

The SEND Reforms:

Young offenders with special educational needs



The Children and Families Act 2014 (C&F Act) transforms the system for disabled children and young people and those with special educational needs (SEN). Part of the new legal framework will introduce new requirements for supporting children and young people with SEN when they are detained in youth custody.

The vast majority of Part 3 of the C&F Act, which sets out wider reforms to the SEN and disability system, came into force on 1st September 2014. The new requirements for when a child or young person is detained will come into force on 1st April 2015.

This factsheet explains the new legal duties and rights as set out in the C&F Act. For additional context, it also identifies some of the key facts about the SEND and youth justice systems and provides an explanation of how they currently operate. This factsheet will support local authorities, youth offending teams and custodial establishments in understanding and preparing to implement this new framework from April 2015.

It is important to note that the new legal framework for supporting children and young people with SEN in custody is not complete. The Department for Education, working with the Ministry of Justice and the Department of Health, are currently developing statutory regulations and statutory guidance which will provide more detail to support the primary legislation.

The arrangements under this new piece of legislation need to be integrated with existing requirements to support children and young people in custody, including other pieces of legislation, such as the Equality Act 2010, the Crime and Disorder Act 1998, the Health and Social Care Act 2012 and non statutory measures, such as contracts with education providers. commissioning groups will be required to commission services jointly for young people with SEND.



Key facts about the SEN system

What is the legal definition of special educational needs?

- A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.
- A child of compulsory school age or a young person has a learning difficulty or disability if he or she:
 - Has a significantly greater difficulty in learning than the majority of others of the same age, or
 - Has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions
- A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.

Facts and figures¹

- Around 1.49 million children were categorised as having SEN in England in 2014 - 17.9% of all pupils. Of these, around 232,190 pupils had statements of SEN - 2.8% of all pupils
- Boys are two and a half times more likely to have statements of SEN at primary schools and nearly three times more likely to have statements at secondary schools compared to girls. Older age groups are more likely to have statements
- Looked after children are almost four times more likely to have SEN and around ten times more likely to have statements than all pupils
- 18% of sentenced young people in custody had a statement of special educational needs² (further 'facts and figures on young people in custody on page 6)



¹ Children with special educational needs: an analysis 2014. www.gov.uk/government/statistics/children-with-special-educational-needs-an-analysis-2014

² Ministry of Justice: Transforming Youth Custody consultation 2013. https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/supporting_documents/transformingyouthcustody.pdf

Changes to the special educational needs and disability (SEND) system from 1 September 2014

The wider changes to the SEND system provide an important context to why and how the system will change for children and young people with SEN in custody.

The new system started on September 1st 2014, with the exception of the provisions applying to children and young people in custody which will start from April 2015.

Key aspects of the new system:

- Age range: **0 - 25** system (for young offenders the framework applies up to age 18)
- Working towards clearly defined **outcomes**
- **Joint working** between education, health and social care; co-ordinated assessments and Education, Health and Care plans
- **Engagement** and **participation** of young people, children and their parents with greater transparency and information about what is available in the local area through the Local Offer
- **Personalisation** and **personal budgets** (personal budgets will not apply in the secure estate³)
- School Action and School Action plus has been replaced by a single category '**SEN support**'

³ Secure estate in this context means: young offenders institutions, secure training centres and secure children's homes.

What are Education, Health and Care plans?

- Education, Health and Care plans (EHC plans) replace Statements of Special Educational Needs and Learning Difficulty Assessments
- An EHC plan is produced following an assessment of a child or young person's education, health and care needs. An EHC needs assessment will not always lead to a plan. EHC plans are issued where the child or young person's needs cannot reasonably be met by the resources of the educational setting (school, FE college etc)
- The purpose of an EHC plan is to make provision to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood
- The process of EHC needs assessment and EHC plan development must take no more than 20 weeks

New rights and responsibilities for young people

The C&F Act 2014 defines a young person as over compulsory school age (the end of the school year in which the pupil turns 16). As a young person, rights and responsibilities which would have sat with a child's parent, such as the right to request an assessment, the right to name a school in an EHC plan or the right to appeal, will sit with the young person themselves.

SEND Code of Practice: 0-25 years

- This statutory guidance was published and agreed by Parliament in July 2014 and can be found here: www.gov.uk/government/publications/send-code-of-practice-0-to-25
- The Code of Practice is statutory guidance for organisations who work with and support children and young people with SEND
- A range of institutions and bodies must have regard⁴ to the Code of Practice. This list now includes Youth Offending Teams and persons in charge of relevant youth accommodation
- A new section of the Code has been drafted to explain the legislation relating to children and young people in custody. This will be updated and published for consultation alongside the regulations later in the year

⁴ Bodies listed in Section 77 of the C&F Act must have regard to the Code. This means that when taking decisions they must give consideration to what the Code says and they cannot ignore it.

Transition to the new 0-25 SEND system

This statutory guidance was published in August 2014 and can be found here: www.gov.uk/government/publications/send-managing-changes-to-legislation-from-september-2014

The guidance explains how legislation relating to children and young people with SEND in England operates between 1 September 2014 and 31 March 2018.

Main points:

- As of 1st September 2014, it is no longer possible to request an assessment of educational needs under the Education Act 1996 and no new Learning Difficulty Assessments can be commenced. From that date, LAs must consider all requests for an assessment under the new legislation
- Every local authority should have published a first local transition plan in September 2014 to explain how the transition process will work locally

Interim arrangements for young offenders with SEN

- Interim arrangements have been set out ahead of the commencement of the new legal framework in custody from April 2015
- If an EHC plan is drawn up for a child or young person between 1 September 2014 and 1 April 2015 and they subsequently enter custody in that period, the EHC plan will be treated as if it was a statement. This means that the new rights and duties set out in this briefing note would not apply
- During this period, the host local authority will have the responsibilities it would have had were the provision in a statement of SEN
- The Department for Education will review and update the transitional guidance in advance of 1 April 2015 if any additional transitional arrangements are required to support the implementation of these provisions

Children and young people in custody facts and figures

Youth Justice Annual Statistics 2012/13⁵

- The average population of young people in custody in 2012/13 (under 18) was 1,544. Including 18 year olds the average population was 1,708
- In 2012/13, 95 % of the young people under 18 held in the secure estate were male. 96% of the young people under 18 held in the secure estate were aged 15-17 years
- Overall, the average length of time spent in custody was 85 days in 2012/13. For Detention and Training Orders (DTOs)* it was 115 days; for remands 45 days and for longer sentences, 302 days
**Detention Training Orders are sentences where the young offender serves half of their sentence in custody and half in the community.*
- In 2012/13, 74% of young people (under 18) held in custody were in Young Offender Institutions, 16% were in Secure Training Centres and the remaining 9% were in Secure Children's Homes

Set out in the Ministry of Justice: Transforming Youth Custody consultation 2013

- 18% of sentenced young people in custody had a statement of special educational needs, compared to 3% in the general population
- Of 15-17 year olds in YOIs, 88% of young men and 74% of young women had been excluded from school at some point. Of 15-17 year olds in YOIs, 36% of young men and 41% of young women were aged under 14 when they last attended school
- A recent review⁶ suggests that the prevalence of neuro-developmental disorders (e.g. dyslexia, communication disorders and epilepsy) among young people in custody is higher than in the general youth population
- Over 60% of people in youth justice estate have difficulties with speech, language or communication⁷

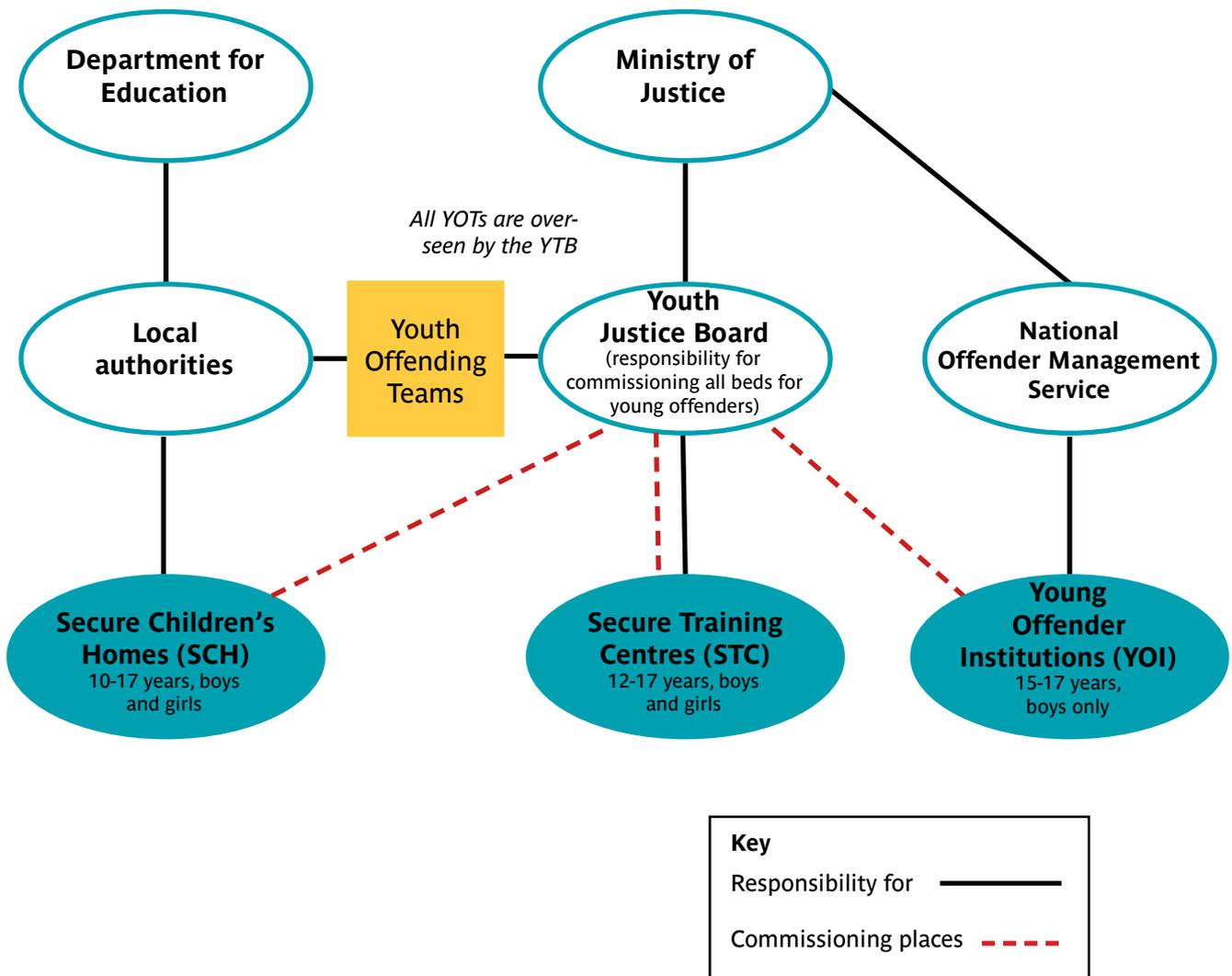


5 www.gov.uk/government/collections/youth-justice-annual-statistics.

6 Hughes, N. et al (2012) Nobody made the connection: The prevalence of neuro-disability in young people who offend

7 Bryan et al, (2007) Prevalence of speech and language difficulties in young offenders

The youth justice system

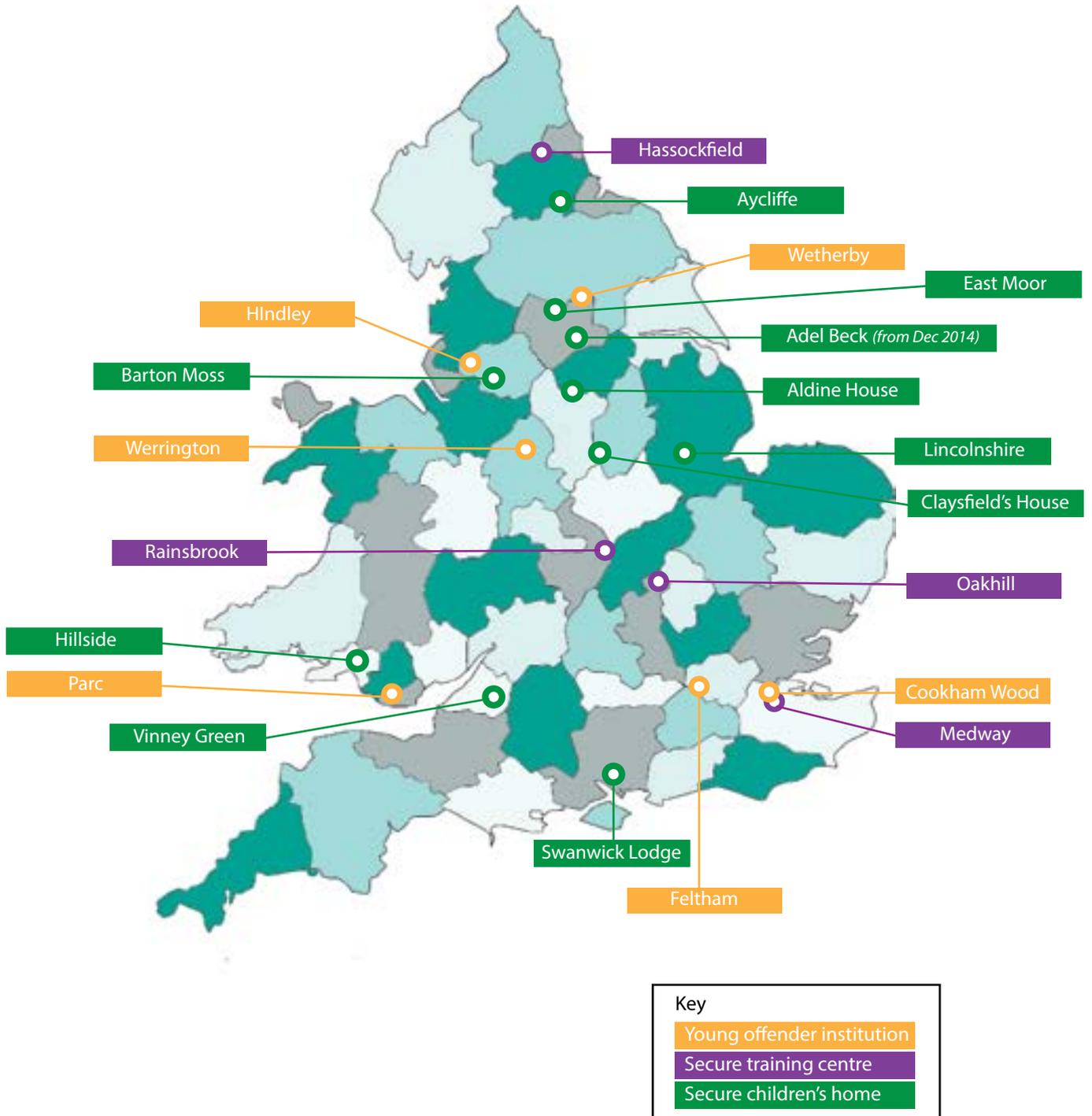


- **Education provision** in the secure estate is arranged differently depending on the type of establishment. In SCHs; education is arranged by the local authority. In STCs, it is arranged via contracts between the Youth Justice Board and the private providers (currently G4S and Serco). Although the National Offender Management Service is responsible for the overall running of YOIs, it (and the person in charge of a YOI) does not manage the education provision. In YOIs, education is arranged by a contract between the Ministry of Justice and the Youth Justice Board and a private education provider (these contracts are currently being re-issued, with providers expected to be confirmed by the end of 2014).
- **Health provision** in the secure estate is the responsibility of NHS England. It is arranged by health providers in each establishment overseen by NHS England local area teams.

Assessments: When a child or young person enters the youth justice system or custody, he or she will be assessed using two main tools:

- Asset is completed by the Youth Offending Team when a child or young person first comes to their service. Asset looks at the child or young person's offence and identifies factors or circumstances which may have contributed to their behaviour. The education element is built on in custody by literacy and numeracy tests carried out by the education provider. New, additional screening tools have been developed to be used alongside Asset, including a Speech Language and Communication Tool and a Physical and Mental Health tool. With the introduction of Asset Plus these screening tools will be within the new framework
- Comprehensive Health Assessment Tool (CHAT) is carried out by the health provider. It includes a screening to be carried out before the first night of admission. Following this a physical health assessment, a mental health assessment, a substance misuse assessment and a neuro disability assessment will be carried out within 3-10 days

Map of relevant youth accommodation in England and Wales



What is the C&F Act seeking to achieve for detained children and young people?

- One responsible local authority for a child or young person's special educational provision while they are in the community and in custody
- Continuing and appropriate special educational provision when a child or young person is in custody
- To help the resettlement process by identifying need and ensuring that provision continues when a child or young person returns to the community
- To make the best use of the time that the young person is in detention so that an assessment can get under way and support can be put in place immediately on release

Who does this part of the legislation apply to?

- Children and young people aged 18 and under.
- Children and young people who have been sentenced or remanded¹ by the Courts to relevant youth accommodation in England
- Relevant youth accommodation is a Young Offender Institution, a Secure Training Centre or a Secure Children's Home

And who does it not apply to?

Although the new legal framework for young offenders with SEN sits within the wider new framework for all children and young people with SEN (Part 3 of the C&F Act), not all rights and duties are the same. There is a specific set of rights and duties which apply in custody and with some restrictions:

- It does not apply to children and young people subject to a detention order in the community. Children and young people serving a sentence in the community would be covered by the rest of Part 3 of the C&FA 2014
- It does not apply to children and young people in secure mental health settings or subject to secure welfare orders. In these cases children and young people would be covered by the rest of Part 3 of the C&F Act 2014

¹ The Legal Aid, Sentencing and Punishment Act 2013 requires that the status of 'looked after child' will apply to all children and young people on remand up to age 17.

- The new legal framework does not apply in the same way to children and young people from Wales placed in England, or children and young people from England placed in Wales (see page 14 for more details)
- It does not apply to those detained in young adult YOIs for 18-21 year olds

New powers and duties brought in by the C&F Act 2014

	Powers	Duties
Home Local Authorities*	Local authorities in England may supply goods and services to any authority or other person making special educational provision for a detained person.	<ul style="list-style-type: none"> • Duty on home authority to keep an EHC plan when a child or young person enters custody • Duty on home authority to arrange SEN provision for a child or young person with an EHC plan while they are in custody • Duty on home authority to consider request for an EHC needs assessment from the parent of a child in custody, a young person in custody or the person in charge of a custodial establishment. • Duty on home authority to consider whether an EHC needs assessment is necessary when a child or young person is brought to their attention as having or may have SEN. • Duty on home authority to co-operate with relevant providers of youth custodial institutions, youth offending teams, Clinical Commissioning Groups and NHS England.
‘The appropriate person’ This means the detained child’s parent⁹ or the detained young person	While a child or young person is in custody, ‘the appropriate person’ has the right to request an EHC needs assessment . The appropriate person can appeal to the SEND tribunal (see page 13)	
Persons in charge of relevant youth accommodation	The person in charge of relevant youth accommodation has the right to request an EHC needs assessment for a child or young person in custody.	<ul style="list-style-type: none"> • Duty on relevant youth accommodation to co-operate with local authorities • Duty to have regard to the SEND Code of Practice

⁹ As defined in the Education Act 1996, the term ‘parent’ includes any person who is not a parent of the child, but has parental responsibility (as defined in the Children Act 1989) or who cares for him or her

Youth Offending Teams	Youth offending teams may bring a child or young person to the attention of the authority as someone who has or may have SEN.	<ul style="list-style-type: none"> • Duty on youth offending teams to co-operate with local authorities • Duty on youth offending teams to have regard to the SEND Code of Practice
Clinical Commissioning groups (CCGs)	CCGs have the right to request information, collaboration etc from a local authority through the duty to co-operate .	Duty on CCGs to co-operate with local authorities
NHS England	NHS England has a right to request information, collaboration etc from a local authority through the duty to co-operate .	<ul style="list-style-type: none"> • Duty on the health commissioner in custody (NHS England) to arrange health provision for a child or young person with an EHC plan while they are in custody • Duty on NHS England to co-operate with local authorities

***What is a ‘home’ local authority?**

- For a child or young person with an EHC plan, the ‘home LA’ is the LA which maintained the child or young person’s EHC plan when they were in the community
- In custody a new request for an assessment to the ‘home LA’ means the LA where the child is ‘ordinarily resident’
- If a looked after child was placed out of area before going into custody, the request for an assessment should also be made to the LA where the child is ‘ordinarily resident’. This may be more difficult to define and LAs may have local protocols setting out procedures and responsibilities in these cases. Following an assessment, if an EHC plan is issued, the LA which the child is ‘looked after by’ will have financial responsibility for the EHC plan

The Apprenticeship, Skills and Learning Act 2009 put a duty on the **host authority** (where the establishment is based) to use its ‘best endeavours’ to support children and young people with SEN. From April 2015 this will no longer apply, with the exception of children and young people from Wales placed in establishments in England. However to support arrangements between custodial establishments and home local authorities, in some cases the host authority could continue to play a role for all children and young people with SEN.

Children and young people with Education, Health and Care plans

This sets out the new legal framework for children and young people who enter custody with EHC plans. These children and young people will have been assessed in the community as having SEN and requiring an EHC plan to meet their needs.

For these children and young people:

- Home local authorities **must** not cease an EHC plan when a child or young person enters custody, the home local authority **must** keep it on hold
- When the child or young person is released the EHC plan is immediately active and the home local authority **must** review the plan as soon as possible
- While the child or young person is in custody the home local authority **must** arrange special educational provision for them
- This provision **must** be what is set out in the EHC plan unless this is not practicable (e.g. the plan references using computer software which is prohibited in the secure estate). In this case the home local authority **must** arrange provision corresponding as closely as possible to the EHC plan
- If it appears that the SEN provision specified in the plan is no longer appropriate, the home local authority should review the child or young person's needs and **must** arrange appropriate provision in custody
- If the plan specifies health provision, NHS England **must** arrange health provision for the child or young person. As with the SEN provision above, if this is not practicable, NHS England **must** arrange provision corresponding as closely as possible to it
- If it appears that the health provision in the plan is no longer appropriate, NHS England should review the child or young person's needs and **must** arrange appropriate provision in custody



It will not be possible for home local authorities to meet these duties and fulfill the 'musts' set out above without working very closely with youth offending teams, youth accommodation providers, education and health providers in custody. The co-operation duty set out in the previous table will be key to making this work.

Regulations and the final statutory guidance within the SEND code of practice are under development. This will provide more detail and clarity on the legal framework, including what it means for a home LA to 'keep' an EHC plan, how a home LA and its partners must arrange SEN provision and how a home LA and its partners must plan for the EHC plan reactivating immediately upon the child or young person's release.

Children and young people without Education, Health and Care plans

This sets out the new legal framework for children and young people who enter custody and do not have an existing EHC plan. These children and young people have either:

- Not previously been brought to the attention of the SEN/inclusion team in their local authority
- Been brought to the home local authority's attention (not within the last 6 months) and considered for an assessment. As a result they may not have received an assessment, or following an assessment, they were not issued with an EHC plan (or statement of SEN)

In these circumstances, the new legal framework sets out that:

- The detained young person, their parent or the person in charge of the custodial institution has the **right to request** the home local authority to secure an EHC needs assessment;
- In addition, anyone (e.g. a youth offending team) can **bring a child or young person to the attention** of their home local authority if they are concerned that a child or young person has or may have SEN;
- Following a specific request, or if a child or young person is brought to their attention, the home local authority **must** determine whether to conduct an EHC assessment. When considering this request the home local authority **must** consult the young person or the child's parent and the person in charge of the custodial establishment and **must** inform them of the local authority's decision;
- The regulations and final statutory guidance within the SEND code of practice will confirm **timescales** for this process. The current draft suggests that the 20 week time limit will apply in custody as it does in the community;
- The assessment and development of EHC Plans should take place while the child or young person is in custody. The focus of the assessment and plan **must** be on post detention needs and provision;
- If a child or young person's assessment is completed and a final EHC plan is issued while in custody, the legal duties for children and young people with EHC plans in custody take effect.

As set out on page 12, it will not be possible for home local authorities to meet these duties and fulfill the 'musts' set out above without working very closely with their partners, using the co-operation duty where necessary.

Regulations and the final SEND code of practice will provide more detail on processes outlined above, including who a home LA must seek advice from in reaching decisions about an assessment and who it must notify of these decisions.

Appeals and mediation

What the law says:

The detained child's parent or the detained young person can appeal to the SEND First Tier Tribunal if they do not agree with certain decisions their home local authority has made. The home local authority must make parents and young people aware of these rights.

A detained child's parent or the detained young person can appeal the decision of the home local authority:

- a) Not to secure an EHC plan assessment;
- b) Not to secure a plan following an assessment; or
- c) In relation to the educational institution named in the EHC plan

Before registering an appeal the child's parent or young person must consider mediation. If they wish to pursue mediation the home local authority must arrange for mediation to take place.

How this will work in practice:

The home local authority should work with the custodial establishment to ensure that the mediation information session can take place and that the detained young person is able to participate in mediation if they choose to do so.

The custodial establishment should ensure arrangements are in place to enable the detained person to attend the tribunal appeal if relevant – for example, by video link.



Transition to adult estate

The new legal framework ceases to apply either when the young person is released; turns 19 or moves into the adult estate.

When a young person is transferred to the adult estate the youth justice establishment 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 establishment.

Although there is no requirement on the home local authority to keep the young person's EHC plan at this point, they may wish to continue to do so, especially if the young person will be released before their 25th birthday, as in the community the wider SEND framework will apply to them.

Children and young people from Wales placed in England or children and young people in England placed in Wales

From April 2015 home local authorities in England should have responsibility for English young offenders with EHC plans detained in Wales. Home 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 English young offenders with EHC plans and those who may request an assessment for one.

Until the Welsh Government enact wider reforms to their SEN policy, English host local authorities will be obliged to fulfil their best endeavours duty for children and young people from Wales with statements under Section 562C of the Education Act 1996 detained in Young Offender Institutions in England.

Other texts to read:

- Children and Families Act 2014
www.legislation.gov.uk/ukpga/2014/6/contents/enacted
- SEND 0-25 Code of Practice
www.gov.uk/government/publications/send-code-of-practice-0-to-25
- Transitional arrangements guidance
www.gov.uk/government/publications/send-managing-changes-to-legislation-from-september-2014

