regulations 2011).

Children and young people should be involved in the design or commissioning of services providing information, advice and support.

**3. Local Offer**

Local authorities in England have a statutory duty to develop and publish a Local Offer setting out the support they expect to be available for local children and young people aged 0-25 with Special Educational Needs (SEN) or disabilities, whether or not they have an Education, Health and Care Plan. Local authorities must consult locally on what provision the Local Offer should contain.

The local authority must involve children and young people in developing and reviewing the Local Offer.

The Local Offer must be widely accessible via the local authority website, to those without access to the internet, and those with different types of SEN.

The Local Offer must include information about:

* Special educational, health and social care provision for children and young people with SEN or disabilities – this should include online and blended learning;
* Support and provision that 19- to 25-year-olds with SEN can access regardless of whether they have an Education, Health and Care Plan;
* Arrangements for identifying and assessing children and young people’s SEN – this should include arrangements for Education, Health and Care Needs Assessments;
* Details of how parents and children and young people can request an assessment for an Education, Health and Care Plan:
  + How the local authority will consider a request for an assessment and inform parents and young people of their decision;
  + How parents and children and young people will be involved in the assessment process;
  + What support is available to help families during the needs assessment process and the development of an Education, Health and Care Plan;
  + The timescales involved in the assessment process;
  + The process for making an Education, Health and Care Plan;
  + Information about the option of having a Personal Budget:
    - A description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets;
    - The mechanisms of control for funding available to parents and young people including direct payments, arrangements and third party arrangements;
    - Clear and simple statements setting out eligibility criteria and the decision-making processes that underpin them;
    - The support available to help families manage a Personal Budget.
* Other educational provision, for example sports or arts provision, paired reading schemes;
* Education provision and post-16 education and training provision;
* Apprenticeships, traineeships and supported internships;
* Information about provision to assist in preparing young people for adulthood;
* Arrangements for travel to and from education institutions;
* Support to help young people move between phases of education;
* Sources of information, advice and support in the local authority’s area relating to SEN and disabilities;
* Childcare, including suitable provision for disabled children and those with SEN;
* Leisure activities;
* Support available to young people in higher education, particularly the Disabled Students Allowance (DSA) and the process and timescales for making an application for DSA;
* Arrangements for resolving disagreements and for mediation, and details about making complaints;
* Parents’ and young people’s rights to appeal a decision of the local authority to the First-tier Tribunal (SEN and disability) in respect of SEN and provision;
* The local authority’s accessibility strategy under the Equality Act 2010.

The Local Offer should cover:

* Support available to all children and young people with SEN or disabilities from universal services such as schools and GPs;
* Targeted services for children and young people with SEN or disabilities who require additional short-term support over and above that provided routinely as part of universal services;
* Specialist services for children and young people with SEN or disabilities who require specialised, longer term support.

The Local Offer must include provision in the local authority’s area, and also provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are responsible and disabled children and young people. This could, for example, be provision in a school or further education college in a neighbouring area or support services for children and young people with particular types of SEN that are provided jointly by local authorities. It should include relevant regional and national specialist provision, such as provision for children and young people with low-incidence and more complex SEN.

The local authority must keep its Local Offer under review. It must publish at least annually a summary of comments received about the Local Offer, its response to the comments, and details of the action they intend to take.

https://www.nelincs.gov.uk/children-families-and-schools/send-and-local-offer/**4. Education, Health and Care Needs Assessment**

**4.1 Requesting an Education, Health and Care Needs Assessment**

An Education, Health and Care Needs Assessment is an assessment undertaken by a local authority of the education, health and care needs of a child or young person aged 0-25 with Special Educational Needs (SEN) or disabilities to determine whether it is necessary to make provision for those needs in accordance with an Education Health and Care Plan.

The following have a specific right to ask a local authority to conduct an Education, Health and Care Needs Assessment:

* A child’s parent;
* A young person over the age of 16 but under the age of 25; and
* A person acting on behalf of a school or post-16 institution (this should be with the knowledge and agreement of the parent or young person where possible).

In addition, anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, e.g. foster carers, health and social care professionals, education staff, youth offending teams or Probation Providers, or a family friend.

Following a request or a child having been brought to its attention, the local authority must (unless it has already undertaken such an assessment during the previous six months) determine whether an Education, Health and Care Needs Assessment is necessary and communicate that decision within 6 weeks. It must give its reasons where it decides not to proceed.

Where the local authority considers that special educational provision may need to be made in accordance with an Education, Health and Care Plan and is considering whether an Education, Health and Care Needs Assessment is necessary, it must notify:

* The young person/parent (and must inform them of their right to express written or oral views and submit evidence);
* The health service (the relevant Clinical Commissioning Group (CCG) or NHS England where it has responsibility for a child or young person);
* Local authority officers responsible for social care for young people with SEN;
* Where the child or young person attends an education establishment, the principal (or equivalent).

In considering whether an Education, Health and Care Needs Assessment is necessary, the local authority should consider whether there is evidence that despite the education establishment having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child/young person, s/he has not made expected progress.

If the local authority decides not to conduct an Education, Health and Care Needs Assessment, it must notify the young person/parent, the education provider and the health service and give the reasons for its decision. The local authority must also inform the young person/parent of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services (see **Section 15, Resolving Disagreements**). The local authority should also provide feedback collected during the process of considering whether an Education, Health and Care Needs Assessment is necessary, including evidence from professionals, which the parent, young person, early years provider, school or post-16 institution may find useful.

**4.2 Undertaking an Education, Health and Care Needs Assessment**

Local authorities must consult the child/young person/parent throughout the process of assessment and production of an Education, Health and Care Plan.

Education, Health and Care Needs Assessments should be combined with other social care assessments where appropriate. As far as possible, there should be a ‘tell us once’ approach to sharing information during the assessment and planning process so that families and young people do not have to repeat the same information to different agencies, or different practitioners and services within each agency. It must be discussed with the child/young person/parents what information they are happy for the local authority to share with other agencies. A record should be made of what information can be shared and with whom.

Where particular services are assessed as being needed, their provision should be delivered and should not be delayed until the Education, Health and Care Plan is complete.

Following the completion of an Education, Health and Care Needs Assessment, if the local authority decides that an Education, Health and Care Plan is not necessary, it must notify the child/young person/parent, the education and the health service and give the reasons for its decision. This notification must take place as soon as practicable and at the latest within 16 weeks of the initial request or of the child or young person having otherwise been brought to the local authority’s attention. The local authority must also inform the child/young person/parent of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services.

**4.3 New Requests for Education, Health and Care Needs Assessments for 19- to 25-year-olds**

Young people who do not already have an Education, Health and Care Plan continue to have the right to request an assessment of their SEN at any point prior to their 25th birthday (unless an assessment has been carried out in the previous six months).

Where such a request is made, or the young person is otherwise brought to the attention of the local authority as being someone who may have SEN, the local authority must follow the guidance set put above for carrying out Education, Health and Care Needs Assessments. In addition, when making decisions about whether a plan needs to be made for a 19- to 25-year-old, local authorities must consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete his or her education or training.

**5. Education, Health and Care Plans**

An Education, Health and Care Plan details the education, health and social care support that is to be provided to a child or young person aged 0-25 who has Special Educational Needs or a disability.

As a statutory minimum, Education, Health and Care Plans must include the following sections:

* **Section A**: The views, interests and aspirations of the child/young person;
* **Section B**: The child/young person’s Special Educational Needs (SEN);
* **Section C**: The child/young person’s health needs which are related to their SEN;
* **Section D**: The child/young person’s social care needs which are related to their SEN or to a disability;
* **Section E**: The outcomes sought for the child/young person. This should include outcomes for adult life. The Plan should also identify the arrangements for the setting of shorter term targets by the education or training provider;
* **Section F**: The special educational provision required by the child/young person;
* **Section G**: Any health provision reasonably required by the learning difficulties or disabilities which result in the child/young person having SEN. Where an Individual Health Care Plan is made for them, that plan should be included;
* **Section H1**: Any social care provision which must be made for a child/young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970; any services to be provided for parent carers of disabled children, following an assessment of their needs as carers;
* **Section H2**: Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child/young person having SEN. This will include any adult social care provision being provided to meet a young person’s eligible needs (through a statutory care and support plan);
* **Section I**: The name and type of the education institution to be attended by the child/young person;
* **Section J**: Where there is a Personal Budget, the details of how the Personal Budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care. The Special Educational Needs and outcomes that are to be met by any direct payment must be specified;
* **Section K**: The advice and information gathered during the Education, Health and Care Needs Assessment must be attached.

In addition, the Plan must include (in sections F, G, H1 or H2 as appropriate) the provision required by the young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

The local authority must send the draft Education, Health and Care Plan (including the appendices containing the advice and information gathered during the Education, Health and Care Needs Assessment) to the child/young person/parent and give them at least 15 days to give views and make representations on the content. During this period, the local authority must make its officers available for a meeting with the child/young person/parent on request. When the local authority sends the draft Education, Health and Care Plan to the child/young person/parent, it must:

* Notify them that during this period they can request that a particular education institution be named in the plan. The draft plan must not contain the name of the education institution;
* Advise them where they can find information about the education institutions that are available, for example through the Local Offer; and
* Should seek agreement of any Personal Budget specified in the draft.

When changes to the draft Plan are suggested by the child/young person/parent and agreed, the draft plan should be amended and issued as the final Education, Health and Care Plan as quickly as possible. If the local authority wishes to make other changes it must re-issue the draft Education, Health and Care Plan to the child/young person/parent. The final Education, Health and Care Plan should be signed and dated by the local authority officer responsible for signing off the final plan.

Where changes suggested by the child/young person/parent are not agreed, the local authority may still proceed to issue the final Education, Health and Care Plan. In either case the local authority must notify the child/young person/parent of their right to appeal to the Tribunal and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services. The local authority should also notify the child/young person/parent how they can appeal the health and social care provision in the Plan. See **Section 15, Resolving Disagreements**.

The final Education, Health and Care Plan must also be issued to the governing body, proprietor or principal of any school, college or other institution named in the Plan, and to the relevant CCG (or where relevant, NHS England).

**6. Timescales for Education, Health and Care Needs Assessments and Preparation of an Education, Health and Care Plan**

* The whole process of Education, Health and Care Needs Assessment and Education, Health and Care Plan development, from the point when an assessment is requested (or a child/young person is brought to the local authority’s attention) until the final Education, Health and Care Plan is issued, must take no more than 20 weeks;
* Local authorities must give their decision in response to any request for an Education, Health and Care Needs Assessment within a maximum of 6 weeks from when the request was received or the point at which the child/young person was brought to the local authority’s attention;
* When local authorities request information as part of the needs assessment process, those supplying the information must respond in a timely manner and within a maximum of 6 weeks from the date of the request;
* If the local authority decides, following an Education, Health and Care Needs Assessment, not to issue an Education, Health and Care Plan, it must inform the child/young person/parent within a maximum of 16 weeks from the request for a needs assessment;
* The child/young person/parent must be given 15 calendar days to consider and provide views on a draft Education, Health and Care Plan and ask for a particular school or other institution to be named in it.

Exemptions apply where:

* Appointments with people from whom the local authority has requested information are missed by the child/young person;
* The child/young person is absent from the area for a period of at least 4 weeks;
* Exceptional personal circumstances affect the child/young person; and
* The educational institution is closed for at least 4 weeks, which may delay the submission of information from the school or other institution.

The child/young person/parent should be informed if exemptions apply so that they are aware of, and understand, the reason for any delays. All remaining elements of the process must be completed within their prescribed periods, regardless of whether exemptions have delayed earlier elements.

**7. Personal Budgets**

Children/young people who have Education, Health and Care Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. Each request for a Personal Budget must be considered on its own individual merits.

The child/young person should be given an indication of the level of funding that is likely to be required to make the provision specified, or proposed to be specified in the Education, Health and Care Plan. An indicative figure can be identified through a resource allocation or banded funding system. The local authority should agree the provision to be made in the plan and help the parent or young person to decide whether they want to take up a Personal Budget. Local authorities should be clear that any figure discussed at this stage is indicative and is a tool to support the planning process including the development of the draft Education, Health and Care Plan. The final allocation of funding budget must be sufficient to secure the agreed provision specified in the Education, Health and Care Plan and must be set out as part of that provision. If the local authority is unable to identify a sum of money, they should inform the child/young person/parent of the reasons.

If the local authority refuses a request for a direct payment for special educational provision, the local authority must set out their reasons in writing and inform the child/young person/parent of their right to request a formal review of the decision. The local authority must consider any subsequent representation made by the child/ young person/parent, and notify them of the outcome, in writing, setting out the reasons for their decision.

Where the disagreement relates to the special educational provision to be secured through a Personal Budget the child/ young person/parent can appeal to the First-tier Tribunal (SEN and Disability) – see **Section 15, Resolving Disagreements**.

The mechanisms of control for funding available to parents and young people include:

* Direct Payments – where individuals receive the cash to contract, purchase and manage services themselves;
* An arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the Education, Health and Care Plan (these are sometimes called notional budgets);
* Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the young person;
* A combination of the above.

**8. Transfer of Education, Health and Care Plans**

Where a child/ young person moves to another local authority, the ‘old’ authority must transfer the Education, Health and Care Plan to the ‘new’ authority on the day of the move. Where the old authority has not been provided with 15 working days’ notice of the move, the old authority must transfer the Plan within 15 working days beginning with the day on which it did become aware.

The requirement for the child/ young person to attend the educational institution specified in the Education, Health and Care Plan continues after the transfer. However, where attendance would be impractical, the new authority must place the child/ young person temporarily at an appropriate educational institution until the Plan is formally amended. The new authority may not decline to pay the fees or otherwise maintain the child at an independent or non-maintained special school or a boarding school named in an Education, Health and Care Plan unless and until they have amended the Plan.

The new authority may, on the transfer of the Education, Health and Care Plan, bring forward the arrangements for the review of the plan, and may conduct a new Education, Health and Care Needs Assessment regardless of when the previous needs assessment took place. The new authority must tell the child/ young person/parent, within six weeks of the date of transfer, when they will review the plan and whether they propose to make a needs assessment.

The new authority must review the plan before one of the following deadlines, whichever is the later:

* Within 12 months of the plan being made or being previously reviewed by the old authority; or
* Within 3 months of the plan being transferred.

Where children/young people move between local authority areas while they are being assessed for an Education, Health and Care Plan, the new authority should decide whether it needs to carry out an Education, Health and Care Needs Assessment (using the information already gathered) and it must decide whether to do so if it receives a request from the child/ young person/parent.

**9. Reviewing Education, Health and Care Plans**

Education, Health and Care Plans should be used to actively monitor the progress of children/young people towards their outcomes and longer term aspirations. They must be reviewed as a minimum every 12 months. The local authority’s decision following the review meeting must be notified to the child/ young person/parent within four weeks of the review meeting.

Reviews must focus on the child/young person’s progress towards achieving the outcomes specified in the Plan, and whether these outcomes and supporting targets remain appropriate.

Reviews should also:

* Gather and assess information so that it can be used by education settings to support the child/young person’s progress and their access to teaching and learning;
* Review the special educational provision made for the child/ young person to ensure it is being effective in ensuring access to teaching and learning and good progress;
* Review the health and social care provision made for the child/ young person and its effectiveness in ensuring good progress towards outcomes;
* Consider the continuing appropriateness of the Plan in the light of the child/ young person’s progress during the previous year or changed circumstances and whether changes are required including any changes to outcomes, enhanced provision, change of educational establishment or whether the Plan should be discontinued;
* Set new interim targets for the coming year and where appropriate, agree new outcomes;
* Review any interim targets set by the education provider;
* Review any existing Personal Budget arrangements including the statutory requirement to review any arrangements for Direct Payments;
* Review any transition plan that is in place.

Reviews must be undertaken in partnership with the young person/parent and must take account of their views, wishes and feelings, including their right to request a Personal Budget.

Professionals across education, health and care must co-operate with local authorities during reviews.

For Looked After children the annual review should, if possible and appropriate, coincide with one of the reviews in their Care Plan and in particular the Personal Education Plan (PEP) element of the Care Plan.

Local authorities must also review and maintain an Education, Health and Care Plan when a young person has been released from custody. The responsible local authority must involve the young person in reviewing whether the Plan still reflects their needs accurately and should involve the youth offending team in agreeing appropriate support and opportunities.

The Education, Health and Care Plan review at Year 9, and every review thereafter, should include a focus on preparing for adulthood. It can be helpful for reviews before Year 9 to have this focus too.

**10. Inter-relationship with Other Plans**

**10.1 Adult Services Statutory Care and Support Plans**

For disabled children who are likely to have needs when they turn 18, then under the Care Act 2014, the local authority must undertake a transitions assessment if it considers it will benefit the individual in them doing so. This is even if the child is not receiving any current services. The Act does not specify a specific age, prior to 18, at which an assessment can be requested, but the phrase 'significant benefit' is used by which the local authority can decide if the young person or his/her carer would benefit from an assessment.

The assessment is expected to identify what outcomes the service user wants to achieve, what their needs are in the present and what they are likely to be when they turn 18. Advice and information must also be provided about what services exist to either support needs or to reduce them – this includes information on resources deemed as being outside 'formal' services.

If the local authority deem that an assessment is not required, then this must be put in writing to the service user, and information about local advice services provided.

When an assessment takes place, the local authority is expected to produce a care and support plan at its conclusion, that the young person or adult carer has been closely involved in formulating in order to achieve their identified outcomes. This plan will have to be reviewed at regular intervals.

The Act recognises that there are likely to be several agencies involved in a young person’s or carer’s life. Therefore, the Act gives local authorities a legal responsibility to cooperate, and to ensure that all the correct people work together to get the transition right. It also allows for multiple assessments by different agencies to be combined to save assessment after assessment from having to take place.

Similarly, a young person’s care and support plan could easily become part of an Education, Health and Care Plan, if the young person already has one.

Further details are outlined in **Section 11, Transitions from Children’s to Adults’ Services**.

**10.2 Care Plans for Looked After Children**

Where a Looked After child is being assessed for SEN it is vital to take account of information set out in their Care Plan. SEN professionals must work closely with other relevant professionals involved in the child's life to ensure that the child's Education, Health and Care Plan works in harmony with their Care Plan and adds to, but does not duplicate, information about how education, health and care needs will be met.

The assessment must be carried out by the authority where the child lives (i.e. is ordinarily resident), which may not be the same as the authority that looks after the child. If a disagreement arises, the authority that looks after the child, will act as the ‘corporate parent’ in any disagreement resolution.

It is the Looked After child’s social worker (in close consultation with the Virtual School Head in the authority that looks after the child) that will ultimately make any educational decision on the child’s behalf. However, the day-to-day responsibility for taking these decisions should be delegated to the carer who will advocate for the Looked After child and make appeals to the First-tier Tribunal (SEN and Disability) as necessary.

For Previously Looked After Children, the SEN assessment should be aware of, and take into account, any factors relating to the child's previous looked after status that are relevant. The child's carer with parental responsibility will ultimately make any educational decision on the child’s behalf but should be offered support and guidance from the VSH who might also advocate on the child's behalf where necessary.

Once placed in a school the child's progress will be monitored and promoted by the Designated Teacher who will need to be aware of the child's looked after legal status, contact arrangements and the child's Care Plan including the level of authority delegated to the named carer.

The Designated Teacher has a wide range of responsibilities, including:

* The development and implementation of the children's PEP and ensuring all other staff in the school are aware of the plan and are working to it;
* Safeguarding;
* Ensuring children who are entitled to Premium Pupil Funding are attracting it and that it is being used to support and benefit Looked After and Previously Looked After Children as intended and this is reflected in the PEP;
* Advising and supporting teachers and other school staff in whole school approaches that enable Looked After and Previously Looked After Children to thrive and achieve;
* Promoting positive home and school links;
* Monitoring the children's progress against their peers.

For a child in a stable, long-term foster placement it may well be appropriate for the carer to take on the responsibility of managing a Personal Budget but this will need careful case-by-case consideration.

**10.3 Children in Need**

For all children who have social care plans, e.g. a Child in Need Plan, the social worker should co-ordinate any outward facing plan with other professionals. Where there are specific Child Protection concerns resulting in action under Section 47 of the Children Act 1989, careful consideration should be given to how closely the assessment processes across education, health and care can be integrated, in order to ensure that the needs of vulnerable children are put first.

Education, Health and Care Plan reviews should be synchronised with social care plan reviews, and must always meet the needs of the individual child.

**11. Transitions from Children's to Adults' Services**

Children’s services must continue to be provided until adult provision has started or a decision is made that the young person’s needs do not meet the eligibility criteria for adult care and support following a Transition assessment.

The transition from children’s to adult services should take place at a time that is appropriate for the individual. This is particularly important where young people’s assessed needs do not meet eligibility criteria for adult services. Transition to adult services for those with EHC plans should begin at an appropriate annual review and in many cases should be a staged process over several months or years.

Where young people aged 18 or over continue to have EHC plans under the Children and Families Act 2014, and they make the move to adult care and support, the care and support aspects of the EHC plan will be provided under the Care Act. The statutory care and support plan must form the basis of the ‘care’ element of the EHC plan.

Under the Care Act 2014 all young people going through the transition process are entitled to independent advocacy.

The Local Offer must include relevant information and advice on local provision and how to receive an assessment for transition to adult care and support.

For social care provision specified in the Education, Health and Care Plan, existing duties on social care services to assess and provide for the needs of disabled young people continue to apply. Where the young person is over 18, the care element of the Education, Health and Care Plan will usually be provided by adult services. However, where it will benefit a young person with an Education, Health and Care Plan, local authorities have the power to continue to provide children’s services past a young person’s 18th birthday for as long as is deemed necessary. This can continue until the Education, Health and Care Plan is no longer maintained.

Local authorities and their partners must work together to ensure effective and well supported transition arrangements are in place; that assessment, planning and review processes for both Care Plans, Transition Plans and Education, Health and Care Plans are aligned; plans are person-centered; that there is effective integration with health services, and that there is a good range of universal provision for inclusion in the Local Offer. Young people and their families should not be expected to repeatedly provide duplicate information to different services, or to attend numerous reviews, or receive support that is not co-ordinated and joined up.

Transitions Assessments for adult care or support **must** consider:

* Current needs for care and support;
* Whether the young person is likely to have needs for care and support after they turn 18; and
* What are their desired outcomes?
* If so, what those needs are likely to be and which are likely to be eligible needs.

Transitions Assessments can be combined with other assessments, or where other agencies are involved and doing their own assessment, they can be undertaken jointly.

Having carried out a transition assessment, the local authority must give an indication of which needs are likely to be regarded as eligible needs so the young person understands the care and support they are likely to receive once children’s services cease. Where a young person’s needs are not eligible for adult services, local authorities must provide information and advice about how those needs may be met and the provision and support that young people can access in their local area.

The local authority and relevant partners should consider building on a transition assessment to create a person-centred transition plan that sets out the information in the assessment, along with a plan for the transition to adult care and support, including key milestones for achieving the young person or carer’s desired outcomes.

Where a transition assessment identifies needs that are likely to be eligible, local authorities should consider providing an Indicative Personal Budget so that young people have an idea of how much their care and support will cost when they enter the adult system. This is particularly important if young people with Education, Health and Care Plans are already exercising their statutory right to a Personal Budget as any adult with eligible needs will have a care and support plan which must include a Personal Budget. Young people with Education, Health and Care Plans may also consider the transition to adult services a good opportunity to start exercising their right to start receiving their Personal Budget as a direct payment.

In the case of care leavers with disabilities, the Staying Put Guidance states that local authorities may choose to extend foster placements beyond the age of 18. All local authorities must have a Staying Put policy to ensure transition from care to independence and adulthood that is similar for care leavers to that which most young people experience, and is based on need and not on age alone.

**12. Funding Issues - Ordinary Residence**

All children receiving services under the Children Act 1989 are ordinarily resident in the Local Authority area that has arranged their services. This is also the case when those services include a placement in another local authority area.

This Section takes into account the amendments to the Care and Support statutory guidance in December 2016 that reflected the findings of the Supreme Court in the case of R v Secretary of State [2015] (UKSC46 Cornwall) which particularly applied to adults who lack capacity in terms of making a decision as to where they live and Looked After Children transitioning to adult social care and other accommodation.

When a child who has been placed in another area reaches the age of transition, and is deemed eligible for on-going services under the Care Act 2014 they may or may not remain ordinarily resident in the placing Local Authority area.

The first determining factor is whether or not they continue to need accommodating in a residential home, hospital, supported living scheme or shared lives scheme. If this is the case then under Section 39 of the Care Act they remain ordinarily resident in the Local Authority that placed them.

If they do not require specialist accommodation, the Shah test applies. These deeming provisions relating to specific types of accommodation are included in the Care Act to ensure that a Local Authority is not able to ‘export its responsibility for providing necessary accommodation by exporting the person who is in need of it’.

The Shah test is the means by which consistent and lawful decisions about ordinary residence are made - see **Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England**.

There are 4 steps to the Shah test. However, if a person is deemed to lack capacity the first step does not apply:

* Is the person voluntarily living in the area;
* The person’s connection with the area, (viz. family, friends, work, education and professional support networks);
* The duration of their residence there;
* Their wishes and feelings – all decisions must consider the views and wishes of the person in relation to the above, and where this is not clearly possible, any decision must be made in the person’s best interests and consider the impact on their Wellbeing on any decision made.

See **DHSC, Care and Support Statutory Guidance** and *‘Case studies; where a person lacks capacity to decide where to live’.*

**13. Ceasing to Maintain an Education, Health and Care Plan**

The local authority may cease to maintain an Education, Health and Care Plan for a child/ young person only if:

* The authority is no longer responsible for the child/ young person; or
* The authority determines that it is no longer necessary for the plan to be maintained.

‘No longer necessary’ can include where the child/ young person no longer requires the special educational provision specified in the Education, Health and Care Plan. When deciding whether a young person aged 19 or over no longer needs the special educational provision specified in the Plan, the local authority must take account of whether the education or training outcomes specified in the Education, Health and Care Plan have been achieved. The local authority must not cease to maintain the Education, Health and Care Plan simply because the young person is aged 19 or over.

The circumstances where a local authority is ‘no longer responsible’ for the young person include:

* A young person aged 16 or over leaves education to take up paid employment (including employment with training but excluding apprenticeships);
* The young person enters higher education;
* A young person aged 18 or over leaves education and no longer wishes to engage in further learning;
* The child or young person has moved to another local authority area.

Where a child/ young person of compulsory school or participation age – i.e. under the age of 18 – is excluded from their education or training setting or leaves voluntarily, the local authority must not cease their Education, Health and Care Plan, unless it decides that it is no longer necessary for special educational provision to be made for the child/ young person in accordance with an Education, Health and Care Plan. The focus of support should be to re-engage the child/ young person in education or training as soon as possible and the local authority must review the Plan and amend it as appropriate to ensure that the child/ young person continues to receive education or training.

Where a young person aged 18 or over leaves education or training before the end of their course, the local authority must not cease to maintain the Education, Health and Care Plan unless it has reviewed the Plan to determine whether the young person wishes to return to education or training, either at the educational institution specified in the Plan or elsewhere. If the young person does wish to return to education or training, and the local authority thinks it is appropriate, then the local authority must amend the Education, Health and Care Plan as necessary and must maintain the Plan. The local authority should seek to re-engage the young person in education or training as soon as possible.

Where a local authority is considering ceasing to maintain a child/ young person’s Education, Health and Care Plan it must:

* Inform the child/ young person/parent that it is considering this and consult with them;
* Consult the education institution named in the Education, Health and Care Plan.

Where, following the consultation, the local authority decides to cease to maintain the Education, Health and Care Plan, it must notify the child/ young person/parent, the institution named in the Education, Health and Care Plan and the responsible CCG of that decision. The local authority must also notify the child/ young person/parent of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support, and disagreement resolution services.

Support should generally cease at the end of the academic year, to allow young people to complete their programme of study. In the case of a young person who reaches their 25th birthday before their course has ended, the Education, Health and Care Plan can be maintained until the end of the academic year in which they turn 25 (or the day the apprenticeship or course ends, or the day before their 26th birthday if later). It is important that a child or young person’s exit from an Education, Health and Care Plan is planned carefully, to support smooth transitions and effective preparation for adulthood.

Where a young person aged 18 or over is in receipt of adult services, the local authority should ensure that adult services are involved in and made aware of the decision to cease the young person’s Education, Health and Care Plan. Where the care part of an Education, Health and Care Plan is provided by adult services because the person is 18 or over, the Care Plan will remain in place when the other elements of the Education, Health and Care Plan cease. There will be no requirement for the young person to be re-assessed at this point, unless there is reason to re-assess him or her for health and social care because their circumstances have changed.

Where the young person/parent disagrees with the decision to cease their Education, Health and Care Plan, they may appeal to the Tribunal (see **Section 15, Resolving Disagreements**). The local authority must continue to maintain the Education, Health and Care Plan until the time has passed for bringing an appeal or, when an appeal has been registered, until it has been concluded.

**14. Young Carers and Parent Carers of Disabled Children**

**Young Carers**

Under the Young Carers (Needs Assessment) Regulations 2015, a local authority must carry out a young carer’s needs assessment in a manner which is appropriate and proportionate to the needs and circumstances of the young carer to whom it relates.

The assessment needs to take into account:

1. The young carer’s age, understanding and family circumstances;
2. The wishes, feelings and preferences of the young carer;
3. Any differences of opinion between the young carer, the young carer’s parents and the person cared for, with respect to the care which the young carer provides (or intends to provide); and
4. The outcomes the young carer seeks from the assessment.

Before the assessment starts the local authority must provide the following people with clear information about the manner and form of the assessment, in order to enable the young person to participate with it as fully as possible:

1. The young carer;
2. The person cared for;
3. The young carer’s parents;
4. Any other person whom the young carer or a parent of the young carer requests should participate in the assessment.

The assessment must determine the following:

1. The amount, nature and type of care which the young carer provides (or intends to provide);
2. The extent to which this care is (or will be) relied upon by the family, including the wider family, to maintain the well-being of the person cared for;
3. Members of the extended family or friends, and how they can contribute to any identified outcomes;
4. Whether the care which the young carer provides (or intends to provide) impacts on the young carer’s well-being, education and development;
5. Whether any of the tasks which the young carer is performing (or intends to perform) when providing care are excessive or inappropriate for the young carer to perform having regard to all the circumstances, and in particular the carer’s age, sex, wishes and feelings;
6. Whether any of the young carer’s needs for support could be prevented by providing services to:
   1. The person cared for; or
   2. Another member of the young carer’s family;
7. What the young carer’s needs for support would be likely to be if the carer were relieved of part or all of the tasks the young carer performs (or intends to perform) when providing care;
8. Whether any other assessment of the needs for support of the young carer or the person cared for has been carried out;
9. Whether the young carer is a child in need;
10. Any actions to be taken as a result of the assessment;
11. The arrangements for a future review.

Furthermore, the local authority must consider the impact of the needs of the young carer’s family on the well-being of the young carer and any child in that family and, in particular, on their education and personal and emotional development.

The local authority must both take into account the outcome of any other assessment already undertaken in regard to the young carer, the person cared for or a member of the young carer’s family, as well as combine a young carer’s assessment with any other assessment being undertaken.

**Parent Carers**

Parent Carers have rights to stand-alone assessments under the Children and Families Act 2014.

Section 97 of the Children and Families Act 2014 requires local authorities to assess parent carers on the appearance of need or where an assessment is requested by the parent.

This is called a “parent carers needs assessment”.

Where requested, then the local authority must assess whether that parent has needs for support and, if so, what those needs are. The assessment must include an assessment of whether it is appropriate for the parent to provide, or continue to provide, care for the disabled child, in the light of the parent’s needs for support, other needs and wishes.

The assessment must also have regard to:

* The well-being of the parent carer; and
* The need to safeguard and promote the welfare of the child and any other child for whom the parent carer has parental responsibility.

Following assessment, the local authority must then decide;

* Whether the parent has needs for support;
* Whether the child has needs for support;
* And if so whether those needs could be met (wholly or partly) by services under Children Act 1989, s17.

Services to be provided for parent carers of disabled children can be included in Section H1 of the EHC plan, if the child has one.

As part of transition planning, the needs of carers should also be assessed or reviewed to explore the impact of changing circumstances on the carer.

Section 10 of the Care Act 2014 introduces key changes to the existing rights of carers for young people over 18 (i.e. those at the older end of the transitions process) to assessments. Carers no longer have to request an assessment to obtain one and they must be completed by the local authority on appearance of need.

The carer no longer has to establish that they are providing substantial care on a regular basis to qualify.

Instead, the only requirement is that the carer ‘may have needs for support – whether currently or in the future’.

The assessment must consider:

* Whether the carer is able/willing to provide and continue to provide the care;
* The impact on the carer's ‘well-being’ of their caring role;
* The outcomes the carer wishes in day-to-day life;
* Whether the carer works or wishes to work (and/or) to participate in education, training or recreation.

Local authorities must also consider whether the carer would benefit from preventative services, information and advice. There will be a national eligibility threshold to determine following the assessment whether the carer has eligible needs. Where a carer is assessed as having an eligible need, the local authority has a legal duty to meet those needs.

**15. Resolving Disagreements**

The following must be available for resolution of disputes:

* Local authorities **must** make available independent arrangements for:
  + Disagreement resolution arrangements for disagreements across special educational provision, and health and care provision in relation to Education, Health and Care (EHC) plans;
  + Independent mediation arrangements which parents and young people can use before deciding whether to appeal to the First-tier Tribunal (Special Educational Needs (SEN) and Disability) (‘the Tribunal’) and for health and social care complaints in relation to EHC plans.
* The **Complaints Procedure**;
* Appealing to the First-tier Tribunal (Special Educational Needs (SEN) and Disability) (‘the Tribunal’) (see the **GOV.UK website**) or making disability discrimination claims.

Services for the provision of Dispute Resolution Arrangements and Mediation Arrangements, whilst commissioned by it, must be independent of the local authority – no-one who is directly employed by the local authority can provide the services.

**Disagreement resolution arrangements** apply more widely. They cover all children and young people with SEN (not just those who are being assessed for or have an Education, Health and Care Plan), and a range of disagreements, including any aspect of SEN provision, health and social care provision, disagreements during the processes related to Education, Health and Care Needs Assessments and Education, Health and Care Plans, and disagreements between health commissioners and local authorities. Disagreement resolution services are voluntary and can be used at any time, if both parties agree, including while an Education, Health and Care Needs Assessment is being conducted, while the Education, Health and Care Plan is being drawn up, after the Plan is finalised or while an appeal is going through the Tribunal process.

**Mediation arrangements** apply specifically to parents and children/young people who are considering appealing to the Tribunal in relation to Education, Health and Care Needs Assessments and Education, Health and Care Plans, e.g. following a decision not to carry out an Education, Health and Care Needs Assessment, not to draw up an Education, Health and Care Plan, after a final or amended Education, Health and Care Plan is drawn up, following a decision not to amend an Education, Health and Care Plan, or a decision to cease to maintain an Education, Health and Care Plan. Parents and children/young people must contact a mediation adviser before registering an appeal with the Tribunal.

When the local authority sends the parent or child/young person notice of a decision which can be appealed to the Tribunal it must advise them of their right to go to mediation and that they must contact a mediation adviser before registering an appeal with the Tribunal. The notice must give the contact details of a mediation adviser, contain the timescales for requesting mediation and the contact details of any person acting on behalf of the local authority whom the parent or child/ young person should contact if they wise to pursue mediation. The notice should also make clear that parents’ and child/ young people’s right to appeal is not affected by entering into mediation.

If the parent or child/ young person decides to proceed with mediation then the local authority must ensure that a mediation session takes place within 30 days of the mediation adviser informing the local authority that the parent or child/ young person wants to go to mediation, although it may delegate the arrangement of the session to the mediator. Parents or children/young people do not have to pay for the mediation session(s). The local authority must attend the mediation.

**Registering an appeal with the First-tier Tribunal (Special Educational Needs (SEN) and Disability**

Children/young people/parents have two months to register an appeal with the Tribunal (see **Special Educational Needs and Disability Tribunal, GOV.UK website**), from the date of the notice containing a decision which can be appealed or one month from the date of a certificate which has been issued following mediation or the parent or child/ young person being given mediation information, whichever is the later. Where it is fair and just to do so the Tribunal can accept appeals outside the two month time limit.

Parents and children/ young people can appeal to the Tribunal about:

* A decision by the local authority not to carry out an Education, Health and Care Needs Assessment or re-assessment (where the local authority has not carried out an assessment in the previous six months);
* A decision by a local authority that it is not necessary to issue an Education, Health and Care Plan following an assessment;
* The description of a child or young person’s SEN specified in an Education, Health and Care Plan, the special educational provision specified, the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified;
* An amendment to these elements of the Education, Health and Care Plan;
* A decision by a local authority not to amend an Education, Health and Care Plan following a review or re-assessment;
* A decision by a local authority to cease to maintain an Education, Health and Care Plan (the local authority has to maintain the plan until the Tribunal’s decision is made).

The Tribunal can dismiss the appeal, order the local authority to carry out an assessment, or to make and maintain an Education, Health and Care Plan, or to maintain a Plan with amendments. The Tribunal can also order the local authority to reconsider or correct a weakness in the plan, for example, where necessary information is missing.

**16. Further Information and Statutory Guidance**

**SEND: 19 to 25 year olds' entitlement to EHC plans**

**Special Educational Needs and Disability Code of Practice: 0 - 25 years Statutory Guidance for Organisations who work with Children and Young People with Special Educational Needs and Disabilities (revised January 2015)** - This statutory code contains: details of legal requirements that you must follow without exception and the statutory guidance that you must follow by law unless there’s a good reason not to.

**0 to 25 SEND code of practice: a guide for health professionals – Advice for clinical commissioning groups, health professionals and local authorities**

**DfE/DHSC Send Resources** - a range of resources to support the work on special educational needs and disability (SEND).

**Care and Support Statutory Guidance (GOV.UK)**, Statutory guidance to support local authorities implement the Care Act 2014.

**Children and Young People’s Continuing Care National Framework (DHSC, 2016)** - The process for assessing, deciding and agreeing continuing care for children with complex health needs.

**The Young Carers (Needs Assessment) Regulations (DOE, March 2015)**

**Carers Trust** - resources and information on young carers (including assessment tools).