

10 Children and young people in specific circumstances

What this chapter covers

This chapter highlights particular groups of children and young people whose specific circumstances require additional consideration by those who work with them and support their special educational needs (SEN). It sets out information about managing their circumstances in order to achieve effective joined-up service provision that can help achieve good outcomes for them.

These groups include:

- looked after children
- care leavers
- children and young people with SEN and social care needs, including children in need
- children and young people educated out of area
- children and young people with SEN who are educated at home
- children and young people in alternative provision
- children and young people who have SEN and are in hospital
- children of service personnel
- children and young people in youth custody

Relevant legislation

Primary

The Children and Families Act 2014

The Chronically Sick and Disabled Persons Act 1970

The Children Act 1989

The Education Act 1996

The Crime and Disorder Act 1998

Section 20 of the Children and Young Persons Act 2008

The Apprenticeship, Skills and Learning Act 2009

The Equality Act 2010

The National Health Service Act 2006

Regulations

The Children Act 1989 – Guidance and Regulations Volume 3: Planning Transitions to Adulthood for Care Leavers

Education (Pupil Information) Regulations 2005

The Designated Teacher (Looked after Pupils etc) Regulations 2009

The Special Educational Needs and Disability (Detained Persons) Regulations 2015

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

Looked-after children

- 10.1 Children who are being accommodated, or who have been taken into care, by a local authority (i.e. under Section 20, or Sections 31 or 38 of the Children Act 1989) are legally defined as being ‘looked after’ by the local authority. Around 70% of looked after children have some form of SEN, and it is likely that a significant proportion of them will have an Education, Health and Care (EHC) plan. Children and young people on remand to youth detention accommodation are treated as looked after by their designated local authority under the terms of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (section 104(1)). Further information is provided in paragraphs 10.142 to 10.145.
- 10.2 Local authorities will have particular responsibilities for these children and will act as a ‘corporate parent’. The local authority **must** safeguard and promote the welfare of all children they are looking after.
- 10.3 All maintained schools and academies and free schools **must** appoint a Designated Teacher for looked after children. Where that role is carried out by a person other than the SEN Co-ordinator (SENCO), Designated Teachers should work closely with the SENCO to ensure that the implications of a child being both looked after and having SEN are fully understood by relevant school staff.
- 10.4 Local authorities **must** promote the educational achievement of the children they look after, regardless of where they are placed. The Children and Families Act 2014 requires every local authority to appoint an officer who is an employee of that or another authority to discharge that duty. This officer, often known as a Virtual School Head (VSH), will lead a virtual school team which tracks the progress of children

looked after by the authority as if they attended a single school. Special Educational Needs and Disabilities departments should work closely with the VSH as well as social workers to ensure that local authorities have effective and joined-up processes for meeting the SEN of looked after children.

- 10.5 Local authorities are required to act under care planning statutory guidance issued by the Secretary of State when exercising their social services functions with regard to the children they look after. This is set out in volume 2 of the Children Act 1989 guidance.
- 10.6 This means that a considerable amount of planning will be done around the care, health and education needs of looked after children. They will have a Care Plan, which sets out how the local authority will meet the care needs of the child, addressing all important dimensions of a child's developmental needs. These include health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self-care skills. The Care Plan will specifically include a Personal Education Plan (PEP) and a Health Plan (both are a statutory requirement) which will particularly assess and set out the child's education and health needs. It may be through making these assessments that a child's SEN will be identified.
- 10.7 Where a looked after child is being assessed for SEN it is vital to take account of information set out in the Care Plan. SEN professionals **must** work closely with other relevant professionals involved in the child's life as a consequence of his/her being looked after. These include the social worker, Designated Doctor or Nurse, Independent Reviewing Officer (IRO), VSH and Designated Teacher in school. This will ensure that the child's EHC plan works in harmony with his/her Care Plan and adds to, but does not duplicate, information about how education, health and care needs will be met. It is essential to involve the child, their carers and, where appropriate, their parents in the planning process. When referencing information contained within the Care Plan only information relevant to meeting the child's SEN should be included in the EHC plan. If in any doubt SEN professionals should discuss this with the social worker and, where appropriate, the child and their carers.
- 10.8 A significant proportion of looked after children live with foster carers or in a children's home and attend schools in a different local authority area to the local authority that looks after them. Local authorities who place looked after children in another authority need to be aware of that authority's Local Offer if the children have SEN. Where an assessment for an EHC plan has been triggered, the authority that carries out the assessment is determined by Section 24 of the Children and Families Act 2014. This means that 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, as described in Chapter 11.

- 10.9 It is the looked after child's social worker (in close consultation with the VSH 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.
- 10.10 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. (See Chapter 9).
- 10.11 The Care Planning Regulations specify the frequency with which Care Plans are reviewed. It is important to ensure the annual review of an EHC plan coincides with one of the child's Care Plan reviews. This could be done as part of the review of a child's PEP which feeds into the review of the wider Care Plan. Social workers and SEN teams will need to work closely together to ensure that transitions from being looked after to returning home are managed effectively, to ensure continuing provision.

Care leavers

- 10.12 Some children will cease to be looked after at 16 or 17 and others will continue to be looked after until their 18th birthday. (Some care leavers will remain living with their former foster carers past their 18th birthday in 'Staying Put' arrangements, but they are no longer looked after). Local authorities continue to have responsibilities to provide a Personal Adviser and to prepare a Pathway Plan. The Personal Adviser is there to ensure that care leavers are provided with the right kind of personal support, for example by signposting them to services and providing advice. The Pathway Plan plots transition from care to adulthood for care leavers up to the age of 25 if they remain in education and/or training or are not in employment, education or training and plan to return to education and/or training. In reviewing their arrangements for EHC needs assessment and EHC plan development local authorities should ensure good advanced planning involving the young person and Personal Adviser.

SEN and social care needs, including children in need

Children's social care

- 10.13 There is a statutory duty, under Section 17 of the Children Act 1989, for local authorities to safeguard and promote the welfare of 'children in need' in their area, including disabled children, by providing appropriate services to them. Services for disabled children provided under Section 17 will typically include short breaks for parent carers, equipment or adaptations to the home, and support for parents from

social workers, for example in support of parenting capacity. If a local authority determines that a disabled child needs support under Section 17, it **must** consider whether such support is of the type outlined in Section 2 of the Chronically Sick and Disabled Persons Act (CSDPA) 1970. Where it is, the local authority **must** provide that support. Where an EHC plan is being prepared for a disabled child or young person under the age of 18, any services to be provided under Section 2 of the CSDPA must be included in section H1 of the EHC plan. All other social care services, including services provided under Section 17 of the Children Act but not under Section 2 of the CSDPA must be included in Section H2 of the EHC plan. Chapter 9 gives further details on what to include in Sections H1 and H2 of the EHC plan, in the table after paragraph 9.69.

10.14 Following acceptance of a referral by the local authority children's social care service, a social worker should lead a multi-agency assessment under section 17 of the Children Act 1989. Local authorities have a duty to ascertain the child's wishes and feelings and take account of them when planning the provision of services.

10.15 The purposes of social care assessments are:

- to gather important information about a child and family
- to analyse their needs and/or the nature and level of any risk or harm being suffered by a child
- to decide whether the child is a child in need (Section 17 of the Children Act 1989) and/or is suffering significant harm (Section 47 of the Children Act 1989), and
- to provide support to address those needs to improve the child's outcomes

10.16 A good social care assessment supports professionals to understand whether a child has needs relating to their care or a disability and/or is suffering or likely to suffer significant harm. *Working Together to Safeguard Children 2013* sets out the process for managing individual cases which are referred to and accepted by children's social care. All assessments should be child centred, focused on outcomes, transparent, timely and proportionate to the needs of each child. The maximum timeframe for a social care assessment to conclude that a decision can be taken on next steps is 45 working days from the point of referral.

10.17 Local authorities with their partners should develop and publish local protocols for assessment which should set out how the needs of disabled children will be addressed in the assessment process and clarify how statutory social care assessments will be informed by and inform other specialist assessments including EHC needs assessments leading to an EHC plan.

- 10.18 Where there is an EHC needs assessment, it should be an holistic assessment of the child or young person's education, health and social care needs. EHC needs assessments should be combined with social care assessments under Section 17 of the Children Act 1989 where appropriate. This is explicit in *Working Together to Safeguard Children 2013*, which can be found on the GOV.UK website – a link is given in the References section under Introduction, and a webtext version is also available.
- 10.19 For all children who have social care plans 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, 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.
- 10.20 EHC plan reviews should be synchronised with social care plan reviews, and **must** always meet the needs of the individual child.

Power to continue children's social care services to those aged 18 to 25

- 10.21 Where a local authority has been providing children's social care services to a young person under the age of 18, and they have an EHC plan in place, local authorities can continue to provide these services on the same basis after the age of 18.
- 10.22 The local authority retains discretion over how long it chooses to provide these services, so long as 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.
- 10.23 This will enable local authorities to agree with young people when the most appropriate time for transition to adult services will be, avoiding key pressure points such as exams or a move from school to college. Poorly timed and planned transition to adult services will have a detrimental effect on achievement of outcomes and may result in young people requiring far longer to complete their education or leaving education altogether. This can have a negative impact on their health and care needs and it is essential that the transition between children's and adult's services is managed and planned carefully.
- 10.24 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. More guidance on planning the transition from children's to adult services can be found in Chapter 8, Preparing for adulthood from the earliest years.

- 10.25 Information on adult social care can be found in Chapters 8 and 9. Further information about preparing for transition can be found in the Preparing for Adulthood factsheet 'The Links Between the Children and Families Act 2014 and the Care Act'. A web link for this is given in the References section under Chapter 10.

Children and young people educated out of area

- 10.26 Where a child or young person being educated out of the local authority's area is brought to the local authority's attention as potentially having SEN, the home local authority (where the child normally lives) should decide whether to assess the child or young person and decide whether an EHC plan is required.
- 10.27 Where a child or young person being educated out of area has an EHC plan, the home local authority **must** ensure that the special educational provision set out in the plan is being made. They **must** review the EHC plan annually. Local authorities can make reciprocal arrangements to carry out these duties on each other's behalf.
- 10.28 If the child or young person is placed by a local authority at an independent special school, non-maintained special school or independent specialist provider, the local authority **must** pay the appropriate costs.
- 10.29 If it is a residential placement, so far as reasonably practicable, those placing the child or young person should try to secure a placement that is near to the child's home. However, in making this decision they **must** have regard for the views, wishes and feelings of the child or young person and their families about the placement. Where the local authority names a residential provision at some distance from the family's home the local authority **must** provide reasonable transport or travel assistance. The latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.

Children and young people with SEN educated at home

- 10.30 Under Section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Home education **must** be suitable to the child's age, ability, aptitude and SEN. Local authorities should work in partnership with, and support, parents to ensure that the SEN of these children are met where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention. Local authorities do not have a duty under section 22 of the Children and Families Act 2014 to assess every home educated child to see whether or not they have SEN. The high needs block of the Dedicated Schools Grant is intended to fund provision for all relevant children and young people in the authority's area, including home-educated children. Local authorities should fund the SEN needs of home-educated children where it is appropriate to do so. Guidance is available to local authorities from the Department

for Education on funding provision for home-educated children.

- 10.31 In cases where local authorities and parents agree that home education is the right provision for a child or young person with an EHC plan, the plan should make clear that the child or young person will be educated at home. If it does then the local authority, under Section 42(2) of the Children and Families Act 2014, **must** arrange the special educational provision set out in the plan, working with the parents. Under Section 19 of the Act, a local authority **must** have regard to the views, wishes and feelings of the child and his or her parents, or the young person.
- 10.32 In cases where the EHC plan gives the name of a school or type of school where the child will be educated and the parents decide to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan provided it is satisfied that the arrangements made by the parents are suitable. The local authority **must** review the plan annually to assure itself that the provision set out in it continues to be appropriate and that the child's SEN continue to be met (see Chapter 9). Where the local authority has decided that the provision is appropriate, it should amend the plan to name the type of school that would be suitable but state that parents have made their own arrangements under Section 7 of the Education Act 1996.
- 10.33 Where a child or young person is a registered pupil and the parent decides to home educate, the parent **must** notify the school in writing that the child or young person is receiving education otherwise than at school and the school **must** then remove the pupil's name from the admission register. If the school is a special school, the local authority **must** give consent for the child's name to be removed, but this should not be a lengthy or complex process. There is no provision in law for a 'trial period' of home education.
- 10.34 Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents. Parents should be encouraged to see this process as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine the parents' right to home educate.
- 10.35 Local authorities should not assume that because the provision being made by parents is different from that which was being made or would have been made in school that the provision is necessarily unsuitable. Local authorities should also consider using their power to help parents make suitable provision.
- 10.36 In some cases a local authority will conclude that, even after considering its power to provide support to home-educating parents, the provision that is or could be made

for a child or young person with an EHC plan does not meet the child or young person's needs. The local authority is required to intervene through the school attendance order framework 'if it appears...that a child of compulsory school age is not receiving suitable education'. The serving of a school attendance order is a last resort if all attempts to improve provision are unsuccessful. 'Suitable education' means efficient full-time education suitable to the child or young person's age, ability and aptitude and to any SEN he or she may have.

- 10.37 Parents may also home educate children who have SEN but do not have EHC plans. As with children and young people with EHC plans, local authorities should work with parents and consider whether to provide support in the home to help the parents make suitable provision. Information about the right to request an EHC needs assessment and the right to appeal should be available to all parents including those who are considering home education because they feel that the special educational support being provided in the school is insufficient to meet the child or young person's needs.
- 10.38 Young people may also be educated at home in order to meet the requirement to participate in education and training until the age of 18. Local authorities should involve parents, as appropriate, in the reviews of EHC plans of home-educated young people who are over compulsory school age.

Children with SEN who are in alternative provision

- 10.39 Local authorities **must** make arrangements where, for any reason, a child of compulsory school age would not otherwise receive suitable education. Suitable education means efficient education suitable to a child or young person's age, ability and aptitude and to any SEN he or she may have. This education **must** be full time, unless the local authority determines that, for reasons relating to the physical or mental health of the child, a reduced level of education would be in the child's best interests.
- 10.40 Where this education is arranged elsewhere than at a school it is commonly referred to as alternative provision. Alternative provision includes pupil referral units, alternative provision academies and alternative provision free schools. Local authorities **must** have regard to statutory guidance on alternative provision and on the education of children unable to attend school because of health needs. This guidance specifies that the education provided should be on a par with mainstream schools. The guidance is available on the GOV.UK website – see the References section under Chapter 10 for a link.
- 10.41 Local authorities, schools and post-16 education providers may commission alternative provision for other children and young people who face barriers to participation in mainstream education or training.

- 10.42 Alternative provision **must** be arranged in line with a child or young person's EHC plan. Local authorities may need to amend a plan where, for example, a child or young person is no longer attending the institution named on it. They should also consider whether the EHC plan needs to be reviewed to ensure that the child or young person's SEN will be appropriately supported. Where alternative provision is specified in a child or young person's EHC plan the local authority **must** arrange that provision.
- 10.43 Where a child or young person in alternative provision has SEN that are not specified in an EHC plan then the alternative provider should employ a graduated response to these needs, as set out in Chapter 6.
- 10.44 The support that will be provided for children and young people with SEN, with or without an EHC plan, should be agreed as part of the commissioning process. To allow for continuity of support, mainstream and alternative providers should promptly share appropriate information on a child or young person's SEN. Commissioners of alternative provision should ensure that there is a clear plan for pupils' progression and keep the arrangements under regular review so that they can be adapted in response to the needs of the child or young person. Where an alternative provider has concerns that a child or young person may have SEN that are not being appropriately supported then they should raise their concerns with the commissioner and agree how these potential needs will be assessed and supported.
- 10.45 Alternative provision includes providers of online learning. Whilst it will not be appropriate in every case, online learning can offer certain benefits where there are significant barriers to a child or young person physically attending an educational institution. For example, online learning can provide for real-time teaching support, allow access to a broader curriculum and offer opportunities for students to interact with each other. Decisions on whether to arrange online learning are for the local authority or institution commissioning the provision to make, although they should take into account the views of professionals, parents or carers and the child or young person.
- 10.46 In making this decision, commissioners should give particular consideration to the support that will be provided for children or young people's SEN, as well as their social, emotional and physical development. Where feasible, online learning should be accompanied by opportunities for face-to-face contact with peers. Any decision to use online learning from a child or young person's own home should include an assessment of his or her suitability for independent learning and home circumstances.

Children and young people in alternative provision because of health needs

- 10.47 In line with local authorities' duty to arrange suitable education as set out above, children and young people who are in hospital or placed in other forms of alternative provision because of their health needs should have access to education that is on a par with that of mainstream provision, including appropriate support to meet the needs of those with SEN. The education they receive should be good quality and prevent them from slipping behind their peers. It should involve suitably qualified staff who can help pupils progress and enable them to successfully reintegrate back into school as soon as possible. This includes children and young people admitted to hospital under Section 2 of the Mental Health Act 2007.
- 10.48 Young people with health needs who are over the school leaving age should also be encouraged to continue learning. Under Raising the Participation Age legislation, local authorities have duties to promote effective participation in education or training for 16- and 17-year-olds. Useful information on Raising the Participation Age can be found on the GOV.UK website – a link is given in the References section under Chapter 10.
- 10.49 When a child or young person with an EHC plan is admitted to hospital, the local authority that maintains the plan should be informed so that they can ensure the provision set out in the plan continues to be provided. If necessary, the EHC plan may be reviewed and amended to ensure it remains appropriate and the child's SEN continue to be met.
- 10.50 Where children or young people with health needs are returning to mainstream education then the local authority should work with them, their family, the current education provider and the new school or post-16 provider to produce a reintegration plan. This will help ensure that their educational, health and social care needs continue to be met. Where relevant, a reintegration plan should be linked to a child or young person's EHC plan or individual healthcare plan.
- 10.51 It is important that medical commissioners and local authorities work together to minimise the disruption to children and young people's education. In order for local authorities to meet their duties, medical commissioners should notify them as soon as possible about any need to arrange education, ideally in advance of the hospital placement. For example, where a child of compulsory school age is normally resident in a local authority but is receiving medical treatment elsewhere, it is still the duty of the 'home' local authority to arrange suitable education if it would not otherwise be received.
- 10.52 In certain circumstances, local authorities' duties may require them to commission independent educational provision. Such providers would need to be funded directly

by the home local authority. Local authorities' duties do not specifically require them to commission a particular educational provider. Medical commissioners should, therefore, avoid making commitments to fund education without the local authority's agreement. Decisions about educational provision should not, however, unnecessarily disrupt a child or young person's education or treatment.

Children of Service personnel

- 10.53 The Children's Education Advisory Service (CEAS) within the Ministry of Defence provides advice and guidance to Service parents, educational establishments and local authorities on educational issues relating to Service children, including issues relating to SEN. Service Children's Education (SCE) provides mainstream education for Service children in some overseas locations. As the education, health and social care resources available overseas are different from the UK, MoD services complete an MoD Assessment of Supportability Overseas (MASO) for all Service children with complex needs before an overseas posting is agreed. Personal Budgets agreed in the UK cannot be transferred to SCE locations overseas.
- 10.54 Children whose parent(s) are Service personnel may face difficulties that are unique to the nature of their serving parent's employment. These needs may arise from:
- **service induced mobility:** Service personnel may relocate more often than the rest of the population and, sometimes, at short notice. Such transitions should be well managed to avoid Service children with SEN experiencing delays in having their needs assessed and met
 - the **deployment** of serving parents to operational arenas, while not constituting SEN in itself, may result in a Service child experiencing anxiety, dips in educational performance and/or emotional difficulties. Children may also be affected similarly by siblings' deployment

Action to take in respect of Service children with SEN

- 10.55 In having regard to this Code of Practice and in meeting the aspirations of the Armed Forces Covenant, which attempts to eliminate or mitigate some of the potential disadvantages faced by Service families, all those with statutory responsibilities towards Service children with SEN should ensure that the impact of their policies, administrative processes and patterns of provision do not disadvantage such children because of their Service-related lifestyle.
- 10.56 In respect of Service children, schools and other education providers should:
- ensure that mechanisms are in place to enable effective and timely receipt and dispatch of all relevant records for Service children with SEN moving between schools in the UK and overseas, to enable effective planning,

ideally in advance of the child's arrival in school. Maintained schools **must** transfer information, including SEN information, about pupils to other schools in the UK (maintained or independent) in accordance with the Education (Pupil Information) Regulations 2005. To support the transfer of information on Service children with SEN the MoD has developed the Pupil Information Profile for Service children, which includes details of a child's SEN. It is available for use by schools across the UK and overseas and is available from the Children's Education Advisory Service (CEAS) on the GOV.UK website (see the References section under Chapter 10 for a link)

- ensure that all reviews for Service children with SEN explicitly consider those Service-related issues (for example, Service-induced mobility) relevant to the outcomes of those reviews
- ensure that access to appropriate assessments, interventions and provision is determined solely on the nature, severity and complexity of the needs presented by Service children with SEN and not related to the amount of time they have left in a particular school
- consider how any funds received through the Service Pupils' Premium might be used to improve their overall approaches to meeting the SEN of Service children

10.57 Local authorities should:

- when commissioning services for children and young people with SEN, take account, with their partners (for example, Health and Social Care), of the particular needs of any Service communities within their boundaries for a Service child with SEN, consider the likely impact on the child's needs and the provision made to meet them of any relevant Service-related issue. When carrying out an assessment of a Service child's needs or making an EHC plan, local authorities **must** seek advice from CEAS, acting on behalf of the Secretary of State for Defence
- when children move home across local authority boundaries, transfer the EHC plan from the 'old' local authority to the 'new' local authority within 15 days from when they first become aware of the move. The new local authority will have to tell the parents within 6 weeks of the transfer of the EHC plan whether the authority will bring forward the annual review of the plan and whether it intends to reassess the child. From the transfer of the plan the new local authority **must** arrange the special educational provision set out in it, although a child may have to be placed in a school other than the one named on the plan if the distance of the move makes it impractical

to send the child to the named school

- work with each other, particularly those which have bases within their areas, and CEAS, so that special educational provision can be made as soon as a child arrives in the new authority. Anticipated moves should not be used to delay the provision of appropriate support for children or the carrying out of needs assessments
- when considering provision for Service children with SEN or disabilities, use all relevant evidence, including statements made for Service children in Wales and Northern Ireland, as well as Co-ordinated Support Plans made for them in Scotland and the Service Children's Assessment of Need (SCAN) completed for them by SCE
- when Personal Budgets are agreed with mobile Service parents, work with sending/receiving local authorities and the parents concerned to ensure that adequate, appropriate and timely arrangements are made in the receiving authority to ensure continuity of those elements of the overall provision purchased for Service children with SEN by the Personal Budgets allocated

First-tier Tribunal (SEN and Disability)

- 10.58 In reaching decisions about appeals from Service parents, the First-tier Tribunal (SEN and Disability) should consider, on the basis of the evidence available to them, the extent to which Service-induced mobility has had, is having and will have an impact on the appropriateness and effectiveness of the provision offered by local authorities and that requested by the parents.

Further information

- 10.59 Further information and advice about the education of Service children with SEN, in England or elsewhere in the world, including the public funds available for boarding placements and the services available in SCE schools overseas, is available from the Children's Education Advisory Service (CEAS) information page on the GOV.UK website – see the References section under Chapter 10 for a link.

Children and young people with SEN who are in youth custody

Relevant legislation

Primary

Sections 70-75 of the Children and Families Act 2014, together with sections 28, 31, and 77

The National Health Service Act 2006

The Equality Act 2010

Section 2 of the Chronically Sick and Disabled Persons Act 1970

Section 17 of the Children Act 1989

Section 39A of the Crime and Disorder Act 1998

Section 562B of the Education Act 1996

Regulations

The Special Educational Needs and Disability (Detained Persons) Regulations 2015

The Special Education Needs and Disability Regulations 2014

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (Part 3 and Schedule 3)

What this section covers

- 10.60 This section outlines roles and responsibilities in relation to children and young people aged 18 and under who have been remanded or sentenced by the Courts to relevant youth accommodation in England. Relevant Youth Accommodation refers to a Young Offender Institution, Secure Training Centre, Secure Children's Home or Secure College. The term 'detained person' is used throughout to describe these children and young people and includes those who are voluntarily detained in a Secure Children's Home. The term 'appropriate person' is used throughout this section to describe either the detained person's parent, where the detained person is a child, or the young person, where the detained person is a young person. 'Parent' includes any person who is not a parent of the child but has parental responsibility or who cares for him or her (see Glossary).

- 10.61 This section does not apply to children and young people serving their sentence in the community, to persons detained in a Young Offenders Institution for 18- to 21-year-olds or to persons detained in the adult estate.
- 10.62 Unless otherwise stated a reference to ‘a local authority’ means the home local authority. For a detained person with an EHC plan this is the local authority which maintained their EHC plan when they were in the community. In custody a request for an assessment of post-detention EHC needs **must** be made to the home local authority, meaning where the detained person is ‘ordinarily resident’.
- 10.63 ‘The person in charge of the relevant youth accommodation’ includes the Governor, Director or Principal in charge of the accommodation.

Introduction

- 10.64 Local authorities, Youth Offending Teams (YOTs), health commissioners and those in charge of the relevant youth accommodation **must** have regard to this Code of Practice and this section should be read alongside the guidance in other chapters.
- 10.65 The principles underpinning the Code (see Chapter 1) are relevant when supporting detained persons to achieve the best possible educational and other outcomes and to prepare for adulthood and independent living. They support:
- the participation of the detained person and the child’s parents in decisions relating to their individual support. Local authorities **must** have regard to their views, wishes and feelings and **must** provide them with information, advice and support to enable them to participate
 - the timely identification and assessment of special educational needs and provision of high quality support at the earliest opportunity whether they have an EHC plan or not
 - greater collaboration between education, health and social care with a focus on continuity of provision both when a detained person enters custody and after their release. Custodial sentences are often short, it is therefore important for decisions to be made as soon as possible to ensure appropriate provision is put in place without delay

Summary of statutory requirements

- 10.66 The statutory requirements relating to children and young people detained in youth custody are:
- Local authorities **must not** cease an EHC plan when a child or young person enters custody. They **must** keep it while the detained person is detained and

they **must** maintain and review it when the detained person is released (see paragraphs 10.121 to 10.122 and paragraph 10.136)

- If a detained person has an EHC plan before being detained (or one is completed while the detained person is in the relevant youth accommodation) the local authority **must** arrange appropriate special educational provision for the detained person while he or she is detained (see paragraphs 10.123 to 10.127)
- If the EHC plan for a detained person specifies health care provision, the health services commissioner for the relevant youth accommodation **must** arrange appropriate health care provision for the detained person (see paragraph 10.128 to 10.131). (The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations confer responsibility on the NHS Commissioning Board (NHS England) for commissioning health services in prisons and custodial establishments.)

10.67 For a detained person with an EHC plan, appropriate special educational and health care provision is the provision specified in the plan. If it is not practicable to arrange the provision specified in the EHC plan, special educational and health provision corresponding as closely as possible to that in the EHC plan **must** be arranged. If it appears to the local authority that the special educational provision in the EHC plan is no longer appropriate, the local authority **must** arrange provision it considers appropriate. Likewise, if it appears to the health care commissioner for the relevant youth accommodation that the health care provision in the EHC plan is no longer appropriate, that commissioner **must** arrange health care provision that appears appropriate to it. Local authorities should also consider whether any social care needs identified in the EHC plan will remain while the detained person is in custody and provide appropriate provision if necessary. For example, if a detained child is looked after, the existing relationship with their social worker should continue and the detained child should continue to access specific services and support where needed.

10.68 Where a detained person does not have an EHC plan, the appropriate person or the person in charge of the relevant youth accommodation can request an assessment of the detained person's post-detention EHC needs from the local authority. The appropriate person can appeal to the First-tier Tribunal (SEN and Disability) if they disagree with the decisions of the local authority about certain matters.

10.69 Anyone else, including YOTs and the education provider in custody, has a right to bring the detained person to the notice of the local authority as someone who may have special educational needs and the local authority **must** consider whether an assessment of their post-detention EHC needs is necessary.

10.70 YOTs and those in charge of the relevant youth accommodation **must** co-operate with the local authority to ensure that these duties can be fulfilled and **must** have regard to this Code of Practice.

Sharing information

10.71 All detained persons entering the youth justice system are assessed by the YOT using the approved Youth Justice Board (YJB) assessment tool. As part of the assessment process, YOTs will seek information from a number of sources, including local authorities, education institutions and health providers. The local authority, education institution and health provider should respond to this request as soon as possible.

10.72 The YOT **must** notify the local authority when a child or young person aged 18 and under is detained. If the detained person has an EHC plan the local authority **must** send it to the YOT, the person in charge of the relevant youth accommodation and the detained person's health commissioner within five working days of becoming aware of the detention. Information from the EHC plan will feed into the YOT assessment. The information sharing protocols described in the section in Chapter 9 (9.32 to 9.34), on 'Sharing information' and the protocols on disclosure of EHC plans (9.211 to 9.213) apply in the same way to EHC plans which are kept for detained persons (under Regulation 17 of the Special Educational Needs and Disability (Detained Persons) Regulations 2012).

10.73 If a detained person has SEN and this is known to the local authority, the local authority should provide all available information to the YOT, including details of any assessments the detained person has had and any needs which have been identified. The YOT will then share this information with the detained person's custodial case manager (using the established information sharing process via the YJB's placements team) to inform the work of key personnel (such as the health provider or SENCO for the relevant youth accommodation) who will be involved in delivering the detained person's sentence plan. Information about a detained person's educational history, including any SEN, should be reflected in the pre-sentence report if deemed relevant to the court case. The court may ask for sight of the detained person's EHC plan.

Education for children and young people in youth custody

10.74 The local authority **must** promote the fulfilment of the detained person's learning potential while they are in custody and on their release, whether they have an EHC plan or not.

10.75 The detained person's YOT will remain the key point of contact between the person in charge of the relevant youth accommodation and the local authority, although the

local authority may also need to discuss the provision directly with the person in charge of the relevant youth accommodation (as well as the education provider).

10.76 Each detained person entering custody will undergo an educational assessment, including an assessment of literacy, numeracy and, where necessary, a screening to identify whether further assessments to identify SEN are required. This assessment also relies on information from the local authority provided by the YOT and will include any current EHC plan for the detained person (which the local authority **must** send to both the YOT and to the person in charge of the relevant youth accommodation). The results of assessments should enable the education provider to develop an individual learning plan for the delivery of education for each detained person.

10.77 Special educational provision should be put in place as soon as possible. Providers in relevant youth accommodation should:

- meet the educational needs of all detained persons, including those with SEN, whether they have an EHC plan or not
- ensure SEN provision, identification and support of SEN follows the model (for schools and colleges) set out in Chapters 6 and 7 of this Code
- have staff who are suitably qualified to support this (such as SENCOs), and make referrals to other specialist support where this is appropriate
- liaise and co-operate with the local authority where a detained person has an EHC plan

Healthcare for children and young people in youth custody

10.78 NHS England is the commissioner of healthcare services in prisons and custodial establishments (with the exception of some emergency care, ambulance, out of hours and 111 services) and manages contracts with healthcare providers to ensure the delivery of agreed services for detained persons.

10.79 Standards for the healthcare of detained persons in secure settings are available from the website of the Royal College of Paediatrics and Child Health (see the References section under Chapter 10 for a link). These standards include guidance on entry and assessment, care planning, physical and mental health, transfer and continuity of care and multi-agency working. The relevant NHS England provider/secure establishment is expected to consider these standards when organising health care for those under 18 years old in secure settings.

10.80 All children and young people entering custody will be screened and assessed using the Comprehensive Health Assessment Tool (CHAT) which includes a screening for speech, language and communication needs. If a detained person has an EHC plan when they enter custody, the information in the plan as well as information from the local authority provided by the YOT, should inform or supplement this assessment. This should lead to an individual health care plan for each detained person.

Requesting an EHC needs assessment for a detained person

10.81 Appropriate support after release will help the resettlement process. Therefore, if the detained person has SEN, the appropriate person, or the person in charge of the relevant youth accommodation, has a right to ask the local authority to arrange an assessment of the detained person's post-detention education, health and care needs.

10.82 In addition, anyone can bring a detained person to the attention of their local authority if they are concerned that the detained person has or may have SEN and the local authority **must** determine whether an assessment of their post-detention needs is necessary. This could include, for example, carers, health and social care professionals, YOTs and those responsible for education in custody. YOTs, for example, should consider bringing a detained person to the attention of the local authority if the approved YJB assessment tool raises concerns about a detained person who may have SEN. This should be done with the knowledge and, where possible, the agreement of the appropriate person.

10.83 The purpose of assessing a detained person's post-detention education, health and care needs is to consider whether they may need support from an EHC plan on their release from custody. EHC needs assessments can take up to 20 weeks to complete, so enabling the assessment to begin in custody will help ensure that appropriate support is in place as soon as possible after the detained person has been released, in addition to ensuring support is in place in custody if the EHC plan is finalised while they are detained.

Considering whether an assessment of post-detention education, health and care needs is necessary

10.84 Following a request for an assessment of post-detention education, health and care needs, or if the detained person has been brought to its attention, the local authority **must** determine whether an assessment is necessary. When considering a request the local authority **must** consult the appropriate person and the person in charge of the relevant youth accommodation.

10.85 Where a local authority considers that the detained person may have SEN and is considering whether an assessment of their post-detention EHC needs is necessary,

it **must** notify:

- the appropriate person (and **must** inform them of their right to express written or oral views and submit evidence to the local authority)
- the person in charge of the relevant youth accommodation (informing them of their right to express written or oral views and submit evidence to the local authority, including evidence from the education provider)
- the home Clinical Commissioning Group (CCG) (with responsibility for commissioning the detained person's health services before he or she entered the relevant youth accommodation)
- NHS England (since it has commissioning responsibility for health services for detained persons while they are in the relevant youth accommodation)
- local authority officers responsible for social care for children or young people with SEN
- where a detained person is registered at a school, the headteacher (or equivalent)
- where the detained young person is registered at a post-16 institution, the principal (or equivalent)
- where a detained person is registered at a Pupil Referral Unit, the principal (or equivalent)
- the YOT responsible for the detained person

10.86 The local authority **must** secure an assessment of post-detention needs if the detained person has or may have SEN and it may be necessary for special educational provision to be made in accordance with an EHC plan on their release from detention.

10.87 To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

- evidence of the detained person's academic attainment, rate of progress and engagement with education (such as exclusions and absence)
- information about the nature, extent and context of the detained person's SEN
- evidence of the action already being taken by the school or post-16 institution the detained person was attending prior to detention to meet their SEN

- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided, and
- evidence of the detained person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies including healthcare professionals in the relevant youth accommodation

10.88 Local authorities may develop criteria to guide them in deciding whether it is necessary to carry out an assessment of post-detention EHC needs and following this whether to issue an EHC plan. However, local authorities **must not** apply a 'blanket' policy, for example, refusing to assess where a detained person has a relatively long sentence or where they have not been engaged in education for a number of years. The local authority **must** consider cases individually and be prepared to depart from any local criteria where it is appropriate.

Advice and information for an assessment of post-detention education, health and care needs

10.89 As with EHC needs assessments for children and young people in the community, an assessment of post-detention education, health and care needs should be based on a co-ordinated assessment and planning process which puts the detained person, and the child's parent, at the centre. Unless otherwise stated the principles and timescales for assessing detained persons mirror those in the community, as detailed in Chapter 9.

10.90 When securing a detained person's needs assessment the local authority **must** consult the detained person, and where they are a child, the child's parent. The local authority **must** take into account their views, wishes and feelings and **must** ensure that they are fully able to participate in the decision making process.

10.91 Advice and information **must** be sought as follows:

- Educational advice and information from:
 - The head teacher or principal of the school or post-16 or other institution which the detained person attended prior to detention
 - Where this is not available the authority **must** seek advice from a person with experience of teaching children or young people with SEN, or knowledge of the provision which may meet the detained person's needs

- Where advice from a person with relevant teaching experience or knowledge is not available and the detained person did not attend an educational institution prior to entering detention, the local authority **must** seek educational advice and information from a person who was responsible for educational provision for the detained person prior to detention
 - If the detained person is either vision or hearing impaired, or both, the educational advice and information **must** be given after consultation with a person who is qualified to teach pupils or students with these impairments
- Medical advice and information from a health care professional identified by the home CCG. This should include advice and information gathered from professionals with a role in relation to the detained person's health, including the custodial healthcare provider
- Psychological advice and information from an educational psychologist. The educational psychologist should consult any other psychologists known to be involved with the detained person
- Advice from the person in charge of the relevant youth accommodation, including advice and information from the education provider in that accommodation
- Advice from the YOT responsible for the detained person
- Social care advice and information from or on behalf of the local authority, including, if appropriate, children in need or child protection assessments, or information from a looked after child's care plan. In some cases, a detained person may already have a child in need assessment or a child protection plan from which information should be drawn for the EHC needs assessment
- Advice and information in relation to preparation for adulthood and independent living where the young person would have been in or beyond Year 9 (if not for their detention)
- From any person requested by the appropriate person, where the local authority considers it reasonable to do so (for example, they may suggest consulting a GP or other health professional)
- Any other advice and information which the local authority considers appropriate for a satisfactory assessment (for example, in the case of a

looked after child, from the Virtual School Head in the authority that looks after the child)

10.92 The local authority **must** give those providing advice copies of any representations made by the appropriate person, and any evidence submitted by or at the request of the appropriate person. The local authority may also pass on the representations and evidence provided from the person in charge of the relevant youth accommodation, where the person in charge consents to this.

10.93 The whole process, from the point when an assessment is requested (or a detained person is brought to the local authority's attention) until the final EHC plan is issued, **must** take no more than 20 weeks (subject to the exemptions set out paragraph 10.97).

10.94 The following specific requirements also apply:

- Local authorities **must** give their decision in response to any request for an EHC needs assessment within 6 weeks from when the request was received or the point at which a detained person was brought to the their attention
- When local authorities request information as part of the EHC needs assessment process, those supplying the information **must** respond in a timely manner and within 6 weeks from the date of the request
- If a local authority decides, following an EHC needs assessment, not to issue an EHC plan, it **must** inform the appropriate person within 16 weeks from the request for an EHC needs assessment. It **must** also notify those listed in paragraph 10.71

10.95 When notifying the appropriate person of a decision not to issue an EHC plan, the local authority **must** also notify them of their right to appeal that decision and the time limit for doing so. It **must** also provide information concerning mediation and the availability of SEN information and advice. The local authority should ensure that the appropriate person is made aware of the resources available to meet SEN and disability in the community within mainstream provision and through other support as set out in the Local Offer.

10.96 If, following an EHC needs assessment, a local authority decides to issue an EHC plan, the appropriate person **must** be given 15 days, beginning with the day on which the plan was served, to consider and provide views on a draft EHC plan, to ask for a particular school or other institution to be named in it and to request a meeting with the local authority to discuss the plan, if they wish.

- 10.97 The whole process should be completed within 20 weeks from the date of the request. There may be instances where it may not be reasonable to expect local authorities and other partners to comply with the 20 week time limit. The Special Educational Needs and Disability (Detained Persons) Regulations (2015) set out specific exemptions. These include where:
- the educational institution is closed for at least 4 weeks, (which may delay the submission of information from the school or other institution)
 - exceptional personal circumstances affect the detained person or the child's parent. Being detained in youth custody in itself is not an exceptional personal circumstance
 - the child's parent is absent from the area for a period of at least 4 weeks
- 10.98 The appropriate person 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 should be completed within their prescribed periods wherever possible, regardless of whether exemptions have delayed earlier elements.
- 10.99 In deciding whether an EHC plan is necessary for the detained person on release from custody, the local authority should take into account whether the special educational provision required to meet their needs can reasonably be provided from within the resources normally available to schools and post-16 institutions or whether an EHC plan may be needed to ensure that support is provided and co-ordinated effectively for them on release from custody. Where, in the light of an assessment of the detained person's EHC needs, it is necessary for special educational provision to be made in accordance with an EHC plan, the local authority **must** prepare a plan.
- 10.100 Local authorities should take into account that NHS England is the commissioner of health services for detained persons, whereas on release the Clinical Commissioning Group (CCG) where the detained person is ordinarily resident will have responsibility for commissioning the health care element of the EHC plan.
- 10.101 The views of the home CCG will be crucial to finalising the health content of the EHC plan. The commissioning of the healthcare element of the plan and the duty to ensure it is delivered falls on that CCG after the detained person is released from custody. Although the home CCG does not have statutory commissioning responsibility while the detained person is in the relevant youth accommodation, as a local partner the home CCG **must** co-operate with the local authority that is carrying out an assessment of the detained person's post-detention EHC needs. The views of the home CCG **must** inform the final plan. The local authority and the home CCG should work together with the providers of healthcare in the secure setting to ensure any relevant healthcare information is available to inform the assessment process.

Preparing an EHC plan for a detained person in custody

10.102 In preparing a detained person's EHC plan, local authorities and those contributing to the preparation of the plan should follow the principles and requirements set out in paragraph 9.61.

10.103 As in the community, the format of an EHC plan will be agreed locally. However, as a statutory minimum, EHC plans **must** include the sections set out below, which **must** be separately labelled from each other using the letters below. The content of each is covered in detail in Chapter 9:

Section A: The views, interests and aspirations of the detained person and the child's parent.

Section B: The detained person's special educational needs.

Section C: The detained person's health needs which are related to their SEN.

Section D: The detained person's social care needs which are related to their SEN or to a disability.

Section E: The outcomes sought for the detained person on release. This should include outcomes for adult life. The EHC plan should also identify the arrangements for the setting of shorter term targets by the school, college or other education or training provider.

Section F: The special educational provision required by the detained person on release.

Section G: Any health provision reasonably required on release by the learning difficulties or disabilities which result in the detained 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 on release for a detained person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.

Section H2: Any other social care provision reasonably required on release by the learning difficulties or disabilities which result in the detained person having SEN. This will include any adult social care provision being provided on release to meet a young person's eligible needs (through a statutory care and support plan) under the Care Act 2014.

Section I: The name and type of the school, post-16 institution or other institution to be attended by the detained person on release and the type of that institution (or,

where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the detained person on release).

Section J: Where any provision is to be secured by a Personal Budget post-detention, 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 EHC needs assessment **must** be attached (in appendices). There should be a list of this advice and information.

- 10.104 In addition, where the detained person would have been in or beyond Year 9, the EHC plan **must** include (in sections F, G, H1 or H2 as appropriate) the provision required by the detained person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.
- 10.105 The appropriate person's right to request a particular school, college or other institution in the EHC plan and the process for doing so are the same as set out from paragraph 9.78. The local authority should ensure information is accessible for the detained person.

Provision of information, advice and support

- 10.106 When securing a detained person's EHC needs assessment the local authority **must** consider whether the child or the appropriate person requires any information, advice and support in order to enable them to take part effectively in the assessment. If it considers that such information, advice or support is necessary the local authority **must** provide it.
- 10.107 Further guidance on the provision of information, advice and support is covered in Chapter 2.

Finalising the EHC plan

- 10.108 On completion, the local authority **must** send the finalised EHC plan to the appropriate person, the person in charge of the relevant youth accommodation, the YOT, the governing body, proprietor or principal of any school or other institution named in the EHC plan, the home CCG and NHS England. The YOT should share the plan with the detained person's custodial case manager to inform the work of key personnel who will be involved in delivering the detained person's sentence plan

including the health and education providers. Where the EHC needs assessment process is completed after release, the local authority **must** send the finalised EHC plan to the appropriate person, the governing body, proprietor or principal of any school or other institution named in the EHC plan and the CCG, and should send the finalised plan to the YOT.

- 10.109 Where an EHC plan has been issued while the detained person is still in custody the local authority **must** keep the EHC plan while they remain in custody and arrange the provision in the plan (as set out in paragraphs 10.123 to 10.127). Whilst undertaking these duties they should ensure the least possible disruption to the detained person's education and health support, given that they will already be taking part in a learning programme and receiving any necessary health care that will be based on their assessed needs when they entered into custody.
- 10.110 When the detained person is released the local authority **must** maintain the EHC plan and review it as soon as possible following the guidance in the section on 'Review on release from youth custody' see (paragraphs 10.134 to 10.138).

Partial assessment on entry to or exit from custody

- 10.111 Where a detained person is part way through an assessment of special educational needs or the development of an EHC plan on entry to custody, the local authority **must** continue and complete the process following the guidance set out in this section.
- 10.112 The majority of children and young people in custody will be serving short sentences. In most cases the EHC needs assessment process and plan will not have been completed before the detained person is released. The local authority **must** continue and complete the process in the community following the guidance in Chapter 9 (separate provisions apply if the person is released to a new authority – these are addressed in paragraphs 10.139 to 10.141).
- 10.113 The timeframes and process for completing an incomplete assessment do not start afresh because a detained person is released or a child or young person is detained. For example, the local authority **must** ensure that any EHC plan is finalised with 20 weeks. It **must** also ensure that a decision on whether or not to secure an EHC needs assessment is made within 6 weeks and that any decision not to secure an EHC plan is made with 16 weeks.
- 10.114 To achieve this, the Regulations allow a local authority to treat steps taken in respect of an EHC needs assessment in the community as satisfying steps which are required to be taken for a detained persons EHC needs assessment. (Regulation 15(2) and (5) of the Special Educational Needs and Disability (Detained Persons) Regulations 2015.) This is referred to in the Special Educational Needs and

Disability Regulations 2015 ‘the 2015 Regulations’ as ‘comparable requirements’. This is intended to provide local authorities with flexibility. For instance, where a local authority has provided notification to the relevant bodies that it intends to carry out an assessment (under Regulation 4(2) of the Special Educational Needs and Disability Regulations 2014 ‘the 2014 Regulations’) there may be no need to do so again under the 2015 Regulations, where the local authority is satisfied that this is reasonable. Where a local authority has consulted a parent or young person at the outset of the process (under Regulation 3 of the 2014 Regulations) there may be no need to do so again following a detention, where the local authority considers this reasonable. A local authority may decide that, given the change in circumstances, it would be better to repeat a step. For example, the authority would like to have input from the youth offending team and the person in charge of the relevant youth accommodation. It is essential that detained persons are assessed as promptly as possible (in detention or upon release) to ensure that any required provision is in place as soon as possible.

Transfer between places of relevant youth accommodation

- 10.115 The YOT **must** notify the local authority when a detained person has been transferred from one place of relevant youth accommodation to another. If the detained person has an EHC plan the local authority **must** send it to the person in charge of the new relevant youth accommodation within five working days of them becoming aware of the transfer. NHS England should ensure that the new custodial healthcare provider receives the EHC plan.
- 10.116 If the detained person is part way through an assessment or the development of an EHC plan when they transfer from one place of relevant youth accommodation to another, the local authority and the appropriate CCG **must** continue and complete the process following the guidance set out in this section. The local authority **must** ensure that any EHC plan is finalised within 20 weeks. Anything already completed in relation to an EHC needs assessment by the person in charge of the relevant youth accommodation, including information and advice received, may be treated as having been completed in relation to the new relevant youth accommodation.

Appeals and mediation

- 10.117 The appropriate person during the period of detention can appeal to the First-tier Tribunal (SEN and Disability) about:
- a decision by a local authority not to carry out an EHC needs assessment
 - a decision by a local authority that it is not necessary to issue an EHC plan following an assessment

- the school or other institution or type of school or other institution (such as mainstream school/college) specified in the plan as appropriate for the detained person on their release from custody or that no school or other institution is specified

10.118 Before registering an SEN appeal with the Tribunal the appropriate person **must** consider mediation unless an exemption applies. Further information on mediation and the Tribunal is set out in Chapter 11 on Resolving Disagreements.

10.119 The local authority should work with the YOT and the person in charge of the relevant youth accommodation to ensure that the mediation information session can take place and that the detained person is able to participate in mediation if they choose to go to mediation. When a parent is a party to the mediation, the child (with the agreement of the parent, the mediator and the person in charge of the relevant youth accommodation) may also attend. Young persons placed in relevant youth accommodation may not be able to leave the establishment due to security risks. Most mediation sessions should therefore take place in the relevant youth accommodation and in some cases it may be appropriate for mediation to take place via a video link. However, in such cases, careful consideration should be given as to whether this is accessible for the detained person. The person in charge of the relevant youth accommodation **must** co-operate and support this process by providing local authorities with access to the detained person for the purpose of mediation sessions. The reasonable expenses of the detained person's parent attending mediation **must** be met by the local authority.

10.120 The person in charge of the relevant youth accommodation should also ensure arrangements are in place to enable the young person to attend a Tribunal where an appeal is made. Again, there may be security considerations involved and in some cases a Tribunal hearing could take place via a video link but only where this is accessible the young person.

Keeping an EHC plan and arranging special educational provision

10.121 Where a detained person has an EHC plan at the time of entering custody, or where an EHC plan is finalised in custody, local authorities **must** keep the plan while the detained person is in custody and **must** arrange appropriate special educational provision while they are in custody. They should work closely with the person in charge of the relevant youth accommodation who **must** co-operate with the local authority to enable them to fulfil this duty.

10.122 While the detained person is in custody the local authority **must not** amend the EHC plan, carry out a reassessment or cease to maintain the EHC plan.

- 10.123 The local authority **must** arrange the special educational provision specified in the EHC plan. In practice the educational provision in relevant youth accommodation, including for additional support that detained persons may need as part of an EHC plan, will be delivered by an education provider under contractual arrangements with the YJB or custodial operator and commissioned and funded centrally. Local authorities should work closely with providers to arrange the provision. The local authority should seek to do this as soon as possible on the detained person entering custody, using the custodial establishment's and YOT's existing planning procedures wherever possible.
- 10.124 It may not always be practicable to deliver the exact provision set out in the EHC plan, for example, if the EHC plan specifies a named individual in the detained person's home area to provide a service. Where provision is not currently available within the relevant youth accommodation it does not necessarily mean that it is impracticable for it to be arranged. Where it is not practicable to arrange specified provision in the EHC plan, the local authority **must** arrange provision as close as possible to it and should work with the person in charge of the relevant youth accommodation and the education provider to identify how to do so, focusing on the outcomes in the plan. Local authorities should ensure that the appropriate person is fully involved in the process.
- 10.125 If it appears to the local authority that the special educational provision specified in the plan is no longer appropriate for the person, where for example the detained person's needs have changed since their last EHC plan review or they have previously unidentified needs, the local authority **must** arrange special educational provision that is appropriate for the detained person. Before deciding that the educational provision set out in the EHC plan is no longer appropriate, local authorities should seek appropriate professional advice and work with the custodial case manager, the YOT, the person in charge of the relevant youth accommodation (as well as the education provider) and the appropriate person to review the detained person's needs taking into account the information in the EHC plan, the literacy and numeracy assessment and any other assessment of the detained person's needs. On release, the local authority **must** review the EHC plan and if the special educational provision specified in the plan is no longer appropriate this should also trigger a reassessment of the child or young person's needs.
- 10.126 Speech and language therapy is usually recorded as education provision in section F of EHC plans (see paragraph 9.74 for further information) and where it is, it **must** be arranged by the local authority. However in practice, when undertaking this duty in relevant youth accommodation, the local authority should work with NHS England, and any providers of speech and language therapy who are contracted and funded centrally by NHS England, to deliver it within the framework of services already provided to the establishment.

10.127 Custodial sentences for detained persons are often short. It is therefore important for decisions to be made as soon as possible to enable the provision to be put in place without delay. Local authorities and the person in charge of the relevant youth accommodation should also ensure that the process for making decisions is clear, robust and transparent. Local authorities should keep records of the decisions they have made and the reasons for those decisions and make those records available to the appropriate person, the YOT and the education or training institution the detained person will be attending upon release.

Arranging health care provision for detained children and young people with EHC plans

10.128 Where a detained person has an EHC plan that specifies healthcare provision, NHS England **must** arrange appropriate health care provision while the detained person is in custody. In practice this will be carried out by a health services provider under its contractual arrangements with NHS England. NHS England should make the arrangements below when commissioning health services in the relevant youth accommodation.

10.129 It may not always be practicable to deliver the exact provision as set out in the EHC plan if, for example, the plan is specific to local health professionals or services. Where it appears impracticable to provide exactly what is in the plan, NHS England's commissioning arrangements **must** ensure that the health care provider arranges provision as close as possible to that in the plan, if it is still appropriate. In practice, although the judgment about what is practical falls to NHS England, its views will be influenced by the advice from the provider.

10.130 If it appears that the health care support specified in the plan is no longer appropriate, NHS England's commissioning arrangements **must** ensure that the health care provider arranges appropriate alternative healthcare support for the detained person. This may be the case if, for example, the health needs have changed since the detained person's last EHC plan review. Again, the assessment of what is no longer appropriate will be informed by the provider's views, although the judgment ultimately falls to NHS England. If it appears that the health care support specified in the plan is no longer appropriate this should trigger a reassessment of the detained person's EHC needs upon release.

10.131 The Comprehensive Health Assessment Tool should remain key when identifying what health provision in the plan can and should continue to be provided for detained persons with an EHC plan in custody. It may also pick up additional health needs. The process for making decisions about health provision should be clear, robust and transparent taking into account the information in the EHC plan, the CHAT assessment and any other assessment of the detained person's needs.

Monitoring provision in custody

- 10.132 The local authority **must** promote the fulfilment of the detained person's learning potential whilst they are in custody and on their release. Local authorities should use the EHC plan to actively monitor progress towards these and other long term outcomes.
- 10.133 Where a detained person is in custody within a year of the last review of their EHC plan, the local authority should conduct a monitoring meeting and continue to do so, as a minimum, every 12 months. The monitoring meeting should consider the special educational and health provision arranged for the detained person in custody and the appropriateness of the provision in the EHC plan in light of the detained person's progress or changed circumstances. If the provision in the EHC plan appears inappropriate the local authority should follow the guidance set out in paragraph 10.125. The local authority can request that the person in charge of the relevant youth accommodation or YOT convenes the monitoring meeting. Further guidance on best practice is given in Chapter 9, Education, health and care needs assessments and plans.

Review on release from youth custody

- 10.134 To support a detained person's transition from custody, the local authority and YOT should seek to review the detained person's educational progress and their continuing special educational and health needs in preparation for their release, using the YOT's existing release planning procedures wherever possible.
- 10.135 The YOT **must** notify the local authority that a detained person is due to be released from the relevant youth accommodation in order to inform the resettlement process and should ensure all external agencies are aware of their responsibilities under the proposed release plan, and condition of licence or Notice of Supervision. The local authority should inform any relevant community services that the detained person is due to be released.
- 10.136 If the detained person had an EHC plan before entering custody or was issued with an EHC plan while they were in custody, the responsible local authority **must** keep the plan while the detained person is in custody and **must** review it as soon as possible on release. The review **must** focus on the detained person's progress towards achieving the outcomes specified in the EHC plan and local authorities **must** follow the process set out in Chapter 9, Education, Health and Care needs assessments and plans. Local authorities should work with the YOT to take account of the condition of licence or Notice of Supervision when reviewing the EHC plan. If the EHC plan was issued while the detained person was in custody the review should specifically consider sections I and J of the EHC plan.

- 10.137 Professionals across education, health and social care are expected to co-operate with local authorities during reviews and the relevant healthcare commissioner **must** agree the healthcare provision to be included in a revised plan.
- 10.138 Local authorities, CCGs and NHS England **must** co-operate to ensure the health needs of detained persons whilst in custody and on release are considered in developing the local Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy.

Moving to a new local authority on release

- 10.139 If the detained person is due to be released to a new local authority the YOT **must** notify the local authority where the detained person is ordinarily resident (the old local authority) and the new local authority in whose area the YOT expects the detained person to live on release from the relevant youth accommodation. The old authority **must** send the EHC plan to the new authority within 5 working days of being informed of the move. The new authority will become responsible for maintaining the plan and for securing the special educational provision specified in it.
- 10.140 Where the detained person's move results in a new CCG becoming responsible for the detained person, the new local authority **must** send the EHC plan to the new CCG within 5 working days of becoming responsible for maintaining the plan. Where it is not practicable for the new CCG to secure the health provision specified in the EHC plan, the new CCG **must**, within 15 working days of receiving a copy of the EHC plan, request the new local authority to make an EHC needs assessment or review the EHC plan. The new local authority **must** comply with any request.
- 10.141 If the detained person is released to a new local authority before the EHC needs assessment process has been completed the new local authority should consider whether it needs to carry out an EHC needs assessment. The new authority should take account of the fact that the old authority decided to carry out an EHC needs assessment (and should seek information concerning the assessment from the old local authority) when making its decision. The new local authority is not bound by the requirements specified in paragraph 10.113. The new local authority should draw on the expertise and knowledge of the YOT to continue the assessment process. (See Chapter 9 for more information about children and young people moving between local authorities).

Looked after children remanded or sentenced to custody

- 10.142 For the purposes of this section a looked after child refers to a child or young person who is under 18.
- 10.143 Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, children remanded to relevant youth accommodation become looked after children for the

period for which they are remanded. This includes those who had previously been accommodated under the Children Act 1989. However, if a looked after child, who has previously been accommodated by a local authority under section 20 of the Children Act, is remanded to relevant youth accommodation he or she will no longer be looked after under section 20 as they are no longer voluntarily accommodated by the local authority. (A child who is looked after by a local authority as defined by Section 22 of the Children Act 1989 means a child who is voluntarily accommodated by a local authority or who is subject to a care order or interim care order.) Children who offend and receive a custodial sentence remain looked after if they were under a care order immediately prior to conviction.

- 10.144 If a looked after child is living in an out-of-authority placement prior to going into custody, the request for an assessment **must** be carried out by the local authority where the child lived before entering custody (i.e. where they are ordinarily resident), which may not be the same as the local authority that looks after the child. The CCG where the child is ordinarily resident has responsibility for the health element of the EHC needs assessment and the development of the health content of the plan. If a disagreement arises, the local authority that looks after the child, will act as the 'corporate parent' in any disagreement resolution, as described in Chapter 11.
- 10.145 If a looked after child was placed out of authority before going into custody and enters custody with an EHC plan, or one is finalised while they are in custody, the local authority where the child lived before entering custody (i.e. where they are ordinarily resident), **must** arrange appropriate special educational provision for the detained person while he or she is detained. Further information on support for looked after children is set out at the beginning of this chapter.

Transition from youth justice to a custodial establishment for adults

- 10.146 When a detained person is transferred to an adult custodial establishment the person in charge of the relevant youth accommodation should ensure that all relevant SEN information, including the EHC plan, is passed to the receiving establishment prior to transfer taking place, so that any additional support needs can be taken into account by the receiving establishment. The SEN duties in the Children and Families Act 2014 no longer apply once a young person is transferred to the adult secure estate.

Education on release for those in a custodial establishment for adults

- 10.147 If a detained person in an adult custodial establishment had an EHC plan immediately before custody, or if they were issued with a plan while in relevant youth accommodation, and if they are still under the age of 25 when they are released from

custody, the local authority **must** maintain and review the EHC plan if the young person plans to stay in education. When reviewing the plan local authorities **must** follow the processes set out in Chapter 9, in particular the section on 19- to 25-year-olds.

- 10.148 If the young person plans to continue their education on release, the Offenders' Learning and Skills Service provider and the National Careers Service provider should liaise to ensure the responsible local authority can review the EHC plan as soon as possible.

Cross-border detention

- 10.149 Local authorities in England should support detained persons with EHC plans whose home authority is in England but who are detained in Wales in the same way that they support detained persons whose home authority is in England and who are placed in England. Local authorities in England should work with the person in charge of relevant youth accommodation and the Local Health Board to meet the needs of detained persons with EHC plans whose home authority is in England when they are detained in Wales.
- 10.150 Until the SEN legal framework is changed in Wales, host local authorities in England will be obliged to fulfill their best endeavors duty for detained persons with statements under Section 562C of the Education Act 1996 whose home authority is in Wales but who are detained in Young Offender Institutions in England.