



## BRIEFING PAPER

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# Special Educational Needs: support in England

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# Introduction

The [Children and Families Act 2014](#) provided for a major reform of the system for identifying children and young people in England with special educational needs (SEN), assessing their needs and making provision for them.

This briefing provides an overview of the system introduced in 2014, and also includes, in an annex, a brief history of the movement towards reform that took place in the years preceding the 2014 Act.

The 2014 reforms began to be implemented in September 2014, in a phased process to be completed by April 2018.

The Government has also reformed the funding system for SEN, alongside wider changes to the school funding system. A national funding formula has been introduced to allocate 'high needs' funding to local authorities – largely, this is for special educational provision. From 2018-19, local authorities cannot transfer more than 0.5% of their wider 'schools block' funding into their high needs budget, although requests to transfer more may be made to the Secretary of State. A call for evidence on high needs funding ran from May to July 2019. The Government has not yet published its response.

Inspections by Ofsted and the Care Quality Commission of local arrangements to support children and young people with special educational needs and disabilities began in May 2016.

In September 2019, five years after the introduction of the current system of SEN support, the Government [announced a review](#) of the system's effectiveness. The review is expected to be published in spring 2021. The Government has stated that reflections on the impact of the COVID-19 pandemic will now form part of the review when it is published.

The [Coronavirus Act 2020](#) gave the Secretary of State powers to temporarily disapply certain statutory requirements relating to education. This includes the requirements on local authorities to secure education and health care provision under an Education, Health, and Care Plan (EHCP) under the *Children and Families Act 2014*. During the spring and summer of 2020, temporary changes were made to reduce the requirements on local authorities in light of the pandemic. Concerns have been raised about the support children and young people with SEN received during this period, and that they may suffer particularly badly from the educational impact of the pandemic.

A body of evidence is forming about the operation of the reformed system. In October 2019, the Education Committee [published its report](#) on the system, a wide-ranging piece of work that found significant concerns about the financial sustainability of the system and systemic problems in its operation. The [Government published its response](#) in July 2020.

A separate Library briefing provides responses to [Post-16 Special Educational Needs FAQs](#), CBP 8561.

This briefing applies to England only.

# 1. Support for children and young people with Special Educational Needs (SEN)

## 1.1 Definition of SEN

The statutory SEND<sup>1</sup> [Code of Practice](#) sets out the definition of special educational needs used in England:

xiii. 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.

xiv. 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

xv. For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, mainstream post-16 institutions or by relevant early years providers. For a child under two years of age, special educational provision means educational provision of any kind.<sup>2</sup>

## 1.2 Levels of support

The type of support that children and young people with SEN receive may vary widely, as the types of SEN that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

### SEN Support

This will be support given to a child or young person in their pre-school, school or college. In schools, it has replaced the previously existing 'School Action' and 'School Action Plus' systems.

The [gov.uk website](#) sets out that SEN support for children under 5 includes:

- a written progress check when your child is 2 years old
- a child health visitor carrying out a health check for your child if they're aged 2 to 3

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<sup>1</sup> The Code of Practice refers to SEND, Special Educational Needs and Disability, whereas this briefing is focused on children and young people with SEN. While many children with SEN will also have disabilities, this is not uniformly the case. This briefing focuses on educational support.

<sup>2</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), January 2015, p15-16

- a written assessment in the summer term of your child's first year of primary school
- making reasonable adjustments for disabled children, e.g. providing aids like tactile signs

For children of compulsory school age, the following indicative [list](#) is provided of the type of help a child might receive:

- a special learning programme
- extra help from a teacher or assistant
- to work in a smaller group
- observation in class or at break
- help taking part in class activities
- extra encouragement in their learning, e.g. to ask questions or to try something they find difficult
- help communicating with other children
- support with physical or personal care difficulties, e.g. eating, getting around school safely or using the toilet

A young person of 16-25 in further education would need to contact their school or college before starting a course, to ensure their needs can be met.

## Education, Health and Care Plans

Education, Health and Care Plans are for children and young people aged up to 25 who need more support than is available through SEN support. They are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

The [gov.uk website](http://gov.uk) makes clear that parents can ask their local authority to carry out an assessment if they think their child needs an EHC Plan.

A request can also be made by:

anyone at the child's school  
 a doctor  
 a health visitor  
 a nursery worker

A local authority has 6 weeks to decide whether or not to carry out an EHC assessment.

## 1.3 Key aspects of the system

### The local offer

Since September 2014, local authorities have been required to have published a 'local offer' to clearly set out the services available for children and young people with SEND. The offer must have been developed in partnership with children and young people with SEN or Disability and their parents, and education, health and care partners. It

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should cover the support available for those with and without EHC Plans and from birth to 25 years, including SEN Support.

The Code of Practice states:

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. In setting out what they 'expect to be available', local authorities should include provision which they believe will actually be available.<sup>3</sup>

The Code makes clear that this initial offer is intended to be the start of an ongoing process, with local offers developed and revised over time through regular review and consultation.

### Education, Health and Care Plans: requirements on authorities

Education, Health and Care (EHC) Plans are the replacement for SEN statements and Learning Difficulty Assessments (LDAs). The SEN Code of Practice states that because the legal test of when a child required an EHC Plan is the same as for a statement under the *Education Act 1996*, nobody should lose support received under a SEN statement as a result of these changes.<sup>4</sup>

While most children and young people with SEN will have their needs met by early years settings, schools, or colleges, some will need more substantial support. Where in the past a child in school, for example, might have been assessed for an SEN statement, they would now be assessed for an EHC plan which would seek to secure the best possible outcomes for them across education, health and social care.

In conducting an EHC assessment, a local authority would be required to:

- establish and record the views, interests and aspirations of the parents and child or young person
- provide a full description of the child or young person's special educational needs and any health and social care needs
- establish outcomes across education, health and social care based on the child or young person's needs and aspirations
- specify the provision required and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes<sup>5</sup>

The Code of Practice sets out a further expectation that young people who are currently receiving support as a result of a LDA and remain in further education or training during the transition period, who request and need an EHC Plan, would be issued with one, since they have already been assessed as requiring SEN support.<sup>6</sup>

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<sup>3</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p59

<sup>4</sup> *Ibid.*, p15

<sup>5</sup> *Ibid.*, p142

<sup>6</sup> *Ibid.*, p15

## EHC plans for 19-25 year olds with SEN

Under the reformed system, EHC Plans will cover eligible students up to the age of 25. However, [DfE guidance](#) makes it clear that this does not mean that students have an automatic entitlement to education up to the age of 25:

Young people with SEND are not automatically entitled to maintain their EHC (education, health and care) plans after they turn 19.

Reforms to the SEND system should mean that children and young people are better prepared for adulthood. Therefore we expect the majority of young people with EHC plans to complete further education with their peers by age 19. However we recognise that some young people with SEND need longer to complete and consolidate their education and training. The length of time will vary according to each young person.<sup>7</sup>

Nonetheless, 19 to 25 year olds with a learning difficulty or disability have the right to request an EHC needs assessment (unless one has been carried out in the last 6 months), and may appeal if a request is rejected.<sup>8</sup>

## Personal budgets

Young people and parents of children who have EHC Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC Plan where the parent or young person is involved in securing that provision. Local authorities must provide information on Personal Budgets as part of the local offer. Personal Budgets are optional for the child's parent or the young person but local authorities are under a duty to prepare a budget when requested.<sup>9</sup>

A local policy should be available that includes:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets
- the mechanisms of control for funding available to parents and young people including:
  - direct payments – where individuals receive the cash to contract, purchase and manage services themselves
  - an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
  - third party arrangements – where funds (direct payments) are paid to and managed by an individual

<sup>7</sup> Department for Education, [SEND: 19- to 25-year-olds' entitlement to EHC plans](#), February 2017

<sup>8</sup> Ibid.,

<sup>9</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p178



- or organisation on behalf of the child's parent or the young person
- a combination of the above
- clear and simple statements of eligibility criteria and the decision-making processes that underpin them<sup>10</sup>

### Requirement for consultation with children, young people, and their parents

The [Code of Practice](#) provides information on the requirements on local authorities to consult with children and young people with SEN, as well as their parents, in carrying out all of its duties relating to SEN:

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<sup>11</sup>

The Code states that 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<sup>12</sup>

The Code of Practice sets out what these principles are intended to mean in practice, and how it is intended that they will be implemented.<sup>13</sup>

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<sup>10</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p48

<sup>11</sup> *Ibid.*, p19

<sup>12</sup> *Ibid.*, p19-20

<sup>13</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p20-29

## 2. Funding system

### 2.1 Background

Funding for SEN in England is not allocated as a separate amount per pupil. SEN funding is part of the overall Dedicated Schools Grant allocated to each local authority to fund their schools budget. It is for local authorities, in consultation with their schools forums, to determine the individual allocation to schools.

The following PQ response provides information on SEN funding for maintained schools:

**Steve McCabe:** To ask the Secretary of State for Education whether special educational needs coordinators are able to request funds from his Department for extra assistance with SEN students in maintained schools. [201299]

**Mr Timpson:** The Department for Education does not give funds directly to local authority maintained schools. Funds for extra assistance with students with special educational needs (SEN) come from schools' budgets and, if the extra cost is more than £6,000 per year for an individual student, from local authorities in the form of top-up funding for the school. Local authorities can also give extra funding to schools with a disproportionate number of pupils with SEN. Special educational needs coordinators should therefore seek any additional funds required from the relevant local authority.<sup>14</sup>

Mainstream academies are in a similar position. When planning their budgets, academies should take into account that they must meet the costs of additional support for pupils with SEN up to £6,000 from their school budget share (including the notional SEN funding).<sup>15</sup>

For special schools, maintained or academies, a similar system is in place, but they are funded at the higher level of £10,000 per SEN pupil, with any extra 'top-up' funding then provided by the local authority.<sup>16</sup> (This level of funding may also be provided for some pupils in specialist SEN units and resourced provision in mainstream schools, including academies and free schools.)

The charity Independent Parental Special Education Advice (IPSEA), have produced a [helpful briefing](#) on changes to SEN funding that were introduced from April 2013, which provides more background on SEN funding.<sup>17</sup>

### 2.2 Reform: a national funding formula

The Government is undertaking major reforms to the way schools in England are funded. As part of this, the Government proposed the introduction of a national funding formula to allocate 'high needs'

<sup>14</sup> [HC Deb 23 Jun 2014 c83W](#)

<sup>15</sup> Department for Education, [Academy general annual grant allocation guide: 2020 to 2021 academic year](#), February 2020, p11

<sup>16</sup> See separate DfE guidance on the [funding of special schools in 2020-21](#)

<sup>17</sup> IPSEA, [School Funding Reform: SEN Funding](#), May 2013

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funding to local authorities – largely, this is for special educational provision.

On 7 March 2016, the then Education Secretary Nicky Morgan announced initial consultations on funding reform, with further consultations to follow later in the spring. The first of these proposed a national school funding formula to include a basic per-pupil amount, and factors reflecting pupil characteristics, school and areas costs. The Library briefing [Implementation of the national funding formula for schools in England](#), CBP 8106, provides up-to-date information on the progress of these reforms.

Separate [consultations](#) were conducted on high needs funding. [The national funding formula for schools and high needs](#), published by the Department for Education in September 2017, described how the Government intended to proceed following those consultations.

Local authorities would receive high needs funding through a national formula derived from, among other factors, a basic unit of per-pupil funding for pupils in specialist SEN provision, historic spend, and also proxy measures such as population, school attainment, and numbers of children in bad health. More detail is provided in chapter 4 of the [Policy Document](#).

In July 2017, the Government [announced](#) £1.3bn of additional funding for schools, including high needs, over 2018-19 and 2019-20.<sup>18</sup> The subsequently published funding [consultation response](#) stated that this had the effect maintaining the schools and high needs blocks of the Dedicated Schools Grant in real terms per pupil up to 2019-20.<sup>19</sup> A further £350million in funding for SEN [was announced](#) in December 2018.<sup>20</sup>

### Transferring funding between blocks

Prior to 2018-19, the Dedicated Schools Grant has been split into 3 blocks: the schools block, the high needs block and the early years block. These blocks were notional, with local authorities are free to move funds between them.<sup>21</sup>

Following the formula changes, this position is now more restricted:

131. The second stage of the consultation recognised that a degree of flexibility between the DSG funding blocks would be needed to ensure that local authorities could manage their high needs budget. Local authorities will therefore be able to transfer up to 0.5% of their schools block funding into their high needs budget, with the agreement of their schools forum.[...][T]here

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<sup>18</sup> Department for Education, [£1.3bn for core schools budget delivers rise in per pupil funding](#), 17 July 2017

<sup>19</sup> Department for Education, [The national funding formula for schools and high needs Executive summary](#), September 2017, p35

<sup>20</sup> Department for Education, [New funding to support children with special educational needs](#), 16 December 2018

<sup>21</sup> Department for Education, [School revenue funding: Current funding arrangements](#), March 2016, p4

will be a process for considering any reasonable requests for exceptions to these rules.<sup>22</sup>

These formula arrangements apply in 2018-19 and 2019-20, with future spending decision subject to future Spending Reviews.

The Library briefing [School funding reform in England from 2018-19: Implementation of the national funding formula](#), CBP 08106, provides more information on the reforms.

## 2.3 Funding system: Call for evidence

In May 2019 the Department for Education opened a [call for evidence](#) on the High Needs funding system.<sup>23</sup>

The call for evidence asked for view on a range of issues relating to SEN, including:

- SEN factors in the school funding formula, including the possibility of tiering funding for pupils with lower attainment in mainstream assessments and, by proxy, pupils with more complex SEN
- Targeted funding for pupils with SEN
- The notional SEN budgets provided to schools to support their spending decisions
- The expectation that mainstream schools pay for the costs of SEN support up to £6,000 before accessing extra funding
- The information available locally about the SEN support particular schools provide
- Whether existing funding arrangements provide perverse incentives against early intervention to support children with SEN

The call for evidence also includes questions about SEN support in post-16 education, and funding for Alternative Provision.<sup>24</sup>

The call for evidence ran until 31 July 2019. The Government has not yet published a response.

### **Consultation: High needs funding 2022-23**

In February 2021, the Department for Education [published a consultation of](#) “specific proposals for a small number of changes” to the high needs funding formula for the 2022-23 funding year, as well as for views on potential longer term changes. The potential changes address the use of historic spending, and also attainment levels, as part

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<sup>22</sup> Department for Education, [The national funding formula for schools and high needs Policy document](#), September 2017, p38

<sup>23</sup> Department for Education, [Education Secretary confirms plans to simplify school accountability](#), 3 May 2019

<sup>24</sup> Department for Education, [Provision for children and young people with special educational needs and disabilities, and for those who need alternative provision: how the financial arrangements work: Call for Evidence](#), May 2019

of the high needs formula, as well as the use of proxy factors.<sup>25</sup> The consultation is open until 24 March 2021.

The consultation stated that wider, longstanding concerns about high need funding, such as the expectation that mainstream schools meet the costs up to £6,000 of supporting a pupil with SEND from their core budget, would be addressed as part of the SEND review (proposals expected in spring 2021) and in subsequent consultations.

### 2.4 Education Committee funding report

In July 2019, the Education Committee published its report on [A ten-year plan for school and college funding](#), which included recommendations on SEN funding.

The report described special educational needs and disability funding as “completely inadequate...[with] simply not enough money in the system to provide for the scale of demand. Local authorities are expected to face a funding shortfall in excess of £1 billion by 2021.”<sup>26</sup>

The report recommended both increased funding and “a thorough assessment of the cost implications of local authorities’ duty to maintain an Education, Health and Care Plan up to the age of 25.”<sup>27</sup>

The report also recommended that the high needs funding formula be revised to become more responsive to changing local authority needs.<sup>28</sup>

A separate, wider Education Committee report on SEN support is discussed in section 5.2.

### Government response

The Government published its [response to the report](#) in October 2019.

In response to the Committee’s criticisms of funding levels, the Government highlighted its forthcoming SEND review, and recent additional funding:

Next year we will be investing £780 million in additional high needs funding to support children with complex special educational needs and disabilities (SEND). This represents an increase of 12% on the funding available this year, bringing the total high needs funding budget to £7.2 billion.

Every local authority will see a minimum increase of at least 8% per head of 2-18 population to their high needs funding.<sup>29</sup>

In response to wider concerns about the funding system and how money is allocated, the response drew attention to the call for evidence

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<sup>25</sup> Department for Education, [Review of national funding formula for allocations of high needs funding to local authorities: changes for 2022-23](#), February 2021, p3 and pp8-14

<sup>26</sup> House of Commons Education Select Committee, [A ten-year plan for school and college funding](#), Tenth report of session 2017-19, July 2019, HC 969, para 105

<sup>27</sup> As above, para 106

<sup>28</sup> As above, para 115

<sup>29</sup> Department for Education, [Government response to Education Committee report on school and college funding](#), Cm 190, October 2019, p19

on the funding system (see section 2.3), which it stated would feed into future decisions about the future of the funding system.<sup>30</sup>

## 2.5 2019 Spending Round

In the [2019 Spending Round](#) the Government outlined several commitments for schools. One of which was an “over **£700 million**” increase in cash terms for special educational needs in 2020-21. This was [subsequently clarified](#) as a £780 million increase in 2020-21 (and an additional £730 million increase in 2021-22). This would increase the High Needs Block in 2020-21 to **£7.06 billion** representing an annual cash terms increase of 12% and a real terms increase of 10%.<sup>31</sup>

However the IFS estimated in their [2019 report](#) on education spending, that this increase “**might** thus only be enough to keep spending **per pupil** largely constant in real terms”.<sup>32</sup> This is due to the IFS estimating that the number of children and young people with EHC plans (includes those aged 16-25) would increase in 2020-21 at a broadly similar rate to the real terms funding increase.

Following the Spending Round, the Minister for School Standards made a statement which provided some [additional detail](#):

...every local authority will receive an increase of at least 8% per head of 2 to 18 population through the funding floor [in cash terms]. This minimum increase in 2020-21 allocations will be based on local authorities’ high needs allocations in 2019-20, including the additional £125 million announced in December 2018.

Above this minimum increase, the formula will allow local authorities to see increases of up to 17% [in cash terms], again calculated on the basis of per head of population.<sup>33</sup>

## 2.6 Trends in funding since 2014-15

As noted above, the high needs block of the Dedicated Schools Grant (DSG) is largely intended for special educational needs provision.

The table below provides total high need funding allocations figures for each financial year since 2014-15. The DfE does not publish allocations at a per-pupil (or per-place) level. This means that comparisons over time should be treated with caution as there is no way of controlling for changes in pupil numbers. In addition, there have been changes in funding methodologies and the policy framework over this period.

<sup>30</sup> As above, p19-20

<sup>31</sup> In 2020-21 prices; [Department for Education, DSG Allocations: 2019/20](#); HM Treasury, [GDP deflators at market prices, and money](#) (Quarterly National Accounts), September 2020.

<sup>32</sup> [Institute Fiscal Studies, Annual Education Spending Report: 2019](#) (p55)

<sup>33</sup> [HC Deb 9 Sep 2019 c22WS](#)

| <b>Total high needs block allocations</b> |            |                             |
|-------------------------------------------|------------|-----------------------------|
| £ Billions, England                       |            |                             |
|                                           | Cash terms | Real terms (2020-21 prices) |
| 2014-15                                   | 5.18       | 5.82                        |
| 2015-16                                   | 5.25       | 5.85                        |
| 2016-17                                   | 5.30       | 5.76                        |
| 2017-18                                   | 5.83       | 6.23                        |
| 2018-19                                   | 6.12       | 6.39                        |
| 2019-20                                   | 6.28       | 6.40                        |
| 2020-21                                   | 7.06       | 7.06                        |
| % Change over period                      | +36%       | +21%                        |
| 2021-22 (planned)                         | 7.79       | 7.63                        |
| Planned annual % change                   | +10%       | +8%                         |

Notes: Figures for all years are for the high needs block prior to deductions. 2021-22 planned funding as of September 2020.

Source: Department for Education, [Dedicated Schools Grant \(DSG\) allocations](#), various years. HM Treasury, [GDP deflators at market prices, and money](#) (Quarterly National Accounts), September 2020. Department for Education, [Panorama on SEND provision](#), September 2020.

## 3. Statistics: tribunals, children and young people with SEND

### 3.1 SEND Tribunals

Parents and, in some cases, young people themselves, have statutory appeal rights to the First Tier Tribunal (Special Educational Needs and Disabilities).

In the academic year 2019-20, **3,770** cases were decided by the Tribunal.<sup>34</sup> Of these, **3,577**, or around **95%**, were decided in favour of the appellant. However, this doesn't necessarily mean that all aspects of the decision were in the appellant's favour.<sup>35</sup>

The proportion of cases decided in favour of the appellant increased from around **69%** in the academic year 2011-12 to **95%** in 2019-20. The following table sets out in more detail the trends in tribunal outcomes since 2011-12.

| <b>SEND Tribunals</b>          |                  |                               |                          |
|--------------------------------|------------------|-------------------------------|--------------------------|
| England, year ending 31 August |                  |                               |                          |
|                                | Outcomes decided | Number in favour of appellant | % in favour of appellant |
| 2011-12                        | 823              | 564                           | 69%                      |
| 2012-13                        | 808              | 682                           | 84%                      |
| 2013-14                        | 797              | 660                           | 83%                      |
| 2014-15                        | 788              | 680                           | 86%                      |
| 2015-16                        | 883              | 780                           | 88%                      |
| 2016-17                        | 1,599            | 1,418                         | 89%                      |
| 2017-18                        | 2,298            | 2,035                         | 89%                      |
| 2018-19                        | 2,614            | 2,416                         | 92%                      |
| 2019-20                        | 3,770            | 3,577                         | 95%                      |

Note: Excludes cases that were withdrawn or conceded

Source: [Tribunal statistics quarterly: July to September 2020; SEND Tribunal Tables \(SEND1\)](#)

In the academic year 2019-20, a total of **7,917** appeals were registered. A significant proportion of these appeals were conceded or withdrawn, explaining the gap between the number of appeals registered and the number of outcomes decided.<sup>36</sup>

As in previous years, the most common special educational need for appeals registered in 2019-20 was autistic spectrum disorder (**3,722**). Between the academic year 2011-12 and 2019-20 the proportion of

<sup>34</sup> This excludes cases which were conceded or withdrawn.

<sup>35</sup> Ministry of Justice, [Tribunal statistics quarterly: July to September 2019](#), Table SEND1

<sup>36</sup> Ministry of Justice, [Tribunal statistics quarterly: July to September 2019](#), Table SEND1



autistic spectrum disorder appeals increased from **29%** of appeals registered, to **4%**.<sup>37</sup>

## 3.2 Pupils with SEN, statements and EHC plans

The trend in the number of pupils in all schools<sup>38</sup> with SEN (includes SEN pupils with and without statements or EHC plans) has fluctuated between 2007 and 2020, but overall has decreased over the period.<sup>39</sup>

In 2007 there were around 1.6 million pupils with SEN, the total increased gradually reaching a peak of around 1.7 million in 2010 before declining again and reached its lowest level in 2016 (around 1.2 million), before increasing again gradually to around **1.4 million in 2020**.

Only a minority of pupils with SEN have statements or EHC plans (around 21%). The trend in the number of pupils with statements or EHC plans has fluctuated to a lesser degree (compared to all pupils with SEN) between 2007 and 2020, and has increased overall during the period. In 2007 there were around 233,000 pupils with statements or EHC plans, the total decreased gradually reaching its lowest level of around 224,000 in 2010 it then increased in each year and reached its highest level in 2020 (around **295,000**).<sup>40</sup>

However, due to changes in overall pupil numbers over this period, the most meaningful way of making comparisons over time is to compare the proportion of pupils with SEN (known as the SEN incidence rate<sup>41</sup>) or the proportion of pupils with statements or EHC plans.

The SEN incidence rate was around 19% in 2007. It gradually increased reaching a peak of around 21% in 2010 then declined and reached its lowest level in 2016 and 2017 (around 14%), before increasing again gradually to around **16%** in 2020. The decline over the period as a whole, has been driven by a decrease in SEN incidence in primary and secondary schools, which was only partially mitigated by increases in other settings such as independent schools and pupil referral units.<sup>42</sup>

The proportion of pupils with statements or EHC plans has tended to be more stable over the period. It remained at 2.8% of pupils in each year between 2007 and 2017, it has increased slightly in each year since then reaching a peak of **3.3%** in 2020. More details are provided in the chart below.<sup>43</sup>

In January 2020 the most common type of need among pupils with an EHC plan by far was autistic spectrum disorder (around 83,000 pupils or 30% of all pupils with an EHC plan). The second most common type of

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<sup>37</sup> Ministry of Justice, [Tribunal statistics quarterly: July to September 2019](#), Table SEND3

<sup>38</sup> Includes all state-funded and independent schools

<sup>39</sup> Department for Education, [Special Educational Needs in England: 2020](#)

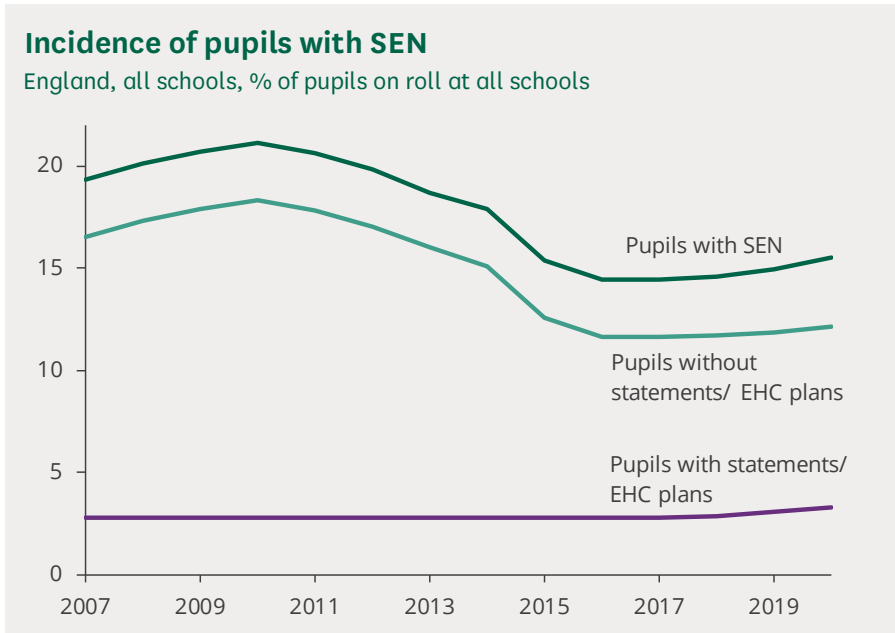
<sup>40</sup> Same as above

<sup>41</sup> The number of pupils with SEN (with and without statements or EHC plans) as a proportion of the number of pupils on roll in all schools

<sup>42</sup> Department for Education, [Special Educational Needs in England: 2020](#)

<sup>43</sup> Same as above

need was speech, language and communication needs (around 43,000 pupils or 15% of all pupils with an EHC plan).<sup>44</sup>



Source: [Special Educational Needs in England: 2020, DfE](#)

### 3.3 EHC plans across all age groups (0 to 25 years)

#### Trends in number of statements and EHC plans

In January 2020, there were around **390,000** children and young people with EHC plans. Most of these were compulsory school age children. In January 2020, 68% of people with EHC plans were aged between 5 and 15 years old, 21% were aged 16-19, 6% were aged 20-25, and 4% were aged under 5.<sup>45</sup>

The number of EHC plans (and earlier, statements of SEN) maintained by local authorities has increased in each year since 2010 (when there were around 228,000), this increase accelerated since 2014-15 (when there were around 240,000). This increase occurred in a wider context of rising pupil numbers as well as reforms that extended the age group covered, to 25 years old.<sup>46</sup>

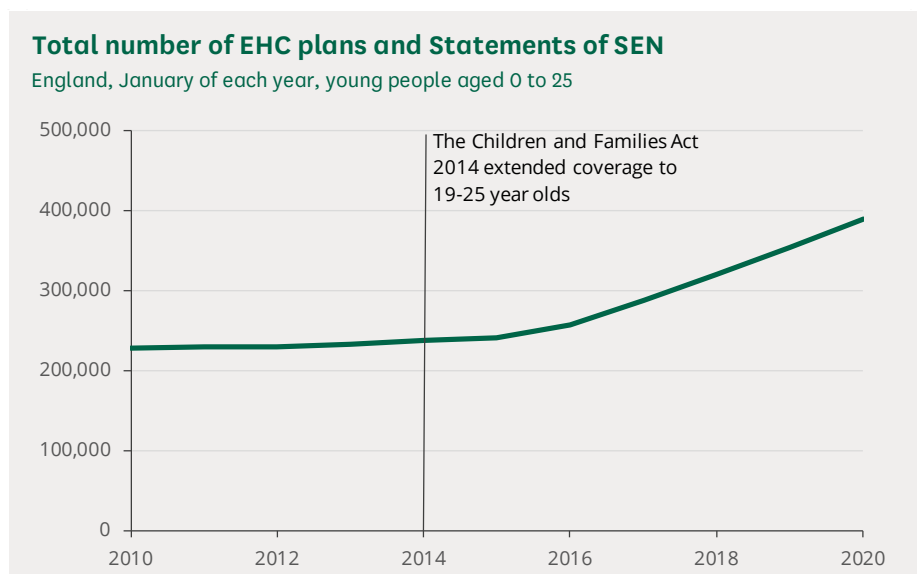
The chart below shows the trend in the number of EHC plans and statements maintained by local authorities, since 2010. The DfE does not publish incidence rates of EHC plans across all age groups as it does for school pupils.

<sup>44</sup> Same as above

<sup>45</sup> Department for Education, [Statements of SEN and EHC Plans: England 2020](#)

<sup>46</sup> Same as above

## 19 Special Educational Needs: support in England



Notes: Figures include Statements of SEN and EHC plans, 31 March 2018 was the deadline for transferring Statements to EHC plans. The Children and Families Act 2014 extended coverage to 19-25 year olds. A very small number within this age group were recorded with EHC plans for the first time in 2015, and large increases were recorded in each year since.

Source: [Department for Education, Statements of SEN and EHC Plans: England 2019, table 1.](#) ; [Department for Education, Statements of SEN and EHC Plans: England 2020](#)

### Placements

In January 2020 of those with an EHC plan:

- **39.0%** were attending mainstream schools
- **37.2%** were attending special schools
- **16.5%** were in further education institutions
- **2.1%** were not in any education, employment or training (NEET)
- **0.8%** were in alternative provision settings – such as pupil referral units.
- **0.5%** were in non-maintained early years settings.

The remaining 4% (around 15,000) of children and young people with EHC plans were in different settings or situations, including:

- Receiving other provision arranged by the local authority or their parents.
- Awaiting the placement named on their plan.
- Being without a new placement following permanent exclusion.<sup>47</sup>

<sup>47</sup> Department for Education, [Statements of SEN and EHC Plans: England 2020](#)

## 4. Accountability: Ofsted and CQC inspections from May 2016

Over five years from May 2016, Ofsted and the Care Quality Commission (CQC) are carrying out inspections of all local authority SEND support provision in England.

Under the [Local area special educational needs and disabilities inspection framework](#), inspectors review how local areas meet their responsibilities to children and young people (from birth to age 25) who have special educational needs or disabilities (or both).

An [overview of the inspections](#), and what inspectors look for, has been published by the two inspectorates:

Over the course of the 5-day inspection, inspectors will meet managers and leaders from the area's education, health and social care services and look at young people's case files.

They will review the support provided by the local area for some individual children and young people to better understand how well the local area meets its responsibilities overall.

They will also visit early years settings, schools, further education providers and specialist services.

During these visits, inspectors will also spend time speaking to children, young people and their parents or carers.

Inspectors will look for evidence of how children and young people with special educational needs or disabilities (or both) are identified, how their needs are assessed and met, and how they are supported to move on to their next stage of education, the world of work and wider preparation for adulthood.<sup>48</sup>

Inspectors do not carry out inspections of individual education, social care or health services or providers.

Separate [information for families](#) about the inspections has also been published.

The relevant reports [are published](#) on the Ofsted and CQC websites.

A [report](#) summarising the findings from the first year of inspections was published in October 2017.<sup>49</sup>

### Background: proposals for inspections

In March 2015, the Department for Education published [Special educational needs and disability: supporting local and national accountability](#), which provided a framework for monitoring the performance of the reformed SEND support system. The document indicated that the Government would develop a set of key indicators to monitor the progress and impact of the reforms locally and nationally,<sup>50</sup>

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<sup>48</sup> Ofsted and Care Quality Commission, [Joint inspections of local area special educational needs or disabilities \(or both\) provision](#), 7 January 2019

<sup>49</sup> Ofsted and Care Quality Commission, [Local area SEND inspections: one year on](#), October 2017

<sup>50</sup> Department for Education, [Special educational needs and disability: supporting local and national accountability](#), March 2015, p6

and included information about new arrangements for independent assessment, including proposed inspections by Ofsted and the CQC.<sup>51</sup>

A [consultation](#) on the proposed inspections by Ofsted and the CQC was launched in October 2015 and ran until January 2016. It set out that, starting in May 2016, inspectors from these two bodies would inspect the provision of support for children and young people with SEND across the responsible local bodies in health, social services and education. The full [consultation document](#) provides more detail.<sup>52</sup>

### **Government Response and next steps: inspections began May 2016**

Ofsted and the CQC published a [response to the consultation](#) on 10 March 2016. The response set out how Ofsted and the CQC would develop their approach, informed by consultative pilot inspections.

Ofsted and the CQC stated that there was “considerable agreement” with the proposals and that inspections would begin in May 2016.

The [Local area SEND inspection framework](#) was published in April 2016, alongside [guidance for inspectors](#) and [information for families](#).

### **Findings**

Ofsted’s annual report for 2018/19 found that, as of the end of August 2019, two thirds (100 out of 151) of the inspections had been completed and reports published, with half (50) of the areas inspected have been required to produce and submit a written statement of action (WSOA) to HMCI.<sup>53</sup>

### **Coronavirus pandemic: inspections paused**

In July 2020, Ofsted announced that inspections with the CQC, that had been paused at the onset of the pandemic, [would not resume in autumn 2020](#).

In the meantime, Ofsted and the CQC would conduct visits to local areas to:

- understand children and young people’s experience and learn from what has worked well for them in this time
- support local areas to prioritise and meet the needs of children and young people with SEND in the context of the pandemic
- enable learning for all local areas, government and stakeholders on how best to strengthen the SEND system in future through a series of national reports

The announcements stated that “these visits are not inspections, nor will they replace the current area SEND inspection cycle.”<sup>54</sup>

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<sup>51</sup> Ibid., p14-15

<sup>52</sup> Ofsted, [Local area SEND consultation: The inspection of local areas’ effectiveness in identifying and meeting the needs of disabled children and young people and those who have special educational needs](#), October 2015

<sup>53</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19](#), p88

<sup>54</sup> Ofsted, [HMCI commentary: the future of area special educational needs and disabilities inspections](#), 9 July 2020

Ofsted further confirmed that the Secretary of State had commissioned Ofsted and CQC to develop a new area SEND inspection framework, to launch after the existing cycle had been completed.<sup>55</sup>

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<sup>55</sup> Ofsted, [HMCI commentary: the future of area special educational needs and disabilities inspections](#), 9 July 2020

## 5. Impact of the coronavirus pandemic

### 5.1 Regulatory changes

#### Coronavirus Act

The [Coronavirus Act 2020](#) gave the Secretary of State powers to temporarily disapply certain statutory requirements relating to education. This includes the requirements on local authorities to secure education and health care provision under an Education, Health, and Care Plan (EHCP) under the *Children and Families Act 2014*. Instead, the duty would be fulfilled if authorities had made 'reasonable endeavours' to fulfil these requirements.

In a March 2020 [letter to children, young people and parents](#), the Parliamentary Under-Secretary of State for Children and Families, Vicky Ford, set out what the changes might mean, and noted that further changes could follow through regulations to amend the timescales for EHCP processes:

In practice, this will mean that where a local authority is, because of the outbreak, unable, for example, to put in place stated provision, they will need to use their reasonable endeavours to do this, but won't be penalised for failing to meet the existing duty as set out in the Children and Families Act 2014. These emergency powers will only be exercised for the shortest period and where necessary, and will be regularly reviewed. We will also be seeking to amend regulations on the timescales for EHC plan processes where this is appropriate because of COVID19. I want to reiterate that these decisions are not taken lightly but I believe strike the right balance in these difficult times.<sup>56</sup>

#### Temporary changes: May-September 2020

From 1 May to 31 July 2020, notices were published by the Secretary of State under the *Coronavirus Act 2020*, that local authorities and health commissioning bodies were required to use their 'reasonable endeavours' to discharge these duties to provide the support set out in EHC plans.

Regulations also amended the timeframes for some requirements. This included the requirement to issue an EHC plan to someone eligible for one within 20 weeks of the initial request, where the impact of coronavirus made meeting this timescale impractical. In such cases, responsible bodies had to complete the process as soon as was reasonably practical. These changes came to an end on 25 September 2020, and the normal statutory timeframes resumed.

[Guidance on these temporary legislative changes](#) was published by the Department for Education.<sup>57</sup>

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<sup>56</sup> DfE, [Letter to partner organisations](#), 24 March 2020

<sup>57</sup> DfE, [Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to coronavirus \(COVID-19\)](#), 26 August 2020

## 5.2 Attendance

Schools in all parts of the UK were closed to most children by the start of the week commencing Monday 23 March 2020. In England, some schools remained open where necessary for the children of critical workers, and vulnerable children, which included some of those with an education, health and care plan (EHCP).

The DfE has published national **estimates** of the number of pupils with an EHCP attending schools in person during term time since 23 March 2020. These estimates are based on the daily attendance figures which schools in England have provided to them. The most recently available data can be found in the statistical release [Attendance in education and early years settings during the coronavirus covid-19 outbreak](#).

The published figures are estimates because they have been adjusted for non-responses using certain assumptions. Lower response rates from schools can make these estimates less accurate.

Between 23 March and 17 July 2020 the estimated average number of pupils with an EHCP attending schools increased each month in the context of schools partially reopening to certain year groups from 1 June.

An average of around 11,800 pupils with an EHCP were attending schools in England from 23 March to 30 April 2020, this increased to around 18,600 from 1-29 May, this increased again to around 56,000 from 1-30 June, and reached a peak monthly average of around 78,600 from 1-17 July.<sup>58</sup>

The Children's Commissioner produced estimates for the proportion of pupils with EHC plans attending schools. Less than 10% of pupils with an EHCP attended school from 23 March to 1 June 2020, before rising to around a third in mid-July.<sup>59</sup>

Over this period as a whole, the proportion of all pupils attending schools was lower than for pupils with EHCPs (this is not surprising because schools were closed to most pupils). The proportion of all pupils attending schools reached its peak on 7 July when an estimated 17.5% attended. Further information about trends in the attendance of pupils with an EHCP as well as other groups of pupils is available in the Library briefing paper [Coronavirus and schools: FAQs](#).

The Children's Commissioner, Anne Longfield, said risk assessments organised by schools sometimes dissuaded parents from sending their child to school, despite believing that their child's needs would be best met through attendance, and, in other cases, assessments "either did not happen or stated that the child would be safer at home".<sup>60</sup>

The Education Policy Institute's (EPI) [School attendance rates across the UK since full reopening](#) (October 2020) estimated that special schools

<sup>58</sup> DfE, [Table 3- Daily attendance in education settings during COVID-19 outbreak pre 17 July](#) from [Explore Education Statistics](#)

<sup>59</sup> Children's Commissioner, [Childhood in the time of Covid](#), September 2020, p7

<sup>60</sup> [Ibid](#), p7; Children's Commissioner, [Supporting children with SEND return to school](#), 31 August 2020



had the lowest rates of attendance across the UK: 78% in England compared to 87% in all state-funded schools in the week ending 19 October.<sup>61</sup>

### 5.3 Access to support services

The Women and Equalities Committee's [Unequal impact](#) (September 2020) argued that the term 'reasonable endeavours' in relation to meeting needs identified in an EHCP under the *Coronavirus Act 2020* was 'inconsistently interpreted and poorly understood by some local authorities'. The Committee said that in some authorities, their support for SEND pupils 'fell far short of an acceptable standard' from May to July.<sup>62</sup> The Government is yet to respond to the Committee's report.

The EPI's October 2020 report, [Education policy responses across the UK to the pandemic](#), argued that some parents with SEND children struggled to access support during the pandemic which made continuing their education difficult:

Some types of support, such as one-on-one support, or some types of therapy, were particularly difficult to provide during the period of school closures, when social distancing was a priority and such provision would usually have been delivered at school. However, some parents report not receiving any support at all [...] For students who rely on a combination of education, therapy and health services, missing out on any one of these areas of support could be detrimental to the other two.<sup>63</sup>

Pages 53-54 of the [EPI report](#) details findings from eleven surveys of children with SEND in April-June 2020 across the UK. These include a survey by the Disabled Children's Partnership, whose [survey](#) of around 4,000 parents and carers with disabled children in May 2020 found that 'nearly a third (32%) said they were receiving no support specific to their child's needs from school [...] [and] a quarter were getting good support'.<sup>64</sup>

Ofsted's [Briefing on local areas' SEND provision](#) (October 2020), based on interviews and online surveys from young people, children and parents and visits to six local authority areas in October 2020, found that access to services had been partly impacted on the state of relationships between families and practitioners before March 2020: those that were previously strong were more likely to continue, while establishing new relationships was difficult.<sup>65</sup> Ofsted concluded that availability across the six authorities was 'variable', being partly determined by family resources (impacting, for example, on access to IT equipment), and that not all support services, particularly Child and

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<sup>61</sup> EPI, [School attendance rates across the UK since full reopening](#), October 2019, p4, 7

<sup>62</sup> Women and Equalities Committee, [Unequal impact? Coronavirus, disability and access to services: Interim report on temporary provisions in the Coronavirus Act](#), HC 386, 25 September 2020, para 10

<sup>63</sup> EPI, [Education policy responses across the UK to the pandemic](#), 9 October 2020,

<sup>64</sup> Disabled Children's Partnership, [Left in lockdown: Parent carer's experiences of lockdown](#), p2; Education Select Committee, [Oral evidence: The impact of COVID-19 on education and children's services, HC 254](#), 1 July 2020, Q724

<sup>65</sup> Ofsted, [Briefing on local areas' SEND provision, October 2020](#), 10 November 2020, pp2, 7-8

Adolescent Mental Health Services, were able to switch to online provision effectively.<sup>66</sup>

## 5.4 Experiences of learning

Ofsted's [Briefing on local areas' SEND provision](#) (October 2020) found mixed experiences of learning during the pandemic. For those learning in the classroom, Ofsted noted that some SEND children benefited from smaller class sizes and one-to-one support, but some parents and carers reported a deterioration in communication and health amongst those who did not attend education settings.<sup>67</sup> An Ofsted survey of around 1,250 parents and carers suggested some dissatisfaction with provision: around 47% said work set was either too much or too little, and 40% said the level of challenge in work set was either too difficult or easy for their child.<sup>68</sup>

The National Foundation for Educational Research's [Pupil engagement in remote learning](#) (June 2020), based on a survey of senior leaders and teachers in mainstream secondary schools in England in May, found that 62% reported less engagement amongst pupils with SEND than other pupils.<sup>69</sup>

Examining the educational performance of SEND pupils from 2014 to 2019, the EPI's [Education in England Annual Report](#) reported that, prior to the coronavirus pandemic, 'by the end of secondary school, SEND pupils with a statement or EHCP are over three years behind their peers, on average' and stated an expectation that 'the gaps we report here may [...] already be much wider this year'.<sup>70</sup>

The DfE allocated additional support through the Family Fund and catch-up premium, and it expects schools to use some of this funding to support children with SEND, including through funding extra teaching capacity, speech and language therapists, and educational psychologists.<sup>71</sup>

## 5.5 Potential needs during the Autumn 2020 term

The Nuffield Foundation Trust report, [Special education during lockdown: Returning to schools and colleges in September](#) (September 2020) surveyed the experiences of 201 special schools and colleges during July 2020. 7 in 10 providers agreed that a 'significant proportion' of pupils would require additional support on their return. Reasons cited for this included: declines in social, emotional, mental health and wellbeing during the pandemic as a result of loss of routine, structure

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<sup>66</sup> [Ibid.](#), pp10-12

<sup>67</sup> [Ibid.](#), p4

<sup>68</sup> [Ibid.](#), p5

<sup>69</sup> National Foundation for Educational Research, [Pupil engagement in remote learning](#), June 2020, pp3, 4

<sup>70</sup> EPI, [Education in England: annual report 2020](#), August 2020, pp7, 8, 21

<sup>71</sup> DfE, [£37 million to support children with complex needs](#), 19 May 2020; PQ 110748 [[Special Educational Needs](#)], 3 November 2020

and contact; potential skills regression, such as in language or mobility; and inadequate preparation for transition between schools.<sup>72</sup>

Ofsted's [interim visits](#) to 380 schools from 29 September to 23 October 2020 heard reports from school leaders that some pupils with SEND had 'fallen further' behind those without SEND, and that most were making some adaptations to curriculum content in response to pupils' learning.<sup>73</sup> A University of Sussex survey in July 2020 of around 500 parent carers of children with SEND also reported a desire for schools to focus on relationships, wellbeing and routine when their child returned.<sup>74</sup>

A potential backlog in EHC assessments and plans was also [raised](#) by the Women and Equalities Committee in September 2020, who called upon the UK Government to set out a national strategy to manage this.<sup>75</sup> The Government has said it is offering additional support to authorities to help tackle backlogs.<sup>76</sup>

The Children's Commissioner has also [expressed concern](#) that, as before the crisis children with SEND had higher rates of exclusion, these rates could rise again during the Autumn term.<sup>77</sup> The DfE has said that from September 2020 it is monitoring 'in real time any changes in the use of exclusions and other disciplinary measures'.<sup>78</sup>

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<sup>72</sup> ASK Research for Nuffield Foundation, [Special education during lockdown: Returning to schools and colleges in September](#), September 2020, p13

<sup>73</sup> Ofsted, [Briefing on schools, October 2020](#), November 2020, pp4-6, 10

<sup>74</sup> J. Shepherd and C. Hancock, [Education and Covid-19: Perspectives from parent carers of children with SEND](#), August 2020, p4

<sup>75</sup> Women and Equalities Committee, [Unequal impact? Coronavirus, disability and access to services: Interim report on temporary provisions in the Coronavirus Act](#), HC 386, 25 September 2020, para 60

<sup>76</sup> PQ 95632 [[SEND: Coronavirus](#)], 25 September 2020

<sup>77</sup> Children's Commissioner, [Supporting children with SEND return to school](#), 31 August 2020

<sup>78</sup> PQ 91687 [[SEN: Pupil exclusions](#)], 17 September 2020

## 6. Reports on the effectiveness of support for children with SEN

### 6.1 Government review

In September 2019, five years after the introduction of the current system of SEN support, the Government [announced a review](#) of the system's effectiveness.

The review aimed "to improve the services available to families who need support, equip staff in schools and colleges to respond effectively to their needs as well as ending the 'postcode lottery' they often face." It intended to look at how the system has evolved since its introduction, links with health and social care, and would "conclude with action to boost outcomes and improve value for money."<sup>79</sup>

The announcement stated that the Government would consider and propose action on:

- the evidence on how the system can provide the highest quality support that enables children and young people with SEND to thrive and prepare for adulthood, including employment;
- better helping parents to make decisions about what kind of support will be best for their child;
- making sure support in different local areas is consistent, joined up across health, care and education services, and that high-quality health and education support is available across the country;
- how to strike the right balance of state-funded provision across inclusive mainstream and specialist places;
- aligning incentives and accountability for schools, colleges and local authorities to make sure they provide the best possible support for children and young people with SEND;
- understanding what is behind the rise in education, health and care (EHC) plans and the role of specific health conditions in driving demand; and
- ensuring that public money is spent in an efficient, effective and sustainable manner, placing a premium on securing high quality outcomes for those children and young people who need additional support the most.

The review has not yet been published. The Government has stated (see section 5.3) that the Coronavirus pandemic has affected the timing of the review, and that also that the content of the review will be reconsidered in light of the Covid crisis.

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<sup>79</sup> Department for Education, [Major review into support for children with Special Educational Needs](#), 6 September 2019

## 6.2 Education Committee report on the SEND support system

### Announcement

In April 2018, the House of Commons Education Committee announced an [inquiry into the 2014 SEND reforms and their implementation](#).<sup>80</sup>

The announcement stated that the Committee would investigate:

- Assessment of and support for children and young people with SEND
- The transition from statements of special educational needs and Learning Disability Assessments to Education, Health and Care Plans
- The level and distribution of funding for SEND provision
- The roles of and co-operation between education, health and social care sectors
- Provision for 19-25-year olds including support for independent living; transition to adult services; and access to education, apprenticeships and work

The [written and oral evidence](#) provided to the Committee was published on the Committee's website.

### Report publication

The Committee [published its report](#) in October 2019, shortly before Parliament dissolved for the 2019 General Election. The report was lengthy, and the Committee had received a large amount of evidence as part of its deliberations – including more than 700 written submissions.

The Committee believed that the 2014 reforms had set up the right system of support for SEND, but that children and young people were being badly let down by a system that was insufficiently funded and poorly implemented. The Committee found that:

Let down by failures of implementation, the 2014 reforms have resulted in confusion and at times unlawful practice, bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences, and ultimately dashed the hopes of many.<sup>81</sup>

As well as a “significant funding shortfall”,<sup>82</sup> the [report](#) found issues including:

- A lack of joint working between responsible bodies on the ground, meaning that even significant funding increases might make little difference to children and young people with SEND
- An adversarial, hard-to-navigate system, with parents needing to fight for support they are entitled to, often

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<sup>80</sup> Education Committee, [Special educational needs and disabilities inquiry launched](#), 18 April 2018

<sup>81</sup> Education Committee, [Special educational needs and disabilities](#), First Report of Session 2019, HC 20, p3

<sup>82</sup> As above

through repeated visits to tribunals – providing an unfair advantage to more knowledgeable parents

- An absence of responsibility for driving change and accountability for failures
- A lack of involvement for children and young people in decisions about the support they receive

The Committee were, however, confident that if the challenges they identified were addressed, alongside funding issues, local authorities would be able to discharge their duties sufficiently.

The Committee made recommendations including:

- A more rigorous inspection framework for local authorities, with clear consequences for failure. There should be a greater focus on SEND in school inspections.
- A direct line for parents and schools to appeal directly to the Department for Education where local authorities appear not to be complying with the law.
- Powers for the Local Government and Social Care Ombudsman to investigate complaints about schools.
- The development of more employment and training opportunities for post-16 young people<sup>83</sup>

## Government response

The [Government responded](#) to the report in July 2020.

In its response, the Government noted the impact of the Coronavirus pandemic, and that

The great majority of children and young people with SEND have been at home during the crisis, and even those still attending their school or college have generally not been receiving their usual support, and not receiving it in the usual way.<sup>84</sup>

The Government stated that while “we do not agree with all [the Committee’s] findings we readily acknowledge that, overall, the SEND system must improve.”<sup>85</sup>

The Government further stated that it was working through the SEND review to see how cross-sector working could be improved,<sup>86</sup> and highlighted that Ofsted and the CQC were working on a new inspection framework.<sup>87</sup>

On accountability, the report emphasised the arrangements already in place, “at both the educational setting level and the local area level, to

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<sup>83</sup> Education Committee, [Government’s special educational needs reforms failing young people and parents, say MPs](#), 23 October 2019

<sup>84</sup> Education Committee, [First Special Report: Special Educational Needs and Disabilities: Government Response to the Committee’s First Report of Session 2019](#), HC 668, 23 July 2020, p3

<sup>85</sup> As above, p1

<sup>86</sup> As above, p23

<sup>87</sup> As above, p4

hold partners to account for supporting children and young people with SEND.”<sup>88</sup>

### 6.3 Public Accounts Committee report (2020)

In May 2020 the Commons Public Accounts Committee published a report on [Support for children with special educational needs and disabilities](#). The Committee stated that “we remain to be convinced that the Department has sufficient grip on what needs to be done to tackle the growing pressures on the SEND system,” and recommended that the SEND review be completed as a matter of urgency.<sup>89</sup>

The Committee also raised other issues, such as concerns about the differentiation in SEND levels between different groups, exclusions levels among pupils with SEND and the financial incentives on mainstream schools to be inclusive of pupils with SEND.

The [Government responded](#) to the report in October 2020. The Government said that it would publish the SEND review “as soon as is practicable,” with a target for publication of autumn 2020, but that the COVID-19 pandemic had impacted both on the timing and the form of the review:

The Department is determined to introduce genuine and lasting improvements, but the COVID-19 pandemic has brought a further layer of change and complexity to a system that reaches across health, education, social care, and transition into employment. It is too big a risk to rush into making lasting change in a system, and indeed society, in such considerable flux. It would neither be practical nor proper, therefore, to publish the Review until it has been possible to reflect on the past months, to design reform that will work in the post-pandemic system. The Department is clear that future policy needs to reflect this new environment rather than the pre-crisis system.<sup>90</sup>

### 6.4 National Audit Office report (2019)

In September 2019 the National Audit Office published a report assessing the effectiveness of [Support for pupils with special educational needs and disabilities in England](#).

The report presented a range of findings about increased demand and the ability of the SEN support system to meet it. It concluded that the “system for supporting pupils with SEND is not, on current trends, financially sustainable”:

Many local authorities are failing to live within their high-needs budgets and meet the demand for support. Pressures – such as incentives for mainstream schools to be less inclusive, increased demand for special school places, growing use of independent schools and reductions in per-pupil funding – are making the system less, rather than more, sustainable. The Department needs

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<sup>88</sup> As above, p8

<sup>89</sup> Public Accounts Committee, [Support for children with special educational needs and disabilities, First Report of Session 2019–21](#), HC 85, 6 May 2020 p5

<sup>90</sup> Treasury minutes: [Government response to the Committee of Public Accounts on the First to the Sixth reports from Session 2019-21](#), 9 October 2020, p2

to act urgently to secure the improvements in quality and sustainability that are needed to achieve value for money.<sup>91</sup>

The following issues were among the key points were raised:

- The number of pupils identified as having the greatest needs has risen since 2014, although this is in part due to increased pupil numbers on the whole - the proportion of pupils with EHC plans remained stable between 2014 and 2018 at between 2.8% and 2.9%, but rose to 3.1% in 2019
- The Department has increased school funding, particularly for high needs, but funding has not kept pace with the rise in the number of pupils. The report stated:  

Between 2013-14 and 2017-18, the Department increased high-needs block funding by £349 million (7.2%) in real terms. This rise was larger than the 2.3% real-terms increase in schools block funding for mainstream schools, meaning that the Department has shifted the balance of funding towards high needs. However, because of a 10.0% rise in the number of pupils in special schools and those with EHC plans in mainstream schools, high-needs funding per pupil fell by 2.6% in real terms, from £19,600 to £19,100. Per-pupil funding in the schools block also reduced over the same period, despite a £754 million real-terms increase in total funding
- Local authorities are increasingly overspending their budgets for supporting pupils with high needs. In 2017-18, 122 local authorities (81.3%) overspent their schools high-needs budgets, including 84 that overspent by 5% or more. The position had worsened since 2013-14, when 71 local authorities (47.3%) overspent, including 46 that overspent by 5% or more
- The main reason why local authorities have overspent their high-needs budgets is that more pupils are attending special schools. Between January 2014 and January 2018, the number of pupils in special schools and alternative provision rose by 20.2%

The NAO stated that the DfE did not fully assess the likely financial consequences of the 2014 reforms:

It expected, for example, that there would be fewer challenges to local authorities' decisions about support and that these could be resolved through mediation. In practice, the number of cases being taken to tribunal increased by 80.5%, from 3,147 in 2014/15 to 5,679 in 2017/18

The report further stated that the ways in which the DfE and local authorities are responding to overspending on high-needs budgets are not making the system sustainable:

The main way that local authorities have funded overspending against their high-needs budgets is by using dedicated schools grant reserves accumulated in previous years. The total net value of reserves fell by 86.5% – from

<sup>91</sup> National Audit Office, [Support for pupils with special educational needs and disabilities in England](#), September 2019, p11



£1,070 million at the start of 2014-15 to £144 million at the start of 2018-19

Most local authorities have transferred money from their schools block to their high-needs block. The amount transferred has increased – from £49.8 million in 2018-19 to an expected £100.7 million for 2019-20. Schools forums, whom local authorities consult about funding transfers, appear increasingly unwilling to support moving money to the high-needs block, as this reduces funding for mainstream schools

- Ofsted and CQC inspections indicate that many local areas are not supporting children and young people with SEND as effectively as they should be. At July 2019, Ofsted and the CQC had found significant areas of weakness in 47 (50.0%) of the 94 local areas inspected.
- There is considerable local variation across aspects of SEND provision. For example, at January 2019: the proportion of pupils aged 5 to 15 with EHC plans ranged from 1.0% to 5.9% in different local authorities; the proportion of pupils identified as needing SEN support ranged from 7.3% to 17.1%; and the proportion of children in special schools ranged from 0.4% to 2.8%. The Department believes that the variation reflects local context and practice, but has not investigated the reasons.<sup>92</sup>

The report also made a number of recommendations for improving the system, including quantifiable metrics for preparing young people for adulthood, a review of incentives in the funding and accountability system, and more robust investigations of the reasons for local variations in provision.<sup>93</sup>

## 6.5 Ofsted comment

### Report on impact of school funding pressures

In February 2020, Ofsted published [Making the cut: how schools respond when they are under financial pressure](#), a research report carried out during 2018-19. The report noted that most schools involved in the trial had altered their SEN provision because of funding pressures.

In a post on the report, HMCI Amanda Spielman highlighted particular concerns about reductions in SEN support in schools, such as reductions in one-to-one support or the use of external services. She worried this might “reinforce the view among many parents that obtaining an EHCP is the ‘golden ticket’” for effective support.

Ms Spielman further stated:

As a result of the funding squeeze on LAs, schools have in some cases been asked to provide support and services they are not necessarily well equipped to provide. It is not reasonable to expect

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<sup>92</sup> National Audit Office, [Support for pupils with special educational needs and disabilities in England](#), September 2019, p6-11

<sup>93</sup> National Audit Office, [Support for pupils with special educational needs and disabilities in England](#), September 2019, p12

schools to be the main port of call for often highly specialised needs.<sup>94</sup>

A spokesperson for the Department for Education was [reported as stating](#) that the report was based on a “very small and unrepresentative sample of schools.”<sup>95</sup>

## Annual reports

### Annual report 2018/19

Ofsted’s [annual report for 2018/19](#), published in January 2020, highlighted problems for children and young people in receiving the right support, driven in part by rising demand for EHC plans, sometimes not being in school at all because their support was not being fulfilled:

The number of children and young people with an EHC plan increased by 47% in the last four years, rising from 240,000 in January 2015 to 354,000 in January 2019. Ninety-nine per cent of children and young people with EHC plans are placed in the type of education setting named in their plan. While this clearly reflects an enormous effort on the part of LAs and schools, it still left almost 3,500 children and young people with EHC plans waiting for the provision due to them at January 2019. This means that following statutory assessment, the child or young person was not in the school or education setting named in their EHC plan, despite being agreed through statutory consultation. Rather concerningly, over 2,700 of these 3,500 children and young people were recorded as not being in school or in an education setting at the time of the annual data return.<sup>96</sup>

As in the 2017/18 report (see following sub-section), Ofsted found that significant numbers of children with SEND had left school at key points, with just over 5,500 pupils with SEND having left their school between Years 10 and 11 – representing 27% of those who leave their school, despite being 15% of the school population.<sup>97</sup>

The report also identified strengths in areas that performed well in the report, including the effective joint planning, commissioning and provision of services by local leaders. Characteristics of weaker areas included ineffective joint working, overlong waits for EHC plans, and role of the designated clinical or medical officer being insufficiently resourced.<sup>98</sup>

The report also noted developing trends in Ofsted and CQC area inspections (see section 5.5).

### Annual report 2017/18

Ofsted published its [annual report for 2017/18](#) in December 2018. The report found that “the gap in performance and outcomes for children with SEND is widening between the best and the worst local areas.”<sup>99</sup>

<sup>94</sup> HM Chief Inspector, [Commentary on school funding](#), 19 February 2020

<sup>95</sup> Schools Week, [DfE dismisses ‘unrepresentative’ Ofsted school funding study](#), 21 February 2020

<sup>96</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19](#), January 2020, p86

<sup>97</sup> As above, p87

<sup>98</sup> As above, p89

<sup>99</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2017/18](#), December 2018, p7

In her [announcement of the report](#), Amanda Spielman, Her Majesty's Chief Inspector, said that local area SEND reports (see section 4.4) had found provision for young people with SEND to be "too disjointed and too inconsistent," and identified patchy implementation of EHC plans as a key concern:

the quality of education, health and care plans remains too variable and the contributions from certain partners too weak. Some areas have led the way in showing what can be done with these plans to support better outcomes for children. But too many have not. The result is, to return to my analogy of the slope, the gradient for some young people with SEND is getting steeper, not shallower. Identification of SEND is often inaccurate or late, and the gap in outcomes for children with SEND is widening, which in turn places even greater strain on services.<sup>100</sup>

Ms Spielman also highlighted the difficulties parents have in accessing support: "Something is deeply wrong when parents repeatedly tell inspectors that they have to fight to get the help and support that their child needs."<sup>101</sup>

[The report](#) itself commented on a sharp increase in recent years in demand for EHC assessments to be carried out, as well as refusals by local authorities to do so, and raised concerns about increasing numbers of children awaiting provision despite having a plan in place:

6. The level of demand for local authorities to undertake EHC needs assessments has increased by over 50% since 2015. In 2017, 45,200 children and young people were assessed and a decision taken to whether they need an EHC plan. The number of requests for EHC plans that are either refused or delayed is also increasing. LAs can refuse to carry out an EHC needs assessment if they believe it has not met the required threshold of needs. In 2017, there were around 14,600 refusals to carry out an assessment. This is a third more than in 2015. Once a child has been assessed, they may still struggle to access the services they need. In 2018, 2,060 children with a statement or EHC plan were awaiting provision, which is almost three times more than in 2010.<sup>102</sup>

The report also raised concerns that children with SEN are more likely to have a fixed-term exclusion, a permanent exclusion or to be off-rolled:

We are concerned that in secondary schools:

- pupils with SEN support are five times more likely to have a permanent exclusion than pupils with no SEND
- 27% of pupils with SEN support had a fixed-term exclusion last year – 93,800 pupils
- nearly 5,800 pupils with SEND left their school between Years 10 and 11 and some of them may have been 'off-rolled'; pupils with SEND account for 13% of all pupils but 30% of those who leave their school

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<sup>100</sup> Ofsted, [Amanda Spielman launches Ofsted's Annual Report 2017/18](#), 4 December 2018

<sup>101</sup> As above

<sup>102</sup> Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2017/18](#), December 2018, p53

- it is not clear where these Year 10 pupils move on to; half do not reappear in another state-funded school, more than a quarter go to state-funded alternative provision/pupil referral units, but only a small proportion move to a state-funded special school.<sup>103</sup>

The Library briefing on [Off-rolling in English schools](#), CBP 8444, discusses that issue more widely.

## 6.6 Ofsted and CQC inspections: Findings on the system

### 2019: NAO report

The September 2019 National Audit Office report, [Support for pupils with special educational needs and disabilities in England](#), found that Ofsted and CQC inspections of local SEND provision indicated that many areas were “not supporting children and young people with SEND as effectively as they should be.”

### Ofsted annual report 2018/19

Ofsted’s [annual report for 2018/19](#) found that, as of the end of August 2019, two thirds (100 out of 151) of the inspections had been completed and reports published, with half (50) of the areas inspected have been required to produce and submit a written statement of action (WSOA) to HMCI, an indication of significant weaknesses in the areas’ SEND arrangements.

There were significant regional variations in the reports:

- Only one in four London boroughs required a WSoA
- Almost one in two shire county inspections has resulted in a WSoA.
- Unitary authorities and metropolitan districts have the worst outcomes, with 58% and 61%, respectively, requiring a WSoA<sup>104</sup>

### Ofsted annual report 2017/18

Ofsted’s [annual report for 2017/18](#) stated that, as of the end of July 2018, Ofsted and the CQC had inspected SEND provision in 68 out of 152 local areas (see section 3 for information on these inspections’ introduction). Of these, 30 areas were required to provide a ‘written statement of action’, an indication of serious failings.<sup>105</sup>

### 2017 report

In October 2017 Ofsted and the CQC published a [report](#) based on their first year of local area SEND inspections.

<sup>103</sup> As above.

<sup>104</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19](#), p88

<sup>105</sup> Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2017/18](#), December 2018, p53

The report offered some findings on the system as a whole, taken from its inspections of 30 local authorities' SEND support systems. Some of the most important findings were:

- Children and young people identified as needing SEND support had not benefited from the implementation of the Code of Practice well enough. These children and young people had a much poorer experience of the education system than their peers. Too often, local area leaders were not clear how their actions were improving outcomes for those children and young people identified as needing SEND support.
- Children and young people who have SEND were found to be excluded, absent or missing from school much more frequently than other pupils nationally.
- School leaders had used unofficial exclusions too readily to cope with children and young people who have SEND.
- Access to therapy services was a weakness in half of the local areas inspected, while access to child and adolescent mental health services (CAMHS) was poor in over a third of local areas
- There had not been enough progress in implementing a coordinated 0–25 service for children and young people who have SEND. In particular, the commissioning of health services for up to 25 was inconsistent. In the most effective local areas, strong strategic leadership had led to established joint working between education, health and care services.
- Children's and young people's SEND were identified well in the early years, particularly for those with complex needs
- In over a third of the local areas inspected, leaders across education, health and care did not involve children and young people or their parents sufficiently in planning and reviewing their provision.
- Many local area leaders were unaware of the depth of frustration among local parents and what their concerns were about
- A large proportion of parents in the local areas inspected lacked confidence in the ability of mainstream schools to meet their child's needs
- Local offers were not effective in helping parents to access information and services in over half of the local areas inspected
- The statutory assessment process was not working well enough in just over two thirds of local areas inspected
- Local area leaders have had varied success in securing the use of personal budgets
- The proportions of young people who have SEND who are not in education, employment and training were low, particularly for those who had an EHC plan.

- Children and young people who have SEND and their families typically had good access to high-quality short breaks.

## 6.7 DfE survey on EHC plans

In March 2017, the Department for Education published the findings of a survey of parents and young people on their [experiences of EHC plans](#). The following issues were listed among the report's key findings:

- Two thirds of parents and young people were satisfied with the overall process of getting an EHC plan and a similar proportion agreed that it would achieve the outcomes agreed for the child or young person (over one in ten were dissatisfied and just under one in ten disagreed respectively)
- Half found that starting the EHC plan process was easy, whereas almost one quarter found this to be difficult
- Two thirds of parents and young people were informed about the information, advice and support available
- The majority (80%) of parents agreed that their own wishes and opinions were included in the EHC plan. It was less common to report that the wishes and opinions of the child or young person were included (55%)
- Three quarters said that the nursery, school or college named in their EHC plan was the one they asked for in the drafting process
- More respondents thought that their EHC plan had been provided after the 20-week target had passed than before (62-38%). Official statistics show the majority of new plans were provided by 20 weeks. The report suggested that the difference may reflect respondents timing the process from an earlier point, imprecisions in respondents' estimates, and plans exempt from the 20-week timeframe being included in the survey data
- Almost three quarters agreed that their EHC plan led to the child or young person getting the help and support that they need; over two-thirds agreed it has improved the child/young person's experience of education. Respondents were more likely to agree (for both measures) the longer the plan had been in place<sup>106</sup>

## 6.8 DfE Review of arrangements for disagreement resolution

Also in March 2017, the Department for Education published a [review of the arrangements for SEND disagreement resolution](#), and a [Government response](#) to the review.

<sup>106</sup> Department for Education, [Experiences of Education, Health and Care Plans: research report](#), March 2017, p11

The report urged some caution on its findings in terms of sample size, but found wide variations in approaches by local authorities to SEND dispute resolution, as well as that:

- 'Person-centred' EHC needs assessment and plan development was successful in fostering agreement
- The time disagreements took to resolve was important for the impact on the child or young person involved
- Mediation proved to be a cost-effective route for disagreement resolution
- Information, advice and support services varied in quality and quantity
- Disagreement resolution services were generally not understood or used
- Parents interviewed had three main concerns about SEND complaints processes:
  - when the complaint was ignored or not taken seriously
  - when the response to the complaint took too long to emerge
  - when the response did not help to put right the issue/s complained about

Full 'headlines' are available on pages 22-23 of [the report](#), with an expanded summary on the following pages.<sup>107</sup>

The [Government response](#) set out steps that the Government intended to take as a result of the review:

- To publish good practice guidance developed as part of the review to share with local areas through regional networks and delivery support partnerships
- Supporting continuous professional development for LA staff
- Considering how best to channel Government support for families from April 2018 (when transition to EHC plans will be complete)
- Supporting the mediation sector to introduce voluntary standards and accreditation of training programmes for SEND mediation;
- Producing accessible guidance for families on the available routes for complaint and disagreement resolution
- Introducing a two-year national trial of the expansion of the First-tier Tribunal SEND powers to make non-binding recommendations on the health and social care elements of EHC plans.<sup>108</sup>

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<sup>107</sup> Department for Education, [Review of arrangements for disagreement resolution \(SEND\)](#), March 2017

<sup>108</sup> Department for Education, [Special Educational Needs and Disabilities: Disagreement Resolution Arrangements in England](#), March 2017, p7

## 6.9 Lee Scott report: Experiences of the system

In November 2016, the Department for Education published a report by Lee Scott, a former Conservative MP, on the [experiences of children, young people and parents](#) of the SEND system, based on interviews and evidence from across the country.

The report contained mixed experiences of the system, for instance examples of good local authority communication with parents, and poor communication between authorities. It raised a number of areas (rather than formal recommendations) to improve the operation system as it stands:

- Improving Communication across all agencies and in every area, including capturing and replicating good practice in this area. Mr Scott also stated that it was important that the Government, and other leadership agencies, sent out strong messages about the need to improve.
- More training for all staff working with children and young people, for example on identifying SEND, and understanding the particular needs of adoptive children;
- The importance of staff access to training, and that leaders both allow and encourage staff to undertake training to improve awareness and expertise in SEND, and also the “impact of loss and trauma on a child’s ability to learn”
- Greater transparency over funding
- Application of the legislation, and the SEND Code of Practice, in a way that demonstrably led to culture change, and reducing a ‘postcode lottery’ where the standard of provision varies widely in different areas
- Whether more could be done in schools and colleges to do more to support children and young people with medical needs
- Whether more could be done to encourage local areas to develop expertise, discussions and strategies to ensure more young adults with SEND have access to training and employment opportunities

## 6.10 National Autistic Society and APPG report

In November 2017 the National Autistic Society (NAS) and the All-Party Parliamentary Group on Autism published its latest [survey of children with autism and their parents](#), including the following findings:

- Seven in ten children and young people said that their peers do not understand them and five in ten said that their teachers do not know how to support them
- 70% of parents said they more than six months for support for their child, with 50% waiting more than a year



- 42% of parents said their request for a SEN assessment was refused on the first time of asking
- 40% of parents said that their child's school place does not fully meet their needs
- Fewer than five in ten teachers were confident about supporting a child on the autism spectrum<sup>109</sup>

### 6.11 Driver Youth Trust report

In October 2015, the Driver Youth Trust published a report, [Joining the Dots](#), which analysed the impact of the reforms in the year since their introduction. The report stated that:

Many examples of high-quality provision have emerged in response [to the reforms]. These are often driven by strong partnerships, well-managed change and skilled, impassioned leadership. However, at present provision is 'fragmented' leading to difficulties in sharing information and knowledge. As a result, many children and young people do not receive the support they deserve and gaps in the system lead to wasted resources as well as disconnected or duplicated services. Ultimately students, parents, schools and sector organisations are finding it difficult to navigate the new system and this is standing in the way of the reforms' success.<sup>110</sup>

The report cited Local Offers as an example of some of the difficulties faced, describing them as a "huge distraction; in many cases they are of little or no value and many parents are unaware that they even exist."<sup>111</sup>

In a BBC article on the report, a DfE spokesman was quoted as saying the reforms were "already [making] a real difference, with parents telling us the process is much more straightforward - but we want these experiences to continue improving."<sup>112</sup>

### 6.12 Bath Spa University research

[Articles](#) published in September 2015 cited research from a survey carried out by Helen Curran, a lecturer at Bath Spa University, which stated that 63 per cent of special educational needs coordinators (SENCOs) surveyed had said that the number of children on their school's SEN and disabilities register had fallen as a result of the government's SEN reforms, raising the question of whether the relevant children had previously been misidentified as having SEN, or whether other pressures were reducing their numbers.<sup>113</sup>

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<sup>109</sup> All-Party Parliamentary Group on Autism and the National Autistic Society, [Autism and education in England 2017](#), November 2017, p4

<sup>110</sup> Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND](#), October 2015, p3

<sup>111</sup> Ibid.

<sup>112</sup> BBC News Online, [Special needs pupils in 'fragmented' system](#), 14 October 2015

<sup>113</sup> See SecEd, [Concern for pupils who have lost their SEN recognition](#), 23 September 2015; NAHT, [SEN reforms and SENCOs](#), 25 September 2015. Research available at Bath Spa University, [SEND reforms 2014 and the narrative of the SENCO: early impact on children and young people with SEND, the SENCO and the school](#), 21 September 2015 [subscription required]

# Annex: The previous system for children and young people with SEN and the process of reform

## A brief overview of the previous system

The previous system for children with SEN was provided for in Part 4 of the *Education Act 1996*, as amended, and with associated regulations.

The 2001 [statutory code of practice](#) set out a graduated approach to SEN that recognised a continuum of SEN which might require increasing action by a school. There were three levels of intervention for pupils with SEN.

**School Action** – where the teacher or the school Special Educational Needs Coordinator (SENCO) decides to provide something for the child additional to or different from the school's usual differentiated approach to help children learn. In January 2010, 11.4 per cent of the school population were identified at School Action level, approximately 916,000 pupils;

**School Action Plus** – where the school consults specialists and requests help from external services. In January 2010, 6.2 per cent of the school population were at School Action Plus level, approximately 496,000 pupils; and

**Statement** – where the child requires support beyond that which the school can provide and the local authority arranges appropriate provision. In January 2010, 2.7 per cent of the school population or 221,000 pupils had a statement of SEN.<sup>114</sup>

Provisions were in place for children younger than school age, but most statements were made for school-aged children. The governing bodies of maintained schools were required to use their best endeavours to secure appropriate SEN provision for any pupil with SEN, and had to appoint a member of the school staff to be a Special Educational Needs Coordinator (SENCO).<sup>115</sup>

Each local authority was responsible for identifying the children in their area who had SEN of a kind that may call for SEN provision.<sup>116</sup> Having identified a child with SEN, the local authority was required to notify the parent that considering whether to make a formal (statutory) assessment of the child's needs. After a statutory assessment the local authority would decide whether it was necessary to make a statement of SEN. A parent could also request a local authority to arrange a statutory assessment of a child for whom the authority was responsible and for whom no statement had already been made.

A statement of SEN described, in six parts, the child's needs and the special provision needed. Provision was also in place for statements to be reviewed.

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<sup>114</sup> Department for Education, [Support and aspiration: a new approach to special educational needs and disability](#), March 2011, paragraph 25

<sup>115</sup> *Education Act 1996*, section 317; *Education and Inspections Act 2006*, section 173

<sup>116</sup> *Education Act 1996*, section 321

The local authority was obliged to enable parents to express a preference for a school, and was required to name the preferred school on the statement unless it was unsuitable for the child's age, aptitude, ability or his/her SEN, or the placement would be incompatible with the efficient education of other children with whom the child would be educated or with the efficient use of resources.<sup>117</sup> The local authority was also responsible for arranging the provision in the statement.

### Academies and SEN

Academies operate in accordance with their individual funding agreement. Those academies that had been established since the *Academies Act 2010* were required to comply with section 1(7) of the Act, which imposed obligations on them equivalent to those contained in Part 4 of the *Education Act 1996*. The requirements on academies established before the 2010 Act depended upon the exact terms of an individual academy's funding agreement.

### Post-16 provision

Under the previous system, a statement of SEN stopped if a young person left school at 16. However, if the person remained at school, the local authority could maintain a statement until s/he reached 19 or until the end of the school year when s/he finished the course. If the young person left school for further education, his/her SEN was assessed under a different process, the Learning Difficulty Assessment (LDA). Section 139a of the *Learning and Skills Act 2000* placed local authorities under a duty to arrange a LDA for students in their last year of compulsory education who had a statement of SEN and who were expected to continue in post-16 education. Local authorities also had the power to undertake LDAs for young people who did not have a statement but who appeared to have learning difficulties and were receiving, or were likely to receive post-16 education. LDAs however did not have the statutory rights and protections associated with statements of SEN.

### Concerns about the operation of the existing system

During the later period of the 1997-2010 Labour Government, concerns were raised about the operation of the SEN system. In July 2006, the then Commons Education and Skills Select Committee reported on special educational needs, and highlighted strong concerns about parents' confidence in the SEN system. The [report](#) raised issues about the statementing process and the issuing of statements; transfer of statements; placement decisions; the role of local authorities; school admissions and fair access for children with SEN; and parental choice in relation to academies.<sup>118</sup>

Part of the Labour Government's response to the issues raised by the Select Committee was to ask Brian Lamb, the chair of the Special Educational Consortium, to carry out an inquiry into how parental

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<sup>117</sup> *Education Act 1996*, Schedule 27

<sup>118</sup> Education and Skills Committee, [Special Educational Needs](#), HC 478-I, Third Report of Session 2005-06

confidence in the SEN assessment process might be improved. A series of [reports](#) were published.<sup>119</sup>

In addition, a number of reports looked at specific aspects of SEN provision<sup>120</sup> and an Ofsted review of SEN, [Special educational needs and disability review – a statement is not enough](#), commissioned by the Labour Government, was published in September 2010.<sup>121</sup>

## Green Paper on a reformed system

In July 2010, speaking at an Every Disabled Child Matters event, Sarah Teather, the then Children’s Minister, said that the new Government would publish a green paper on SEN.

A [Call for Views](#) on the planned Green Paper was published in September 2010, and set out that the Government was considering a range of options including how to

- give parents a choice of educational settings that can meet their child’s needs

- transform funding for children with SEN and disabilities and their families, making the system more transparent and cost-effective while maintaining a high quality of service

- prevent the unnecessary closure of special schools, and involve parents in any decisions about the future of special schools

- support young people with SEN and disabilities post-16 to help them succeed after education

- improve diagnosis and assessment to identify children with additional needs earlier<sup>122</sup>

The Green Paper, [Support and aspiration: a new approach to special educational needs and disability](#) was published in March 2011, and contained wide-ranging proposals to reform the system. The then Education Secretary, Michael Gove, announced the detailed proposals in a [Written Ministerial Statement](#) on 9 March 2011.<sup>123</sup>

The Green Paper said that the Government would “remove the bias towards inclusion” and improve the range and diversity of schools so as to:

- give parents a real choice of school, either a mainstream or special school. We will remove the bias towards inclusion and propose to strengthen parental choice by improving the range and diversity of schools from which parents can choose, making sure they are aware of the options available to them and by changing statutory guidance for local authorities. Parents of children with statements of SEN will be able to express a preference for any state-funded school – including special schools, Academies and Free Schools – and have their preference met unless it would not meet the needs of the child, be incompatible with the efficient education of other children, or be an inefficient use of resources. We will also prevent

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<sup>119</sup> These are currently available on the [National Archives](#) website.

<sup>120</sup> See [Library Standard Note SN/SP/5781](#)

<sup>121</sup> See [Library Standard Note SN/SP/5781](#) for further background on the Ofsted review.

<sup>122</sup> Department for Education, [Children’s Minister unveils plans for education of SEN pupils](#), 10 September 2010

<sup>123</sup> [HC Deb 9 March 2011 cc63-5WS](#)

the unnecessary closure of special schools by giving parents and community groups the power to take them over<sup>124</sup>

A consultation on the Green Paper was conducted between March and June 2011.

## Developing Legislation

The transition from the Green Paper to legislation was lengthy. This section provides a brief overview of the various stages. More detailed information is provided in the following Library notes; these papers were written contemporaneously and so reflect the then-current position:

- *The green paper on special educational needs and disability*, [SN/SP/5917](#), July 2012
- *Draft legislation on provision for children and young people with special educational needs*, [SN/SP/6420](#), September 2012

In May 2012, the Government published its detailed response to the formal public consultation on the Green Paper: [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#).<sup>125</sup> This announced that a draft Bill for reform would be published in summer 2012, and would be subject to consultation and pre-legislative scrutiny before changes to the law were made. The response stated that the Government wanted to introduce reforms to come into effect in 2014.

Some work had already commenced on proposed changes. Twenty SEN pathfinders had been announced in October 2011.<sup>126</sup> These covered 31 local authorities and their PCT and emerging Clinical Commissioning Group partners. In a [Written Ministerial Statement](#) in May 2012, Michael Gove said that the draft Bill would be informed by early lessons from the SEN pathfinders.

In October 2012, the DFE published an [Interim Evaluation Report](#) of the pathfinder programme. Amongst other things, the report said that the current pace of progress was behind that expected and was unlikely to provide sufficient evidence to inform the evaluation within the original 18-month evaluation. The pathfinders were due to end in March 2013. In evidence to the Education Select Committee in November 2012, Edward Timpson, Under-Secretary of State at the Department for Education, said that the pathfinders would be extended for 18 months, through to September 2014.<sup>127</sup>

Draft provisions relating to SEN reform, along with explanatory notes, were published in September 2012 in [Draft legislation on Reform of provision for children and young people with Special Educational](#)

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<sup>124</sup> [Support and aspiration: a new approach to special educational needs and disability](#), Executive summary, paragraph 7

<sup>125</sup> [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#), DFE, 2012

<sup>126</sup> HC Deb 17 October 2011 c609

<sup>127</sup> [Oral evidence taken before the Education Committee, 6 November 2012](#), Q198, HC Paper 631-II, Ev30

[Needs](#).<sup>128</sup> The [Written Ministerial Statement](#) announcing publication of the draft provisions summarised the proposed changes. The draft legislation, which consisted of 51 clauses, provided a framework for the new system and for much of the detail to be contained in regulations.

The Education Select Committee carried out the pre-legislative scrutiny of the draft SEN provisions. Its [report](#) was published on 19 December 2012, and stated that the general thrust of the reforms was sound, but worried that the draft legislation lacked detail, without which a thorough evaluation of the likely success of the Government's proposals was not possible.<sup>129</sup> Alongside the Bill, the Government published the command paper, [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), which included the Government's detailed response to the Committee's report.<sup>130</sup>

## The Children and Families Act 2014

The *Children and Families Bill* had its First Reading in the House of Commons on 4 February 2013.

Part 3 of the Bill, made provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The changes included:

- Definitions and duties to identify children and young people with SEN
- Local integration of education, health and care provision and joint commissioning
- Inclusion in mainstream education
- Personal budgets for young people with an EHC plan
- Appeals, mediation and dispute resolution
- Special educational provision
- The requirement for a SEN Code of Practice

The following Library publications provide further information on the passage of the Bill:

- *Children and Families Bill*, [RP 13/11](#), February 2013 (see section 4)
- *Children and Families Bill Committee Stage Report*, [RP 13/32](#), May 2013 (see section 3)
- *Children and Families Bill: Lords' Amendments to Part 3 (Children and Young People in England with Special Educational Needs or Disabilities)*, [SN/SP/6815](#), February 2014

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<sup>128</sup> Cm 8438

<sup>129</sup> [Pre-legislative Scrutiny: Special Educational Needs, House of Commons Education Committee, Sixth Report of Session 2012-13](#), HC Paper 631-I, Vol. 1: Report and formal minutes; HC Paper 631-II, Vol. II: oral and written evidence; and Vol. III: additional written evidence, which is available on the [Committee's website](#).

<sup>130</sup> [Children and Families Bill 2013: Contextualised Information and Responses to the Pre-legislative Scrutiny](#), Cm 8540, published 5 February 2013, Annex C

The [Children and Families Act 2014](#) received Royal Assent on 13 March 2014. The majority of sections on SEN came into force on 1 September 2014.

### **The reformed system: changes from the previous system**

The new 0-25 SEN [Code of Practice](#) set out the main changes from the previous code, published in 2001, reflecting the changes introduced by the *Children and Families Act 2014*:

- The Code of Practice covers the 0-25 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) – this is called 'SEN Support'
- 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
- Information is provided on relevant duties under the *Equality Act 2010*
- Information is provided on relevant provisions of the *Mental Capacity Act 2005*<sup>131</sup>

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<sup>131</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p13-14

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