

PAGE ARCHIVED 5.15 PM MONDAY DECEMBER 9TH

<http://edyourself.org/newcodearchive.pdf> via <http://edyourself.org/articles/newcode.php>

<https://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1914&external=no&menu=3>

Consultation Walkthrough for Home Education Response

- 1 Go to
- 2 Click on "register" if you want to be able to save your response as you go along (OPTIONAL)
- 3 Click on respond on line
- 4 Fill in your personal details at the start of the consultation response form
- 5 Scroll down to read the consultation questions and see if you want to respond to any apart from the home education-specific questions
- 6 To respond ONLY to the part about home education, advance through the consultation pages to page 7 (out of 15) and type your home education comments into the question box for 23 and 24
- 7 For example from age 16 it will be only the young person, not the parent who deals with all the paperwork and assessment. You can comment on this in questions 7 and 8 (Chapter 3 'Family Centred System') and also in question 27 Any Other Comments
- 8 Also for example you may want to comment on how home educators will be consulted about transition arrangements from statements to EHC plans which are covered in questions 43 to 50
- 9 When you have finished, advance to the end of the online consultation form (page 15) and summarise what you have said elsewhere, saying you are focusing on home education (OPTIONAL)
- 10 Save again, then press send

SEN Code of Practice Consultation 2013 Home Education

- Home education is covered in pages 146-8 of the draft SEN Code, section 8.6. There is nothing in the Children and Families Bill which says the LA has to ensure that a child's needs are met, so the code goes beyond the law. Saying that the LA has a duty to ensure the child's needs are met doesn't mean that home educated children with SEN get help, it just means the LA has a reason to criticise home education and say the child should be in school.
- The purpose of the Annual Review is to review the contents of the plan. The Annual Review should not be misused to monitor or inspect home educating families.
- Parents aren't "providers" in any legal sense and the authority is only required to "satisfy itself" if it appears that the children are NOT receiving education. The authority should not be routinely monitoring home educating families simply because the child has a statement of SEN. The law doesn't require local authorities to make a "judgement" about home education.
- There should be an explicit reference to the High Needs Funding Block which can be used to support home educated children with SEN. The code should also set out clearly when the LA "must" help (ie when the LA is responsible) and when the LA "should" help (ie when the parent is responsible). The code should state clearly what is meant by having home education "named" in the plan.
- It is not clear whether home educated children will be judged against "outcomes" at Annual Reviews of EHC Plans, see 7.16 for details

[Draft code with my comments](#) (October 28th 2013). [House of Lords October 30th Repealing Part](#)

[IV Education Act 1996 6 page pdf to print](#) comprising home education section of the code, Annual Review child not in school, transitional arrangements, + consultation questions.

Click [here](#) (FOIs) to see how LAs interpret the current Code. The new code is intended to come into force on September 1st 2014 at the same time as Part 3 of the Children and Families Act. The changeover from statements to EHC plans will start in September 2014 but the process will not be completed for everyone until September 2017. This web page also explains how the changeover will take place, summarising the Transitional Arrangements which were published by DfE at the same time as the draft code of practice.

The consultation on the new SEN code of Practice opened on October 4th 2013 and closes December 9th 2013. The draft code is [here](#) and home education is covered in pages 146-148. Read more about the changes to the law for children with special needs [here](#) [Mencap Briefing on the new draft code](#) [Alliance for Inclusive Education Briefing on New Code](#)

Naming Home Education in the EHC Plan

The new code appears to be more home-ed friendly because it encourages LAs to support parents and it gives a link to the guidance on funding. However, the new draft code does not provide the legal reference by which home education could be "named" in the EHC plan. This is a significant omission. DfE must make it clear whether there will be a different approach with the new code or whether it will simply mirror the current code. A positive new approach would be if provision could be made in future under [section 42](#) of the Children and Families Act.

The current code says "the statement can also specify any provision that the LEA have agreed to make under section 319 to help parents provide suitable education for their child at home. This is not a useful model. The equivalent clause in the new legislation would be [clause 57](#)

[Clause 57](#) states that "a local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided only if satisfied that it would be inappropriate for the provision to be made in a school".

[Clause 42](#) states that "the local authority must secure the specified special educational provision for the child or young person [with an EHC plan]"...[this does] "not apply to the extent that the child's parent or the young person has made suitable alternative arrangements."

For the avoidance of doubt it must be made clear that the authority will only be under a duty to secure the special educational provision in cases where the EHC plan states some variant of "Education Otherwise Than At School (or "home education") under section 42 of the Children and Families Act", NOT in those cases where the plan states "parents have made their own arrangements."

To read a marked up version of my proposed changes click [here](http://edyourself.org/sencodecomments.pdf) <http://edyourself.org/sencodecomments.pdf> revised October 28th. See [discussion in House of Lords](#) on naming home education in the plan, October 30th 2013.

8.6 Children and young people with SEN educated at home: extract from draft code October 4th 2013

8.6 Children and young people with SEN educated at home

Under section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Such education must be suitable to the child's age ability, aptitude and special educational needs. Local authorities should work in partnership with, and support, parents to ensure that the special educational needs of these children are met where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention. Local authorities do not have a duty under section 22 of the Children and Families Act to assess every home educated child to see whether they have SEN or not. Guidance is available to local authorities from the Department for Education on funding provision for home educated children.

In cases where local authorities and parents agree that a child or young person with an EHC plan should be educated at home and home education is 'named' on the plan, the local authority is under a duty to arrange the special educational provision set out in the plan.

In cases where the EHC plan 'names' a school and the parents decide to take the child or young person out of school to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan, provided it is satisfied that the arrangements made by the parents to educate the child or young person at home are suitable. The local authority must review the plan annually to assure itself that the provision set out in the plan continues to be appropriate and the child's SEN continue to be met. Where the local authority has decided that the provision is appropriate, it should ensure that the plan names the type of school that would be suitable, but states that the parents have made their own arrangements under section 7 of the Education Act 1996.

Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents. If it is not possible to do this, the authority should discuss with the parents how else it can satisfy itself as to the suitability of the education, bearing in mind its obligations at the same time as the wishes of the parents and the child. Parents should be encouraged to see this process as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine parents' right to home educate.

Local authorities should not assume, because the provision being made by parents is different from that which was being made or would have been made in school, that the provision is necessarily unsuitable. The local authority's duty is to ensure that the child or young person's SEN are being met and they should make an objective

judgement about whether the methods adopted by parents achieve that end. Local authorities are encouraged to help parents exercise their right to home educate their children. They should work with parents and consider using their power to make provision in the home to help parents make suitable provision.

In some cases a local authority will conclude that, even after considering its power to provide support to home educating parents, the provision that is or could be made for a child or young person with a plan does not meet the child or young person's needs. Local authorities have a duty to 'make arrangements to enable them to establish (so far as it is possible to do so) the identities of children and young people in their area who are of compulsory school age but are not registered pupils at a school and are not receiving suitable education otherwise than at school'. Once these children have been identified, local authorities have a duty to act. A local authority is required to intervene through the school attendance order framework 'if it appears ... that a child of compulsory school age is not receiving suitable education, either by regular attendance at school or otherwise'.

Parents may also educate children or young people who have SEN but do not have EHC plans. Where such children or young people are educated at home it may be because parents felt that the special educational support being provided in the school was insufficient to meet the child or young person's needs. In such cases the local authority should consider whether a statutory assessment is required. As with children and young people with plans, local authorities should work with parents and consider whether to make provision in the home to help the parents make suitable provision.

Young people may also be educated at home in order to meet the requirement to participate in education and training until 18.

Annual Review EHC Plan Child out of School

The following requirements apply to review meetings where a child or young person does not attend a school or other institution: **a.** The child's parents or young person, a local authority SEN officer, a health service representative and a local authority social care representative must be invited and given at least two weeks' notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant, and any other person whose attendance the local authority considers appropriate.

b. The local authority must seek advice and information about the child or young person prior to the meeting from all parties invited and send any advice and information gathered to all those invited at least two weeks before the meeting.

c. The meeting must focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to their support to help them

achieve them, or to those outcomes. Children, parents and young people should be supported to engage fully in the review meeting.

7.16 [Draft SEN Code October 2013](#)

Comment: people can be invited to the meeting with just two weeks notice, but the deadline for sending out written advice from those invited is also two weeks before the meeting.

Consultation Questions

<https://www.education.gov.uk/consultations/downloadableDocs/SEN%20response%20form%207.doc>

via

<https://www.education.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1914&external=no&menu=1>

Questions 1 – 27 cover the draft code of practice Questions 28 – 42 cover the draft regulations Questions 43 – 52 cover the transitional arrangements.

DRAFT SPECIAL EDUCATIONAL NEEDS CODE OF PRACTICE General

1 Is it clear from the structure of the draft Code of Practice where you can find the information you need?

2 Is the guidance clearly written and easy to understand?

3 Are the statutory duties in the Children and Families Bill and the draft SEN regulations clearly explained?

4 Does the guidance provide sufficient focus on the full age range from 0-25 including early years and post-16 as well as school-age children?

Chapter 1 – Introduction

5 Does Chapter 1 explain clearly the purpose of the Code of Practice, who it applies to and how it applies to them?

6 Does Chapter 2 summarise how the principles described there are reflected in the Code of Practice?

Chapter 3 – A Family Centred System

7 Is Chapter 3 clear about the information, advice and support young people in particular may need, and how agencies should work with them and their families?

8 Is it reasonable to expect local authorities to provide the advice and support specified in Section 3.3?

9 Does the Code provide an accurate description of key working?

10 a) The 'Independent Supporters' described in Chapter 3 are intended to provide support for children, parents and young people through the Education, Health and Care assessment and planning process. Do you agree that this sort of support should be available to children, young people and parents if they ask for it?

10 b) What might help ensure such support is available to families that need it?

Chapter 4 – Working Together Across Education, Health and Social Care

11 Does Chapter 4 describe clearly how the new joint commissioning arrangements will support children and young people with special educational needs?

12 Is the role of the Designated Health Officer described clearly?

Chapter 5 – The Local Offer

13 Does Chapter 5 describe clearly the purposes of the local offer?

14 Is the guidance clear about what local authorities and their partners must do to develop, publish and review the local offer?

Chapter 6 – Early Years, Schools, Colleges and Other Education and Training Providers

15 Does Chapter 6 make clear the importance of involving children, parents and young people in

decision making?

16 Is the guidance clear about what education providers should do to identify and support children and young people of different ages to achieve good outcomes?

Chapter 7 – Assessments and Education, Health and Care Plans

17 Is Chapter 7 clear about how to carry out assessment and planning for children and young people 0-25, including helping children and young people prepare for adult life?

18 Is the guidance clear about the importance of engaging children, young people and their parents in decision making on assessment, planning and reviews?

19 Is the guidance on the content of Education, Health and Care Plans helpful?

20 Is the guidance appropriate and relevant to professionals across education, health and care?

21 Does the guidance adequately reflect the essential features of the Inclusive Schooling guidance which is being replaced?

22 Does the guidance cover the necessary features of the Learning Difficulty Assessments guidance which is being replaced?

Chapter 8 – Children and Young People in Specific Circumstances

23 Does Chapter 8 provide sufficient information about support to be provided for children and young people in the specific circumstances described?

24 Are the duties of local authorities and others towards children and young people in specific circumstances explained clearly?

25 Does Chapter 9 provide sufficient support and information to help parents and young people understand the different routes for appeals and complaints?

26 Is sufficient guidance given on what makes effective disagreement resolution and mediation services?

Any Other Comments

27 Please provide any further comments on the draft Code of Practice here

DRAFT SPECIAL EDUCATIONAL NEEDS REGULATIONS

The Special Educational Needs (Local Offer) Regulations (Clause 30 and chapter 5 of the draft SEN Code of Practice)

28 Do the draft regulations set out clearly what local authorities are required to do to prepare, publish and review their local offer?

The Special Educational Needs (SEN co-ordinators) Regulations (Clause 62 and chapter 6 of the draft SEN Code of Practice)

29 Do the draft regulations set out clearly the requirements on schools in relation to the qualifications and experience, role, functions and responsibilities of their Special Educational Needs Co-Ordinator (SENCO)?

The Special Educational Needs (Information) Regulations (Clause 65 and draft SEN Code of Practice)

30 Do the draft regulations set out clearly what information schools are expected to publish about their arrangements for identifying, assessing and supporting children with special educational needs?

Remaining in a special school or post-16 institution without an Education, Health and Care plan Regulations (Clause 34 and chapter 7 of the draft SEN Code of Practice)

31 Are the draft regulations clear about the circumstances in which a child or young person without an Education, Health and Care plan may remain in a special school or special post-16 institution following an assessment of their needs?

32 Are the draft regulations clear about what should happen where a child or young person without an Education, Health and Care plan remains in a special school or special post-16 institution following a change in their circumstances?

Education (Special Educational Needs) (Assessment and plan) Regulations (Clauses 36, 37, 44 and 45 and chapter 7 of the draft SEN Code of Practice)

Are the draft regulations clear about what action a local authority should take regarding:

33 a) Education, Health and Care assessments?

- 33 b) Education, Health and Care plans?
- 33 c) Timescales for Education, Health and Care plans?
- 33 d) The transfer of Education, Health and Care plans?
- 33 e) Reviews and reassessments?
- 33 f) Ceasing to maintain Education, Health and Care plans?

The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations (Clause 41 and chapter 7 of the draft SEN Code of Practice)

34 Are the draft regulations clear about which institutions can be approved for the purposes of requests to be named in an Education, Health and Care plan and the matters the Secretary of State will take into account in giving and withdrawing his approval?

The Special Educational Needs (Personal Budgets and Direct Payments) Regulations (Clause 49 and chapter 7 of the draft SEN Code of Practice)

35 Are the draft regulations clear about the arrangements for seeking a Personal Budget and the local authority's duties in respect of Personal Budgets?

36 Are the draft regulations clear on the arrangements for direct payments?

The Special Educational Needs (Appeal) Regulations (Clause 51 and chapter 9 of the draft SEN Code of Practice)

37 Are the draft regulations clear about the circumstances in which appeals may be brought?

The Special Education Needs (Mediation) Regulations (Clause 52 and chapter 9 of the draft SEN Code of Practice)

38 Are the draft regulations clear about how arrangements for mediation are intended to work? The regulations may cover "requiring a local authority to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit".

39 a) What expenses do you think it would be reasonable for the regulations to cover?

39 b) Should there be prescribed limits and, if so, how much should they be?

The Special Educational Needs (Children's Rights to Appeal Pilot scheme) Order (Clause 54)

40 Does the draft Order set out reasonable arrangements for local authorities to pilot giving children the right to appeal to the Tribunal?

41 Will this provide a sufficient basis on which to decide whether to extend the right to appeal across England?

42 Please provide any further comments on the draft regulations here.

43 Some children and young people will be undergoing special educational needs assessments on the current system on 1 September 2014. Should that assessment result in a statement/Learning Difficulty Assessment or an Education, Health and Care plan? Please explain the reason for your opinion.

44 Do you agree that the overall period for transition from statements of SEN to Education, Health and Care plans should be three years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

45 Do you agree that Learning Difficulty Assessments should be phased out within two years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

46 Do you agree that local authorities, following consultation with young people and parents, should determine the best point in any given year to transfer a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, and that this should replace the usual annual review?

47 Do you agree that where a child or young person makes the transfer from a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, their plan should be written using the principles set out in section 7.9 of the draft SEN Code of Practice?

48 Do you agree that the right to request an Education, Health and Care Plan should be limited to new referrals during the three year transition period? If not, why not?

Phasing the Transition

49 a) Do you agree that government should establish a broad framework setting out the slowest

acceptable rate of transfer from statements of SEN to Education, Health and Care plans? If not, why not?

49 b) If yes, which of the two proposed frameworks for transfer from statements of SEN to Education, Health and Care plans do you support? Why do you support this option?

50 Do you agree that young people with Learning Difficulty Assessments should be able to request to transfer to an Education, Health and Care plan at any point during the proposed two year transition period? If not, why not?

Implementing the Local Offer

51 Which approach to implementing the local offer should be adopted? Please explain why.

Any Other Comments

52 Please provide any further comments on the transitional arrangements here.

53 Please let us have your views on responding to this consultation (e.g. the number and type of questions, whether it was easy to find, understand, complete etc.).