

# Children and young people with SEN who are in youth custody

## Relevant legislation

### Primary

Sections 70-75 of the Children and Families Act 2014, together with sections 28, 31, and 77  
The National Health Service Act 2006  
The Equality Act 2010  
Section 2 of the Chronically Sick and Disabled Persons Act 1970  
Section 17 of the Children Act 1989  
Section 39A of the Crime and Disorder Act 1998  
Section 562B of the Education Act 1996

### Regulations

The Special Educational Needs and Disability (Detained Persons) Regulations 2015  
The Special Education Needs and Disability Regulations 2014  
The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (Part 3 and Schedule 3)

### What this section covers

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

10.61 This section does not apply to children and young people serving their sentence in the community, to persons detained in a Young Offenders Institution for 18- to 21- year-olds or to persons detained in the adult estate.

10.62 Unless otherwise stated a reference to 'a local authority' means the home local authority. For a detained person with an EHC plan this is the local authority which maintained their EHC plan when they were in the community. In custody a request for an assessment of post-detention EHC needs **must** be made to the home local authority, meaning where the detained person is 'ordinarily resident'.

10.63 'The person in charge of the relevant youth accommodation' includes the Governor, Director or Principal in charge of the accommodation.

### Introduction

10.64 Local authorities, Youth Offending Teams (YOTs), health commissioners and those in charge of the relevant youth accommodation **must** have regard to this Code of Practice and this section should be read alongside the guidance in other chapters.

10.65 The principles underpinning the Code (see Chapter 1) are relevant when supporting detained persons to achieve the best possible educational and other outcomes and to prepare for adulthood and independent living. They support:

- the participation of the detained person and the child's parents in decisions relating to their individual support. Local authorities **must** have regard to their views, wishes and feelings and **must** provide them with information, advice and support to enable them to participate
- the timely identification and assessment of special educational needs and provision of high quality support at the earliest opportunity whether they have an EHC plan or not

- greater collaboration between education, health and social care with a focus on continuity of provision both when a detained person enters custody and after their release. Custodial sentences are often short, it is therefore important for decisions to be made as soon as possible to ensure appropriate provision is put in place without delay

## Summary of statutory requirements

10.66 The statutory requirements relating to children and young people detained in youth custody are:

- Local authorities **must not** cease an EHC plan when a child or young person enters custody. They **must** keep it while the detained person is detained and

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

- If a detained person has an EHC plan before being detained (or one is completed while the detained person is in the relevant youth accommodation) the local authority **must** arrange appropriate special educational provision for the detained person while he or she is detained (see paragraphs 10.123 to 10.127)

- If the EHC plan for a detained person specifies health care provision, the health services commissioner for the relevant youth accommodation **must** arrange appropriate health care provision for the detained person (see paragraph 10.128 to 10.131). (The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations confer responsibility on the NHS Commissioning Board (NHS England) for commissioning health services in prisons and custodial establishments.)

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

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

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

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

## Sharing information

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

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

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

## Education for children and young people in youth custody

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

10.75 The detained person's YOT will remain the key point of contact between the person in charge of the relevant youth accommodation and the local authority, although local authority may also need to discuss the provision directly with the person in charge of the relevant youth accommodation (as well as the education provider).

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

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

- meet the educational needs of all detained persons, including those with SEN, whether they have an EHC plan or not

- ensure SEN provision, identification and support of SEN follows the model (for schools and colleges) set out in Chapters 6 and 7 of this Code

- have staff who are suitably qualified to support this (such as SENCOs), and make referrals to other specialist support where this is appropriate

- liaise and co-operate with the local authority where a detained person has an EHC plan

## Healthcare for children and young people in youth custody

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

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

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

### Requesting an EHC needs assessment for a detained person

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

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

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

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

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

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

it **must** notify:

- the appropriate person (and **must** inform them of their right to express written or oral views and submit evidence to the local authority)

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

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

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

- evidence of the detained person's academic attainment, rate of progress and engagement with education (such as exclusions and absence)
  - information about the nature, extent and context of the detained person's SEN
  - evidence of the action already being taken by the school or post-16 institution the detained person was attending prior to detention to meet their SEN
- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided, and
- evidence of the detained person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies including healthcare professionals in the relevant youth accommodation

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

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

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

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

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

- Educational advice and information from:

- The head teacher or principal of the school or post-16 or other institution which the detained person attended prior to detention
- Where this is not available the authority **must** seek advice from a person with experience of teaching children or young people with SEN, or knowledge of the provision which may meet the detained person's needs
- Where advice from a person with relevant teaching experience or knowledge is not available and the detained person did not attend an educational institution prior to entering detention, the local authority **must** seek educational advice and information from a person who was responsible for educational provision for the detained person prior to detention
- If the detained person is either vision or hearing impaired, or both, the educational advice and information **must** be given after consultation with a person who is qualified to teach pupils or students with these impairments
- Medical advice and information from a health care professional identified by the home CCG. This should include advice and information gathered from professionals with a role in relation to the detained person's health, including the custodial healthcare provider
- Psychological advice and information from an educational psychologist. The educational psychologist should consult any other psychologists known to be involved with the detained person
- Advice from the person in charge of the relevant youth accommodation, including advice and information from the education provider in that accommodation
- Advice from the YOT responsible for the detained person
- Social care advice and information from or on behalf of the local authority, including, if appropriate, children in need or child protection assessments, or information from a looked after child's care plan. In some cases, a detained person may already have a child in need assessment or a child protection plan from which information should be drawn for the EHC needs assessment
- Advice and information in relation to preparation for adulthood and independent living where the young person would have been in or beyond Year 9 (if not for their detention)
- From any person requested by the appropriate person, where the local authority considers it reasonable to do so (for example, they may suggest consulting a GP or other health professional)
- Any other advice and information which the local authority considers appropriate for a satisfactory assessment (for example, in the case of

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

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

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

10.94 The following specific requirements also apply:

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

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

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

10.97 The whole process should be completed within 20 weeks from the date of the request. There may be instances where it may not be reasonable to expect local authorities and other partners to comply with the 20 week time limit. The Special Educational Needs and Disability (Detained Persons) Regulations (2015) set out specific exemptions. These include where:

- the educational institution is closed for at least 4 weeks, (which may delay the submission of information from the school or other institution)
- exceptional personal circumstances affect the detained person or the child's parent. Being detained in youth custody in itself is not an exceptional personal circumstance
- the child's parent is absent from the area for a period of at least 4 weeks

10.98 The appropriate person should be informed if exemptions apply so that they are aware of, and understand, the reason for any delays. All remaining elements of the process should be completed within their prescribed periods wherever possible, regardless of whether exemptions have delayed earlier elements.

10.99 In deciding whether an EHC plan is necessary for the detained person on release from custody, the local authority should take into account whether the special educational provision required to meet their needs can reasonably be provided from within the resources normally available to schools and post-16 institutions or whether an EHC plan may be needed to ensure that support is provided and co-ordinated effectively for them on release from custody. Where, in the light of an assessment of the detained person's EHC needs, it is necessary for special educational provision to be made in accordance with an EHC plan, the local authority **must** prepare a plan.

10.100 Local authorities should take into account that NHS England is the commissioner of health services for detained persons, whereas on release the Clinical Commissioning Group (CCG) where the detained person is ordinarily resident will have responsibility for commissioning the health care element of the EHC plan.

10.101 The views of the home CCG will be crucial to finalising the health content of the EHC plan. The commissioning of the healthcare element of the plan and the duty to ensure it is delivered falls on that CCG after the detained person is released from custody. Although the home CCG does not have statutory commissioning responsibility while the detained person is in the relevant youth accommodation, as a local partner the home CCG **must** co-operate with the local authority that is carrying out an assessment of the detained person's post-detention EHC needs. The views of the home CCG **must** inform the final plan. The local authority and the home CCG should work together with the providers of healthcare in the secure setting to ensure any relevant healthcare information is available to inform the assessment

## **Preparing an EHC plan for a detained person in custody**

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

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

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

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

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

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

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

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

**Section G:** Any health provision reasonably required on release by the learning difficulties or disabilities which result in the detained person having SEN. Where an Individual Health Care Plan is made for them, that plan should be included.

**Section H1:** Any social care provision which **must** be made on release for a detained person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.

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



**Section I:** The name and type of the school, post-16 institution or other institution to be attended by the detained person on release and the type of that institution or Where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the detained person on release).

**Section J:** Where any provision is to be secured by a Personal Budget post-detention, the details of how the Personal Budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care. The special educational needs and outcomes that are to be met by any direct payment **must** be specified.

**Section K:** The advice and information gathered during the EHC needs assessment **must** be attached (in appendices). There should be a list of this advice and information.

10.104 In addition, where the detained person would have been in or beyond Year 9, the EHC plan **must** include (in sections F, G, H1 or H2 as appropriate) the provision required by the detained person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

10.105 The appropriate person's right to request a particular school, college or other institution in the EHC plan and the process for doing so are the same as set out from paragraph 9.78. The local authority should ensure information is accessible for the detained person.

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

**Section J:** Where any provision is to be secured by a Personal Budget post-detention, the details of how the Personal Budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care. The special educational needs and outcomes that are to be met by any direct payment **must** be specified.

**Section K:** The advice and information gathered during the EHC needs assessment **must** be attached (in appendices). There should be a list of this advice and information.

10.104 In addition, where the detained person would have been in or beyond Year 9, the EHC plan **must** include (in sections F, G, H1 or H2 as appropriate) the provision required by the detained person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

10.105 The appropriate person's right to request a particular school, college or other institution in the EHC plan and the process for doing so are the same as set out from paragraph 9.78. The local authority should ensure information is accessible for the detained person.

### **Provision of information, advice and support**

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

10.107 Further guidance on the provision of information, advice and support is covered in Chapter 2.

### **Finalising the EHC plan**

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

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

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

10.110 When the detained person is released the local authority **must** maintain the EHC plan and review it as soon as possible following the guidance in the section on 'Review on release from youth custody' see (paragraphs 10.134 to 10.138).

### **Partial assessment on entry to or exit from custody**

10.111 Where a detained person is part way through an assessment of special educational needs or the development of an EHC plan on entry to custody, the local authority **must** continue and complete the process following the guidance set out in this section.

10.112 The majority of children and young people in custody will be serving short sentences. In most cases the EHC needs assessment process and plan will not have been completed before the detained

person is released. The local authority **must** continue and complete the process in the community following the guidance in Chapter 9 (separate provisions apply if the person is released to a new authority – these are addressed in paragraphs 10.139 to 10.141).

10.113 The timeframes and process for completing an incomplete assessment do not start afresh because a detained person is released or a child or young person is detained. For example, the local authority **must** ensure that any EHC plan is finalised with 20 weeks. It **must** also ensure that a decision on whether or not to secure an EHC needs assessment is made within 6 weeks and that any decision not to secure an EHC plan is made with 16 weeks.

10.114 To achieve this, the Regulations allow a local authority to treat steps taken in respect of an EHC needs assessment in the community as satisfying steps which are required to be taken for a detained persons EHC needs assessment. (Regulation 15(2) and (5) of the Special Educational Needs and Disability (Detained Persons) Regulations 2015.) This is referred to in the Special Educational Needs and Disability Regulations 2015 ‘the 2015 Regulations’ as ‘comparable requirements’. This is intended to provide local authorities with flexibility. For instance, where a local authority has provided notification to the relevant bodies that it intends to carry out an assessment (under Regulation 4(2) of the Special Educational Needs and Disability Regulations 2014 ‘the 2014 Regulations’) there may be no need to do so again under the 2015 Regulations, where the local authority is satisfied that this is reasonable. Where a local authority has consulted a parent or young person at the outset of the process (under Regulation 3 of the 2014 Regulations) there may be no need to do so again following a detention, where the local authority considers this reasonable. A local authority may decide that, given the change in circumstances, it would be better to repeat a step. For example, the authority would like to have input from the youth offending team and the person in charge of the relevant youth accommodation. It is essential that detained persons are assessed as promptly as possible (in detention or upon release) to ensure that any required provision is in place as soon as possible.

## **Transfer between places of relevant youth accommodation**

10.115 The YOT **must** notify the local authority when a detained person has been transferred from one place of relevant youth accommodation to another. If the detained person has an EHC plan the local authority **must** send it to the person in charge of the new relevant youth accommodation within five working days of them becoming aware of the transfer. NHS England should ensure that the new custodial healthcare provider receives the EHC plan.

10.116 If the detained person is part way through an assessment or the development of an EHC plan when they transfer from one place of relevant youth accommodation to another, the local authority and the appropriate CCG **must** continue and complete the process following the guidance set out in this section. The local authority **must** ensure that any EHC plan is finalised within 20 weeks. Anything already completed in relation to an EHC needs assessment by the person in charge of the relevant youth accommodation, including information and advice received, may be treated as having been completed in relation to the new relevant youth accommodation.

## **Appeals and mediation**

10.117 The appropriate person during the period of detention can appeal to the First-tier Tribunal (SEN and Disability) about:

- a decision by a local authority not to carry out an EHC needs assessment
- a decision by a local authority that it is not necessary to issue an EHC plan following an assessment

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

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

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

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

## **Keeping an EHC plan and arranging special educational provision**

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

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

10.123 The local authority **must** arrange the special educational provision specified in the EHC plan. In practice the educational provision in relevant youth accommodation, including for additional support that detained persons may need as part of an EHC plan, will be delivered by an education provider under contractual arrangements with the YJB or custodial operator and commissioned and funded centrally. Local authorities should work closely with providers to arrange the provision. The local authority should seek to do this as soon as possible on the detained person entering custody, using the custodial establishment's and YOT's existing planning procedures wherever possible.

10.124 It may not always be practicable to deliver the exact provision set out in the EHC plan, for example, if the EHC plan specifies a named individual in the detained person's home area to provide a service. Where provision is not currently available within the relevant youth accommodation it does not necessarily mean that it is impracticable for it to be arranged. Where it is not practicable to arrange specified provision in the EHC plan, the local authority **must** arrange provision as close as possible to it and should work with the person in charge of the relevant youth accommodation and the education provider to identify how to do so, focusing on the outcomes in the plan. Local authorities should ensure that the appropriate person is fully involved in the process.

10.125 If it appears to the local authority that the special educational provision specified in the plan is no longer appropriate for the person, where for example the detained person's needs have changed since their last EHC plan review or they have previously unidentified needs, the local authority **must** arrange special educational provision that is appropriate for the detained person. Before deciding that the educational provision set out in the EHC plan is no longer appropriate, local authorities should seek

appropriate professional advice and work with the custodial case manager, the YOT, the person in charge of the relevant youth accommodation (as well as the education provider) and the appropriate person to review the detained person's needs taking into account the information in the EHC plan, the literacy and numeracy assessment and any other assessment of the detained person's needs. On release, the local authority **must** review the EHC plan and if the special educational provision specified in the plan is no longer appropriate this should also trigger a reassessment of the child or young person's needs.

10.126 Speech and language therapy is usually recorded as education provision in section F of EHC plans (see paragraph 9.74 for further information) and where it is, it **must** be arranged by the local authority. However in practice, when undertaking this duty in relevant youth accommodation, the local authority should work with NHS England, and any providers of speech and language therapy who are contracted and funded centrally by NHS England, to deliver it within the framework of services already provided to the establishment.

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

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

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

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

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

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

## Monitoring provision in custody

10.132 The local authority **must** promote the fulfilment of the detained person's learning potential whilst they are in custody and on their release. Local authorities should use the EHC plan to actively monitor progress towards these and other long term outcomes.

10.133 Where a detained person is in custody within a year of the last review of their EHC plan, the local authority should conduct a monitoring meeting and continue to do so, as a minimum, every 12 months. The monitoring meeting should consider the special educational and health provision arranged for the detained person in custody and the appropriateness of the provision in the EHC plan in light of the detained person's progress or changed circumstances. If the provision in the EHC plan appears inappropriate the local authority should follow the guidance set out in paragraph 10.125. The local authority can request that the person in charge of the relevant youth accommodation or YOT convenes the monitoring meeting. Further guidance on best practice is given in Chapter 9, Education, health and care needs assessments and plans.

## Review on release from youth custody

10.134 To support a detained person's transition from custody, the local authority and YOT should seek to review the detained person's educational progress and their continuing special educational and health needs in preparation for their release, using the YOT's existing release planning procedures wherever possible.

10.135 The YOT **must** notify the local authority that a detained person is due to be released from the relevant youth accommodation in order to inform the resettlement process and should ensure all external agencies are aware of their responsibilities under the proposed release plan, and condition of licence or Notice of Supervision. The local authority should inform any relevant community services that the detained person is due to be released.

10.136 If the detained person had an EHC plan before entering custody or was issued with an EHC plan while they were in custody, the responsible local authority **must** keep the plan while the detained person is in custody and **must** review it as soon as possible on release. The review **must** focus on the detained person's progress towards achieving the outcomes specified in the EHC plan and local authorities **must** follow the process set out in Chapter 9, Education, Health and Care needs assessments and plans. Local authorities should work with the YOT to take account of the condition of licence or Notice of Supervision when reviewing the EHC plan. If the EHC plan was issued while the detained person was in custody the review should specifically consider sections I and J of the EHC plan.

10.137 Professionals across education, health and social care are expected to co-operate with local authorities during reviews and the relevant healthcare commissioner **must** agree the healthcare provision to be included in a revised plan.

10.138 Local authorities, CCGs and NHS England **must** co-operate to ensure the health needs of detained persons whilst in custody and on release are considered in developing the local Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy.

## Moving to a new local authority on release

10.139 If the detained person is due to be released to a new local authority the YOT **must** notify the local authority where the detained person is ordinarily resident (the old local authority) and the new local authority in whose area the YOT expects the detained person to live on release from the relevant youth accommodation. The old authority **must** send the EHC plan to the new authority within 5 working days of being informed of the move. The new authority will become responsible for maintaining the plan and for securing the special educational provision specified in it.

10.140 Where the detained person's move results in a new CCG becoming responsible for the detained person, the new local authority **must** send the EHC plan to the new CCG within 5 working days of becoming responsible for maintaining the plan. Where it is not practicable for the new CCG to

secure the health provision specified in the EHC plan, the new CCG **must**, within 15 working days of receiving a copy of the EHC plan, request the new local authority to make an EHC needs assessment or review the EHC plan. The new local authority **must** comply with any request.

10.141 If the detained person is released to a new local authority before the EHC needs assessment process has been completed the new local authority should consider whether it needs to carry out an EHC needs assessment. The new authority should take account of the fact that the old authority decided to carry out an EHC needs assessment (and should seek information concerning the assessment from the old local authority) when making its decision. The new local authority is not bound by the requirements specified in paragraph 10.113. The new local authority should draw on the expertise and knowledge of the YOT to continue the assessment process. (See Chapter 9 for more information about children and young people moving between local authorities).

## **Looked after children remanded or sentenced to custody**

10.142 For the purposes of this section a looked after child refers to a child or young person who is under 18.

10.143 Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, children remanded to relevant youth accommodation become looked after children for th

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

10.144 If a looked after child is living in an out-of-authority placement prior to going into custody, the request for an assessment **must** be carried out by the local authority where the child lived before entering custody (i.e. where they are ordinarily resident), which may not be the same as the local authority that looks after the child. The CCG where the child is ordinarily resident has responsibility for the health element of the EHC needs assessment and the development of the health content of the plan. If a disagreement arises, the local authority that looks after the child, will act as the 'corporate parent' in any disagreement resolution, as described in Chapter 11.

10.145 If a looked after child was placed out of authority before going into custody and enters custody with an EHC plan, or one is finalised while they are in custody, the local authority where the child lived before entering custody (i.e. where they are ordinarily resident), **must** arrange appropriate special educational provision for the detained person while he or she is detained. Further information on support for looked after children is set out at the beginning of this chapter.

## **Transition from youth justice to a custodial establishment for adults**

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

## **Education on release for those in a custodial establishment for adults**

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

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

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

## **Cross-border detention**

10.149 Local authorities in England should support detained persons with EHC plans whose home authority is in England but who are detained in Wales in the same way that they support detained persons whose home authority is in England and who are placed in England. Local authorities in England should work with the person in charge of relevant youth accommodation and the Local Health Board to meet the needs of detained persons with EHC plans whose home authority is in England when they are detained in Wales.

10.150 Until the SEN legal framework is changed in Wales, host local authorities in England will be obliged to fulfill their best endeavors duty for detained persons with statements under Section 562C of the Education Act 1996 whose home authority is in Wales but who are detained in Young Offender Institutions in England.