

Detained children and young people (up to 18), EHCPS and EHCNAs a brief look at what the law/statutory guidance says.

The Children and Families Act uses 'home local authority and the assumption is made that this is the original LA that the child or young person was resident in before they were sentenced. There is no provision for that to be changed before age 25 for the purpose of maintain an EHCP. This assumption is also made for the responsible health care provider (ICS).

Under 18's with an EHCP in place when detained

- The LA must maintain the plan, they cannot amend, reassess, or cease to maintain CoP 10.122
- The LA must arrange appropriate special educational provision either 'As much of the plan as is practicable' or if provision in plan is not appropriate then SEN provision that would reasonably be considered appropriate CfA s74 (4)

Essentially provision does not have to be the same but equally cannot be nothing

Health provision

- NHSE (in practice likely to be the commissioned health providers for the accommodation) must arrange 'appropriate health care provision'. CfA s74 (5)

Social Care provision

- Social care must establish what needs remain while CYP is detained and provide appropriate provision if necessary.

Monitoring

- The LA should hold a yearly monitoring meeting following on from AR timescales where the CYP continues to be detained.

18 – 25 with an EHCP

- The SEN duties in the Children and Families Act 2014 no longer apply once a young person is transferred to the adult secure estate.

- Where a YP had an EHCP before being detained or were issued with one while detained the LA must maintain and review if the young person will be under 25 on release and intends to resume education. CoP 10.147

EHCNA up to 18

- A request for statutory assessment is made to the home LA. CfA s71
- The decision to assess is based on whether it 'may be necessary for SEP to be in accordance with an EHCP on release from detention' CfA s71 (9)
- When securing a detained person's EHC needs assessment the home authority must consider whether the detained person or, where the detained person is a child, the child's parent requires any information, advice, and support in order to enable them to take part effectively in the assessment, and if it considers that such information, advice or support is necessary, it must provide it. SENDDP Regs

Prescribed advice includes:

- Medical advice or information from a healthcare professional identified by the home commissioning body;
- Advice from the youth accommodation;
- Advice from the YOT. SENDDP Regs

There is a right to appeal a decision not to assess

If an EHCP is issued it will refer to the provision required on release and any health provision must be agreed by the home commissioning body. SENDDP Regs

There is no right to appeal against F or I while detained

When released

- Home LA must maintain and review. CfA s48
- When a detained child or young person is released to a LA which is not their home LA then the home LA must send the 'new' LA the EHCP within 5 days of being informed about their release. The new LA will then be responsible for maintaining the plan and securing the SEN provision in it. CoP 10.140