

### Appendix 1: Children and Families Act-detailed information.

The Children and Families Act (March 2014) replaces the SEN Code of Practice (2001) with a new 'special educational needs and disability code of practice 0-25 years'.

The new code introduces a number of changes in relation to making provision for children and young people with SEN:

- The code now covers the 0-25 age range (rather than as previously-2-18 age range) and includes guidance relating to disabled children and young people as well as those with SEN
- There is a clearer focus on the participation of children and young people and parents in decision-making at individual and strategic levels
- There is a stronger focus on high aspirations and on improving outcomes for children and young people
- It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health and social care
- It includes guidance on publishing a Local Offer of support for children and young people with SEN or disabilities
- There is new guidance for education and training settings on taking a graduated approach to identifying and supporting pupils and students with SEN (to replace School Action and School Action Plus)
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care plan (EHC plan) replace statements and Learning Difficulty Assessments (LDAs)
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood.
- There is a clear focus on children and young people with disability.

### Who must have regard to this guidance?

From 1 September 2014 all the organisations listed **must** have regard to this Code of Practice which will be in force from that date. These are as follows:

- local authorities (education, social care and relevant housing and employment and other services)
- Education providers:
- the governing bodies of schools, including non-maintained special schools further education
- colleges and sixth form colleges.
- the proprietors of academies (including free schools, University Technical Colleges and Studio Schools)
- the management committees of pupil referral units

- independent schools and independent specialist providers (approved)
- all early years providers in the maintained, private, voluntary and independent sectors that are funded by the local authority
- Health partners:
  - the National Health Service Commissioning Board
  - clinical commissioning groups (CCGs)
  - NHS Trusts
  - NHS Foundation Trusts
  - Local Health Boards
- Youth Offending Teams and relevant youth custodial establishments
- The First-tier Tribunal (Special Educational Needs and Disability)

### **The Principles:**

Local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with special educational needs (SEN), **must** have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents
- the importance of the child or young person, and the child's parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions
- the need to support the child or young person, and the child's parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood

These principles are designed to support:

- the participation of children, their parents and young people in decision-making
- the early identification of children and young people's needs and early intervention to support them
- greater choice and control for young people and parents over support
- collaboration between education, health and social care services to provide support
- high quality provision to meet the needs of children and young people with SEN
- a focus on inclusive practice and removing barriers to learning
- successful preparation for adulthood, including independent living and employment

### **Statutory guidance on working together:**

The new Code provides guidance on the joint planning and commissioning of services to ensure close co-operation between education, health and social care.

### **The legal framework**

The Children and Families Act places a duty on:

- local authorities to ensure integration between educational provision and training provision, health and social care provision, where this would promote wellbeing and improve the quality of provision for disabled young people and those with SEN.
- local authorities and clinical commissioning groups (CCGs) to make joint commissioning arrangements for education, health and care provision for children and young people with SEN or disabilities.

The Care Act 2014 requires local authorities to ensure:

- co-operation between children's and adults' services to promote the integration of care and support with health services, so that young adults are not left without care and support as they make the transition between child and adult social care.
- availability of preventative services for adults, a diverse range of high quality local care and support services and information and advice on how adults can access this universal support.

The NHS Mandate, which CCGs have a duty to follow, contains a specific objective on supporting children and young people with SEN or disabilities, including through the offer of Personal Budgets.

Joint commissioning arrangements should enable partners to make best use of all the resources available in an area to improve outcomes for children and young people in the most efficient, effective, equitable and sustainable way. Under the Public Sector Equality Duty (Equality Act 2010), public bodies (including CCGs, local authorities, maintained schools, maintained nursery schools, academies and free schools) have a duty to eliminate discrimination, promote equality of opportunity and foster good relations between disabled and non-disabled children and young people when carrying out their functions. They have a duty to publish information to demonstrate their compliance with this general duty and to prepare and publish objectives to achieve the core aims of the general duty. Objectives **must** be specific and measurable.

## **Specific duties:**

### **A duty for services to collaborate:**

When carrying out their statutory duties under the Children and Families Act 2014, local authorities have a duty to do so with a view to making sure that services work together where this promotes children and young people's wellbeing or improves the quality of special educational provision. –

### **Joint commissioning duty:**

There is a statutory duty for local authorities and health bodies to have arrangements in place to plan and commission education, health and social care services jointly for children and young people with SEN or disabilities.

Local authorities and CCGs have duties to ensure there is clear local governance and decision making structures and therefore accountability for commissioning services for children and young people with SEN and disabilities aged 0-25.

Joint commissioning must also include arrangements for:

- securing EHC needs assessments
- securing the education, health and care provision specified in EHC plans, and
- agreeing Personal Budgets

Local joint commissioning arrangements **must** consider:

- what advice and information is to be provided about education, health and care provision for those who have SEN or are disabled and by whom it is to be provided
- how complaints about education, health and social care provision can be made and are dealt with, and
- procedures for ensuring that disagreements between local authorities and CCGs (and NHS England for specialist services) are resolved as quickly as possible

These arrangements must be presented publicly in the Local Offer.

### **The duty to work together focusing on outcomes:**

Local authorities, education providers and their partners should work together to help children and young people to realise their ambitions in relation to:

- higher education and/or employment – including exploring different employment options, such as support for becoming self-employed and help from supported employment agencies
- independent living – enabling people to have choice and control over their lives and the support they receive, their accommodation and living arrangements, including supported living

- participating in society – including having friends and supportive relationships, and participating in, and contributing to, the local community
- into employment and independent living

Joint commissioning arrangements should enable partners to make best use of all the resources available in an area to improve outcomes for children and young people in the most efficient, effective, equitable and sustainable way. They should aim to provide **personalised, integrated support that delivers positive outcomes for children and young people**, bringing together support across education, health and social care from early childhood through to adult life, and improves planning for transition points such as between early years, school and colleges, between children’s and adult social care services, or between paediatric and adult health services.

“If children and young people with SEN or disabilities are to achieve their ambitions and the best possible educational and other outcomes, including getting a job and living as independently as possible, local education, health and social care services should work together to ensure they get the right support”.

The term ‘partners’ refers to the local authority and its partner commissioning bodies across education, health and social care provision for children and young people with SEN or disabilities, including clinicians’ commissioning arrangements and NHS England for specialist health provision.

Local partners should identify the outcomes that matter to children and young people with SEN or disabilities to inform the planning and delivery of services and the monitoring of how well services have secured those outcomes --- as a result of an intervention at three levels:

- **Individual outcomes** such as might be set out in an EHC plan: for example, Martha can communicate independently with her friends at playtime.
- **Service level outcomes:** for example, paternal mental health has improved in 10 families
- **Strategic outcomes:** for example, there has been a 10% increase in young people supported

#### **Duty to for partners to carry out a health needs assessment:**

There is the duty for local authorities, CCGs and other partners to work together in local Health and Wellbeing Boards to assess the health needs of local people, including those with SEN or who are disabled. This assessment, the Joint Strategic Needs Assessment, is to inform a local Health and Wellbeing Strategy which sets priorities for those who commission services, including prevention, identification, assessment and early intervention and a joined-up approach.

#### **Duty to publish a Local Offer:**

A local authority’s Local Offer should reflect the services that are available as a result of strategic assessments of local needs and reviews of local education and

care and of health provision (Joint Strategic Needs Assessments and Joint Commissioning). The expectation is that linking these assessments and reviews to the Local Offer will help to identify gaps in local provision.

**Duty to provide information:**

Local authorities **must** arrange for children with SEN or disabilities for whom they are responsible, and their parents, and young people with SEN or disabilities for whom they are responsible, to be provided with information and advice about matters relating to their SEN or disabilities, including matters relating to health and social care. This **must** include information, advice and support on the take-up and management of Personal Budgets. In addition, local authorities **must** have regard to the importance of providing children and their parents and young people with the information and support necessary to participate in decisions.

The joint arrangements that local authorities and Clinical Commissioning Groups (CCGs) must have for commissioning education, health and care provision for children and young people with SEN or disabilities must include arrangements for considering and agreeing what information and advice about education, health and care provision is to be provided, by whom and how it is to be provided to young people and parents of children with SEN and disability. These joint arrangements should consider the availability of other information services in their area (services such as youth services, Local Healthwatch, the Patient Advice and Liaison Service (PALS) and the Family Information Service) and how these services will work together. CCGs and local authorities should ensure that this information is clearly available to families, including through the Local Offer.

**Duty to engage children, young people and their families in strategic planning:**

At a strategic level, partners have a duty engage children and young people with SEN and disabilities and children's parents in commissioning decisions, to give useful insights into how to improve services and outcomes. Local authorities, CCGs and NHS England **must** develop effective ways of harnessing the views of their local communities so that commissioning decisions on services for those with SEN and disabilities are shaped by users' experiences, ambitions and expectations. There is already a duty for CCGs (NHS Act 2006) to ensure that planning involves the individuals to whom services are or may be provided for)

**Duty for the CCG to consult with parents in relation to individual children and young people:**

Clinical Commissioning Groups (CCGs), NHS Trusts or NHS Foundation Trusts who are of the opinion that a child under compulsory school age has or probably has SEN or a disability **must** give the child's parents the opportunity to discuss their opinion with them before informing the local authority.

Partners should ensure there is a Designated Medical Officer (DMO) to support the CCG in meeting its statutory responsibilities for children and young people with SEN

and disabilities, primarily by providing a point of contact for local partners, when notifying parents and local authorities about children and young people they believe have, or may have, SEN or a disability, and when seeking advice on SEN or disabilities. This does not alter the CCG's responsibility for commissioning health provision.

This is a non-statutory role which would usually be carried out by a paediatrician, but there is local flexibility for the role to be undertaken by a suitably competent qualified and experienced nurse or other health professional (in which case the role would be the Designated Clinical Officer). The person in this role should have appropriate expertise and links with other professionals to enable them to exercise it in relation to children and young adults with EHC plans from the age of 0 to 25 in a wide range of educational institutions.

### **Children's social care**

Where a child or young person has been assessed as having social care needs in relation to their SEN or disabilities, social care teams:

- **must** secure social care provision under the Chronically Sick and Disabled Persons Act (CSDPA) 1970 which has been assessed as being necessary to support a child or young person's SEN and which is specified in their EHC plan
  - should provide early years providers, schools and colleges with a contact for social care advice on children and young people with SEN and disabilities
  - **must** undertake reviews of children and young people with EHC plans where there are social care needs
  - should make sure that for looked after children and care leavers the arrangements for assessing and meeting their needs across education, health and social care are co-ordinated effectively within the process of care and pathway planning, in order to avoid duplication and delay, to include in particular liaising with the Virtual School Head (VSH) for looked after children
- Where children or young people with SEN or disabilities also have a child in need or child protection plan, the social worker within the SEN team should ensure the statutory timescales for social care assessments are met and any assessments are aligned with EHC needs assessments wherever possible. *Working Together to Safeguard Children* (2013) gives full details.

### **Adult social care:**

Young people with SEN or disabilities turning 18 may become eligible for adult social care services, regardless of whether they have an EHC plan or whether they have been receiving services from children's social care.

**The Care Act 2014** and the associated regulations and guidance set out the requirements on local authorities when young people are approaching, or turn, 18 and are likely to require an assessment for adult care and support. These are

intended to support effective transition from children's to adult social care services. For those already receiving support from children's services, the Care Act makes it clear that local authorities **must** continue to provide children's services until adult provision has started or a decision is made that the young person's needs do not meet the eligibility criteria for adult care and support following an assessment. Children's services **must not** be discontinued simply because a young person has reached their 18<sup>th</sup> birthday.

### **Health services for children and young people with SEN and disabilities and their families**

Health services for children and young people with SEN or disabilities provide early identification, assessment and diagnosis, intervention and review for children and young people with long-term conditions and disabilities. In addition, public health services for children ensure a whole population approach to health and wellbeing including preventative services such as immunisation for the whole population and targeted immunisation for the most vulnerable

Local authorities and CCGs should consider how best to integrate the commissioning of services for children and young people with SEN with the CCG's broad responsibility for commissioning health services for other groups, including preventative services, and the local authority's responsibility for health protection and health improvement for the local population

### **Health commissioning duty**

As health service commissioners, CCGs have a duty under the NHS Act 2006 to arrange health care provision for the people for whom they are responsible to meet their reasonable health needs. This is the fundamental basis of commissioning in the NHS. Where there is provision which has been agreed in the health element of an EHC plan, health commissioners **must** put arrangements in place to secure that provision.

### **Duty to publish a Local Offer:**

Local authorities **must** publish a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans. This should cover:

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



Each CCG will determine which services it will commission to meet the reasonable health needs of the children and young people with SEN or disabilities for whom it is responsible.

**Duty to provide and review health care provision on EHC Plan:**

The health care provision specified in section G of the EHC plan **must** be agreed by the CCG.