



Department  
for Education



Department  
of Health

# **Consultation on transition to Education, Health and Care plans and the local offer**

**October 2013**

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## Summary

1. This consultation concerns implementation of aspects of Part 3 of the 2013 Children and Families Bill and the proposed new system for supporting children and young people with special educational needs (SEN). Specifically, it seeks views on:
  - how best to transfer children and young people currently in receipt of support through a statement or Learning Difficulty Assessment (LDA) to the new 0-25 Education, Health and Care (EHC) plan.
  - timescales for introducing the local offer.
2. The key features being proposed are:
  - From 1 September 2014, no new assessments for statements or LDAs will be offered by local authorities. New requests for an assessment of special educational needs after this point will be considered under the new legislation.
  - Transfer of all children and young people with existing statements to EHC plans is completed within three years; and young people with existing LDAs is completed within two years.
  - Local authorities must consult young people with SEN and parents of children with SEN to determine the best point within each year for them to transfer to the new system. They must have regard to the principles set out in the revised 0-25 SEN Code of Practice when writing EHC plans.
  - Local authorities must consult representative groups of children and young people with SEN and their parents to agree how transition of statements to EHC plans over the proposed three year period will be phased. This could either be at the beginning of a new Key Stage, at the beginning of a new educational stage (i.e. primary, secondary or further education), or earlier at the local authorities discretion.
3. It is essential that the rights of children and young people are protected during the transition. The proposals in this consultation seek to:
  - be responsive to the wishes of children, young people and their parents;
  - be as fair as possible to the children and young people involved;
  - enable children, young people and their families to gain the full benefits of the new system as quickly as is practicable; and
  - be achievable for local authorities and their education, health and care partners involved in the process.

## Background and context

4. Part 3 of the 2013 Children and Families Bill, currently before Parliament<sup>1</sup>, contains provisions that represent the biggest reforms to the special educational needs (SEN) system for 30 years. Subject to Parliamentary approval, the Bill is expected to receive Royal Assent in early 2014. To align with the academic year, we will bring the new legislation into force in England on 1 September 2014. This will be the beginning of a gradual and orderly transition to full implementation of the new system.
5. To help local areas prepare for implementation, the government is funding support from a range of voluntary and community sector partners, including a pathfinder champion in each region to share learning from the SEN pathfinder programme. The government is also making £9 million available to non-pathfinder local authorities in 2013-14 to help them develop their SEN systems and services ahead of the change.
6. We have consulted informally on these proposals with a variety of interested parties including representatives of local authorities, further education, the voluntary and community sectors.

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<sup>1</sup> More details are available on the [Parliament UK website](#).

## **Transferring children and young people with statements of SEN and Learning Difficulty Assessments to Education, Health and Care plans**

7. In 2012, 29,565 children were assessed for special educational needs and 28,635 were issued with a statement for the first time. Approximately a quarter of a million children and young people in England have statements of special educational needs or an LDA at any one time.
8. From 1 September 2014, no new assessments for statements or LDAs will be offered by local authorities. All new requests for an assessment of special educational needs will be considered under the new legislation and those requiring support will receive it through an EHC plan. The reformed mediation and appeals process, and the option of a personal budget for those with an EHC plan will also be available from this date.
9. Our expectation is that the overwhelming majority of children and young people with statements and LDAs will require EHC plans, unless local or individual circumstances have changed. Transferring children and young people to EHC plans in a way that maximises the benefits that they offer will be a significant undertaking. We want to be sure that this transition happens at a pace that is achievable and which maintains the quality of support both to children and young people making the transition and those still on the previous system.
10. To allow a gradual and orderly transition for those with existing statements or LDAs to the new EHC plan, there will be a period during which both the new and the old systems operate in tandem. During this period, we will make legal provision to ensure that children and young people continue to receive the support in their statement or LDA. The legal force of these documents will not be withdrawn until all children and young people have completed the transition. Relevant elements of the current Code of Practice and the LDA guidance will remain in force during the transition period.
11. To make transition responsive to the needs and wishes of those concerned, we will ensure young people with SEN and parents of children with SEN have a say in how the process operates.
12. The following sections set out our proposals for the overall pace of transition, the transfer process, and options for how it might be phased in order to meet our overarching principles and ensure a smooth transition.

## Consultation question

- **Some children and young people will be undergoing SEN assessments on the current system on 1 September 2014. Should that assessment result in a statement/LDA or an EHC plan? Please explain the reason for your opinion.**

## Pace of transition

13. The pace of transition needs to allow sufficient time for local authorities to manage the transfer to EHC plans in an appropriate way, but should not deny children and young people the benefits of the new system for longer than is necessary. We also want to minimise the period during which both the new and the old systems are operated in tandem.
14. The scale of the challenge to transfer all children and young people from statements/LDAs to EHC plans will vary by area, depending particularly on the number of children and young people involved. Pathfinder areas are well placed to make the change quickly. Some non-pathfinder local authorities are also well placed, and have told us they intend to make the change within a year of the legislation coming into force. However, many of those we consulted thought a period of two to three years in which to make the transition would be more achievable.
15. We therefore propose that:
- the transfer of all children and young people with existing statements to the new system of support of EHC plans be completed within three years; and
  - the transfer of all young people with existing LDAs be completed within two years.
16. This would mean that on 1 September 2016 legislation and guidance relating to LDAs would be repealed and LDAs would cease to have effect; and on 1 September 2017, legislation and the current Code of Practice relating to statements would be repealed and they would cease to have effect.

## Consultation questions

- **Do you agree that the overall period for transition from statements to Education, Health and Care plans should be three years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.**
- **Do you agree that Learning Difficulty Assessments should be phased out within two years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.**

## The process for transition

17. We propose that local authorities determine the best point in any given year for the transition review to take place, but that this should be in place of the annual review. In determining this, local authorities would be required to consult with the young person or parents of the child transferring to an EHC plan in order to take account of the child/young person's needs and the wishes of their parents as well as their own capacity and the capacity of other professionals to engage effectively in the transition. In most cases, the transfer will take place at the point the statement/LDA was due to be reviewed.
18. If we are to realise the benefits of the new EHC plan, the transfer must be more than simply a re-badging of existing statements/LDAs. To ensure that the EHC plans are of high quality, we propose that local authorities have regard to the principles in section 7.9 of the revised 0-25 SEN Code of Practice<sup>2</sup> when writing new plans.
19. The normal expectation is that children and young people will move onto an EHC plan. However, as with reviews under the current system, the outcome of the transition process might be a decision that a statutory plan is not necessary. While there may be valid reasons for a child or young person no longer to require statutory support (for example, where special educational provision beyond what is normally available is no longer needed), we would expect the vast majority of children and young people with statements of SEN and LDAs to transfer to an EHC plan.
20. Where a local authority decides that statutory support is no longer required and does not transfer a child or young person to an EHC plan, parents and young people will have the right to appeal that decision to the First-tier Tribunal. The support provided

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<sup>2</sup> A draft version is available on the [e-consultation section of the DfE website](#).

through the statement of SEN or LDA will have to be maintained until after the Tribunal makes a decision.

21. During the three year transition period, we propose to limit the right to request a new assessment for an EHC plan to new entrants only. However, there may be specific cases where it is right for a parent or young person to request a faster transfer to the new EHC plan. We think that these judgements are best made locally, on a case by case basis and should be agreed by exception.

## Consultation questions

- **Do you agree that local authorities, following consultation with young people and parents, should determine the best point in any given year to transfer a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, and that this should replace the usual annual review?**
- **Do you agree that where a child or young person makes the transfer from a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, their plan should be written using the principles set out in section 7.9 of the revised 0-25 SEN Code of Practice?**
- **Do you agree that the right to request an Education, Health and Care Plan should be limited to new referrals during the three year transition period? If not, why not?**

## Phasing the transition

22. To ensure that arrangements for transition reflect local circumstances, we propose to require local authorities to work with children, young people, parents, providers and other local partners to agree the order in which children and young people transfer from statements/LDAs to EHC plans, and to publish a local transition plan which is then updated at least annually during the period.

23. In order to ensure that local authorities are taking broadly comparable approaches, we propose setting some broad national parameters. We have identified two possible approaches to phasing the transfer of statements to EHC plans, and have proposed a single approach for the transfer of LDAs to EHC plans.

## **Options for phasing the transfer for children/young people with statements**

### **Option 1: Transfer to EHC plans at end of Key Stage**

- This approach would set a clear and transparent structure for managing the transition, which local plans would need to be based upon.
- Children and young people with statements would transfer during the last year of their current Key Stage - i.e. Reception, year 2, year 6, year 9 and year 11.
- For children in year 3, who would not reach the end of Key Stage 2 within the proposed three year transition period, local authorities would determine the best point for them to transfer.
- Local authorities would be able to move faster than this if they have the capacity to do so.
- Transferring before each new Key Stage would ensure that appropriate support is in place for the next stage of the child/young person's education.
- Young people moving into further education would have their EHC plan in place by September 2015, at the point they start at the new institution.
- This option may be too demanding for some local authorities in the first year. The approach could be adapted to allow local areas to limit transfers to EHC plans in 2014/15 to children in year 11. However, while allowing transfers to be limited in the first year could be helpful, it could increase the pressure on local areas in the second and third years of the transition period.

- The following table illustrates the points at which children would transfer.

Key stage	School year
Early Years Foundation Stage	<b>R</b>
Key stage 1	1
	<b>2</b>
Key stage 2	3
	4
	5
	<b>6</b>
Key stage 3	7
	8
	<b>9</b>
Key stage 4	10
	<b>11</b>

The **solid shaded boxes** show the years in which children would transfer.

The **diagonal shading** shows years where children will not reach the end of the Key Stage within the proposed three year transition period. For these children, local authorities should determine the best point to transfer.

**Figure 1: Transfer to EHC plans at end of Key Stage**

### **Option 2: Transfer to EHC plans at end of current phase of education**

- This approach would also set a clear and transparent structure for managing the transition, which local plans would need to be based upon.
- Children and young people with statements transfer during the last year of their current phase of education - i.e. before they enter primary school, secondary school or sixth form/further education.
- For children in years 1-3 and 7-8, who will not reach the end of their current phase of education within the proposed three year transition period, local authorities would determine the best point for transfer.
- Local authorities would be able to move faster than this if they have the capacity to do so.
- This approach would ensure momentum during the transition period but would allow local areas greater flexibility than Option 1.

- This option may also be too demanding for some local authorities in the first year. The approach could be adapted to allow local areas to limit transfers to EHC plans in 2014/15 to children in year 11. However, while allowing transfers to be limited in the first year could be helpful, it could increase the pressure on local areas in the second and third years of the transition period.
- The following table illustrates the points at which children would transfer.

Phase of Education	School year
Early Years Foundation Stage	<b>R</b>
Primary	1
	2
	3
	4
	5
	<b>6</b>
Secondary	7
	8
	9
	10
	<b>11</b>

The **solid shaded boxes** show the years in which children would transfer.

The **diagonal shading** shows years where children will not reach the end of their current phase of education within the proposed three year transition period. For these children, local authorities should determine the best point for transfer.

**Figure 2: Transfer to EHC plans at end of current phase of education**

## **Proposed approach to transfer for young people with Learning Difficulty Assessments**

24. Young people with LDAs may only have a limited amount of time remaining in the education system. Many will complete their course within the proposed transition period; others will be keen to benefit from the enhanced protections of an EHC plan as soon as possible.
25. We propose, therefore, that young people with LDAs can request to transfer to an EHC plan at any point within the two year transition period. The numbers of young people in receipt of an LDA are much smaller than those with statements, so this should be achievable for local authorities.

26. Local authorities should make sure young people are aware of this option and ensure they have access to independent advice to support them in deciding whether or not to request an EHC plan.

### **Consultation questions**

- **Do you agree that government should establish a broad framework setting out the slowest acceptable rate of transfer from statements of SEN to Education, Health and Care plans? If not, why not?**
- **If yes, which of the two proposed frameworks for transfer from statements to Education, Health and Care plans do you support? Why do you support this option?**
- **Do you agree that young people with Learning Difficulty Assessments should be able to request to transfer to an Education, Health and Care plan at any point during the proposed two year transition period? If not, why not?**

## Implementing the local offer

27. Under proposals in the Children and Families Bill, local authorities will be required to publish a local offer of services for children and young people with SEN. Local authorities will be required to involve children and young people with SEN and their parents in developing their local offer and in reviewing it so that it is responsive to local needs.

28. The broad requirements for the local offer have been known for some time. Indicative regulations and an indicative SEN Code of Practice were published in March 2013. Some elements of the local offer are already required by current legislation (e.g. duty to publish what provision they expect schools to make from their delegated budgets and what they expect to provide from their resources to support children with SEN; duty to publish a short breaks statement).

29. We want local authorities to produce and publish their local offers as quickly as possible. However, we also want to be sure that local authorities have devoted sufficient time to involving children and young people with SEN and their parents, and to cooperating with relevant services in developing their local offer.

30. We would welcome views on the following proposals.

### **Option 1: Introduce all local offer requirements from September 2014**

- Under this option, local authorities would be required to have a local offer in place on 1 September 2014, alongside the introduction of the new assessment and EHC planning process.

### **Option 2: Introduce all local offer requirements from April 2015**

- This option would relate the timing of the publication of the local offer to the financial year and fit more closely with the cycle for decisions on school and college funding.
- It would also allow local authorities additional time to involve children and young people with SEN and their parents in its development.

### **Option 3: Introduce the local offer progressively from September 2014**

- This option would require local authorities to prepare and publish a local offer containing the information they are currently required to publish under existing legislation in September 2014 with full information being published by September 2015 at the latest.

## Consultation questions

- **Which approach to implementing the local offer should be adopted? Please explain why.**
- **Please provide any further comments on the proposals within this consultation, or more generally about the transfer from the current system of support to the proposed new system.**



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