



Department  
for Education

# Evidence Pack

## Special Educational Needs: Children and Families Bill 2013

This evidence pack pulls together the information that has informed the Department's assessment of the impact of the provisions in Part 3 of the Children and Families Bill, including in relation to equalities. It is provided in support of Parliamentary scrutiny because formal regulatory impact assessments were not required in these areas of the Bill. Work continues to inform developing plans for implementation of the Bill provisions and the Department would be pleased to receive any additional relevant evidence. Please contact:

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March 2013

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# SECTION 1: LOCAL OFFER

## Summary of the measures in the policy area

This assessment covers a single measure which requires local authorities to develop a local offer of services for children and young people with special educational needs, including those who are disabled.

## What are the problems that the measures address?

There are currently over 17 different information documents which a local authority is required by law to publish, providing information about provision for children with SEN within the school setting. These 17 documents include for example: a policy statement by the authority on their general approach to SEN; details of funding for children with SEN; a document setting out transport services for children with SEN or disabilities; a document setting out guidance for parents who suspect their child may have special educational needs. There are no duties on local authorities specifically to provide information regarding services for young people, although local authorities are under a duty to encourage, enable or assist the effective participation of young people in education and training. In some cases, this may include providing young people and their parents with information as a means of supporting young people to participate.

Responses from Parents to the Green Paper<sup>1</sup> provided evidence that despite existing information on provision, parents and young people remain confused about what services are available and what criteria is applied in order to access them. They also felt that as parents they could not routinely engage in discussions with their local authority about who was responsible for providing support and how to access services and this lack of engagement often led to mistrust in processes and professionals.

Some 28,325 statutory assessments were carried out in 2011.<sup>2</sup> A key finding of the Ofsted review of Special Educational Needs in 2010, was that a lack of clearly defined information on services normally provided by schools and colleges for all SEN pupils, especially those without statements, increases the number and cost of assessments authorities need to make. This is because some parents and young people are unable

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<sup>1</sup> Support and Aspiration: A New Approach to Special Educational Needs and Disability (2010)

<sup>2</sup> Department for Education 2012- Statistical First Release – [Special educational needs in England: January 2012 - Date, Research and Statistics](#)

to identify and access the services already provided by schools and colleges.

There are currently, according to data from MoJ, some 3,200 appeals to the First Tier Tribunal per annum, where parents are in dispute with an LA's decision regarding a statutory assessment or their delivery of services. Parents and young people are faced with incomplete information when making decisions on appropriate support and this often leads to an adversarial situation, created, for example, where a family believes they should be able to access a particular service for which the local authority does not believe they meet the eligibility criteria.

## **What are the measures and what is the rationale for their introduction?**

- The Department is seeking to ensure that parents and young people have access to a single source of coherent and complete information to manage their choices with regard to services which support children and young people with SEN and disabilities. This single source should also include information about family support services and guidance on dispute resolution. It should be published as a web-based document but should also be available in other accessible formats.
- The Department is seeking to ensure that parents and young people are directly involved in the development and review of the local offer with the local authority and that their feedback is published. This will enable local authorities to get a clear idea about gaps in provision. Experience in relation to parental engagement in developing local authority short break statements has shown that it can vastly improve relations and lead to more cost effective provision of services that better meet users' needs. For example a local authority in the North East shifted from a block contract with a big short break provider for out of authority facilities to a more community-based solution, as a result of listening to what parents wanted and saved about £2 million.
- The Department intends to place a duty on local authorities in primary legislation to publish a local offer of services for children and young people with special educational needs and set out in regulations more detailed information about what should be included. We are currently using the on-going work of the pathfinders to inform this detail.
- This measure is intended to significantly reduce the information barriers currently faced by parents, by making information more accessible and enabling parents and young people to make informed decisions which are based on clear and consistent information. It will also give parents, children and young people a bigger say in what services are on offer. This will improve both efficiency within the market for services for children and young people with SEN and the increase of provision of services that best meet parents' and children and young people's

needs. It will also improve the equity of access to services, where currently those parents and young people who are able to deploy considerable time in searching through the existing plethora of information published by a Local Authority have better access to services.

- This measure also supports other aspects of the SEN reforms. For example, it will provide parents, children and young people with information on assessment and developing Education Health and Care Plans . The select committee pre-legislative scrutiny report notes the extent to which good quality local offers are pivotal to the success of the Government's proposals.

## **What are the impacts of the measures and which groups of people do they affect?**

### **Who will this measure affect?**

- Any changes to the nature and format of information provision, has the potential to affect all parents and carers of children with SEN and their children, many of whom will be disabled, as well as being a significant new benefit for young people with SEN who had very limited access to information under the current legislative framework. The department currently estimates that there are 1.78 million children and young people up to the age of 25 with special educational need which includes just over 261,000 with high level needs and approximately 1.5 million with lower level SEN needs.
- The requirement to publish a local offer of services for local children and young people with SEN will create a new area of responsibility for the 152 local authorities in England and also will affect children and young people with SEN and their parents through the opportunity to be involved in helping LAs develop and review their local offer.
- The measure will also require a number of bodies including health bodies, schools, (independent and state-funded) colleges (including Independent Specialist Colleges) and training providers to cooperate with the local authority in developing the local offer. The duty of co-operation will extend to some state-funded schools, non-maintained special schools and health bodies in Wales where they have admitted children from English Authorities, or where an English Authority has responsibility for a looked after child.

## What are the desired effects (benefits) of the measure?

- **Better outcomes for children and young people** – With a local offer in place, which parents and young people have been involved in developing and reviewing, parents and young people make better decisions about services which best meet their individual needs.
- **Improved satisfaction and trust** – increased transparency about entitlements and services and increased information at a local level should lead to greater equity in access to provision for parents and make it easier to benchmark local performance. Evidence submitted to the Disabled Children Review (2007)<sup>3</sup> suggested the benefits of parents' forums which are primarily about improved information, include an increased feeling of control for parents over their child's wellbeing, leading to lower levels of stress for families, better use of services and increased parental understanding of how services work, which often leads to better working relationship with professionals. This benefit accrues to parents and young people.
- **Reduction in conflict and the number of appeals** – It is likely that the local offer will reduce the number of appeals made to the Tribunal. It costs a local authority approximately £5,000 to defend a case at the Tribunal, it costs the Tribunal itself approximately £1,600 to hold a hearing and the costs to the exchequer of supporting a family to prepare for a hearing are estimated to be around £1,800.<sup>4</sup> Therefore, the benefits of avoided appeals accrue to parents and young people, local authorities and the exchequer. It is not possible to predict the total reduction in the number of appeals due to the production of the local offer, therefore the estimated total cost saving cannot be monetised. Furthermore, it would however be extremely challenging to isolate the downward effect on the number of appeals arising from this measure from the introduction of other measures in the Children and Families Bill in relation to SEN.
- **Improved transparency supports improved commissioning by LAs and acts to drive down costs** – A national set of local offers from local authorities will stimulate the market for services, revealing gaps in provision and enabling authorities to compare services in different geographic locations. This enhanced transparency will improve the local authority's position as a commissioner of services. For example evidence from the NAO (2011)<sup>5</sup> showed that there were

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<sup>3</sup> Department for Education, HM Treasury (2008) 'Aiming High for Disabled Children' – [Aiming High for Disabled Children.PDF](#)

<sup>4</sup> Legal Services Commission internal statistical data pack 2010/11.

very different levels of funding spent on children with very similar needs across different geographical areas and a local offer would enable the local authority to help reduce that variability of service provision through the mechanism of transparency. Transparency may also lead to greater collaboration between local authorities to offer shared provision for children and young people with low incidence needs.

The department has not quantified the benefits derived from the introduction of a local offer.

### **What are the resource implications (costs) of this measure?**

- The Department has not finalised its assessment of the costs to local authorities of developing and publishing a local offer, but is testing this in the pathfinder project, where 31 local authorities alongside parents, carers and young people will develop and test a local offer.
- The Department expects there to be relatively modest one-off costs incurred by local authorities to develop their systems, design processes and establish protocols for parents and young people to be involved in the development of the local offer. Our best estimate of this currently, using initial findings from some of the pathfinders, is that this will require around £4.5m of additional support across all local authorities to enable them to develop processes which will lead to the publication of their first local offer. This will also include developing processes for gathering information across health and social care. We expect non pathfinder local authorities to benefit from the experience of pathfinder authorities through the work of pathfinder champions during 2013/14. Evidence from pathfinders regarding the likely net additional costs of maintaining and reviewing the local offer will be considered to inform an understanding of the recurring costs of this measure.

### **What other measures were considered and why were they not pursued?**

**The alternative options considered were:**

**Encouraging local authorities to develop a Local Offer as best practice but not creating a specific duty in legislation**

- There would be no requirement for the rationalisation of existing information, the proliferation of which is one of the main causes of concerns for parents.
- A voluntary approach would not help generate the benefits of national transparency and comparability, as without specifying the broad content of the

local offer in regulations to ensure consistency, there is likely to be significant local variation.

- A voluntary local offer would fail to provide a legal requirement to include information about provision for young people and would perpetuate the inequality of access to information between those children and young people in school settings and those in further education or training.
- If local authorities opt not to develop a local offer under a voluntary system, this may have a detrimental effect for those parents and young people who wish to access a personal budget, as the local offer is an important means of accessing information as parents look to purchase a package of services.

### **Maintain the current legal framework**

- There would be no change in the availability of information about services for young people, and in a joined up system from birth to 25 years under the reforms this will create significant new inequalities between information available for services for children and those for young people.
- Local authorities will continue to publish information in vastly variable ways which will perpetuate significant inefficiency as parents search for information required in order to make informed decisions.

### **Are there any key assumptions or risks?**

The local offer is currently being tested in a pathfinder pilot project. By spring 2013, all pathfinders will have published their draft local offer. Therefore, the Department will be building on this assessment in light of this further evidence.



## SECTION 2: CO-ORDINATED ASSESSMENT AND EDUCATION, HEALTH AND CARE PLANS

### Summary of the measures in the policy area

To replace the current system of statementing and learning difficulty assessments with a co-ordinated 0-25 assessment process and an Education Health and Care Plan. Also, to enable all children and young people with an Education Health and Care Plan to **express a preference for any state funded school, college or training provider or any approved independent provider** where the provider is mainly or wholly catering for children and young people with SEN. The measures apply to children and young people who require educational provision which cannot reasonably be provided within the resources normally available to mainstream early years settings, schools and post 16 institutions in the area.

### What are the problems that the measures address?

The Government's 2011 Green Paper, *Support and Aspiration: A new approach to Special Educational Needs and Disability*,<sup>6</sup> described parents' views of the current system for SEN as bureaucratic, bewildering and adversarial. Responses to the consultation informing the Green Paper found that the legislative framework underpinning the system for the assessment of needs and provision of support has created a combative culture which is resource-driven rather than needs-led.

**Late Identification.** It was highlighted in Bercow (2008)<sup>7</sup> that for many children their special educational needs are not identified early enough and the opportunities to benefit from early identification missed. Lewis et al (2010)<sup>8</sup> also points out that there can be significant variation between authorities in terms of the speed of identification.

**Separation of education, health and social care.** Families often have to negotiate each element of their child's statement separately, giving professionals the same information on multiple occasions. This means that the process of assessment and agreeing support is time consuming and onerous. Outcomes for children and young

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<sup>6</sup> Department for Education (2011): Support and Aspiration: A new Approach to Special Educational Needs and Disability.

<sup>7</sup> Department for Education (2008): The Bercow Report- [The Bercow Report](#)

<sup>8</sup> Lewis et al (2010), 'Special Educational Needs and Disability: understanding local variation in prevalence, service provision and support', source [Special Educational Needs and Disability: understanding local variation in prevalence, service provision and support.PDF](#)

people whose parents are unable to navigate the complex, education, health and social care systems are disproportionately affected. Parents and young people are exposed to stress and increased tension as a result of disputes and delays. Professionals from education, health and social care can not readily collaborate due to separate commissioning and budget systems. The system lacks clear shared accountability, which increases the likelihood of disputes between services and the risk of needs going unmet. The onus often falls overly on local authorities as the only body with a statutory duty to deliver the services identified in the SEN statement.

**A separate system for young people.** At the point a young person leaves school for further education they face a different assessment process, leading to a Learning Difficulty Assessment. While this is meant to take place in the young person's last year in school, too often it is done very late in the day. It often does not take into account progress young people have already made or their aspirations and the outcomes they want to achieve, such as independent living. It is not used in a strategic way for commissioning – well in advance – the support and provision that young people need. It also comes at a time when young people are facing re-assessment for other services such as the transition from children's to adult social care, which as the Law Commission found, can be a difficult experience for many.

There are fewer protections for young people (as compared to those under 16 or 18 years). They do not have the right to express a preference for a further education college they wish to attend, nor is there a requirement for the local authority to act on any preference that might be expressed. This creates inequality between those able to remain in school sixth forms – where the current SEN system still applies until 18, and those who access further education, where the SEN system does not apply. It leaves parents and young people unable to hold the system to account unless they are prepared and able to go to judicial review.

**Limited choice of school types and post-16 provision.** Parents reported as part of the Green Paper consultation, that in reality they have little choice of schools, as they are not clear about the options, their local mainstream school are not able to offer appropriate provision or there is a lack of special school places locally. In addition, there are different assessment criteria for assessing a parent's preference for some independent schools. In the case of young people, currently they have no right to

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<sup>9</sup>Ofsted (Aug 2011) Progression post-16 for learners with learning difficulties and/or disabilities

express a preference for a particular institution and there are no duties on FE Colleges and other post 16 institutions to admit young people. Ofsted reported that there is limited choice and opportunity for young people in post-16 education and what does exist is very rarely focused on preparing and enabling young people to make a successful transition to adulthood, including employment and independent living.<sup>9</sup>

## **What are the measures and what is the rationale for their introduction?**

The measures include:

1. The introduction of a co-ordinated assessment process across education, health and social care.
2. The replacement of the current system of statements and learning difficulty assessments, with a single 0-25 Education Health and Care Plan, which retains all the protections of statements, places parents and young people at the heart of decision making and is clearly focused on both short and long term outcomes – including employment and independent living.
3. For those children and young people with an EHCP, enabling parents and young people to express a preference for any state funded school, college or training provider and some independent provision.

The rationale for Government intervention is based on equity arguments and the aim to address co-ordination failures and improve outcomes.

**Equity Arguments.** The Government wants to enable all children and young people with special educational needs to receive consistent support throughout school and further education and up to the age of 25 for those who need longer to complete their learning. Raising the participation age (RPA) implementation, where young people are required to stay in education or training until their 18<sup>th</sup> birthday, would expose further the inequalities of the current system. Enabling those who stay in schools to retain their rights while those accessing further education lose the protections secured by the statement can't be right, if the Government is requiring them to stay in education.

The Government also wants to create equal rights for children and young people to express a preference for any state funded school or further education provision which will apply equally to academies, free schools, non-maintained special schools, independent schools catering mainly or wholly for children with special needs, all further

education colleges and approved independent specialist colleges (ISCs).

**Co-ordination Failure.** The Government wants to address the co-ordination failure of the current system. For parents, their children and young people the low level of joint working across services in some areas leads to confusion and a sense of unfairness. For the exchequer, there are significant costs due to the late identification of needs, duplication of assessments and variation in provision of support. In the longer term, this system failure leads to these young people having high welfare dependency in adulthood, as shown by: significantly lower employment rates, poor health and often a higher than necessary dependency on parents and /or support services.

## What are the impacts of the measures and which groups of people do they affect?

### Who will the measures affect-

- **Parents, children and young people.** There are currently 261,835 children and young people with high level needs who would be likely to have an EHCP under the new system (*including: those with a statement of educational needs, an LDA, participating post 16 without an LDA but had a statement at school and a proportion of young people who had a statement at school but are currently not participating but may do so in the future*). The table below breaks this down by age with further details set out in annex 1.

<b>Age</b>	
<b>0-under 5</b>	<b>10,415</b>
<b>5-16</b>	<b>187,275</b>
<b>16 and 17 year olds</b>	<b>45,740</b>
<b>18-24 year olds – participating or NEET and likely to participate</b>	<b>18,405</b>
<b>EHCP total</b>	<b>261,835</b>

The number of new statements issued in 2011 was 27,445. Over the past few years, this number has in general fluctuated around 25,000<sup>10</sup>. This is around 10% of the total number of statements/LDAs or expected EHC plans.

- **Local authorities and the health service.** The changes to the system will need

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<sup>10</sup> DfE: Special Educational Needs in England, January 2012 [DfE: Special Educational Needs in England, January 2012](#)

to be implemented by local authorities (education and social care services for children and adults), clinical commissioning groups and health service providers.

- The measures will affect maintained schools, non-maintained special schools, academies, free schools and independent schools, colleges and approved independent specialist colleges which mainly or wholly provide for children and young people with SEN. These providers will have a duty to admit a child or young person whose EHCP names that provider.

### **The Impacts (benefits) of the measures are:**

**Improved wellbeing for children and young people.** The introduction of the EHCP aims to improve joined up working and could lead to a better experience for both children and young people with SEN and their families. An on-going support approach provides a better locus of control of their lives leading to an improved sense of wellbeing and potentially improved longer term outcomes. Evidence from the Department of Health (2008) suggests that treatment satisfaction can be improved following the introduction of care planning for treatment of long-term conditions. Similar health based evidence (see for example: Forman et al,<sup>11</sup> Kinmonth et al,<sup>12</sup> and Fuller et al<sup>13</sup>) provide further evidence of the benefits of care planning and self-management approach in terms of health outcomes.

**The benefits of reducing the number of full assessments.** Once EHCPs are in place for children, they will take their plans forward into further education if they continue to be needed, without the need for the development of a separate learning difficulty assessment. The Department estimates the average cost of statutory assessments to be around £3,200, and assume that the cost of an ECHP assessment will be similar.<sup>14</sup>

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<sup>11</sup> Forman et al (1997), "Clinical improvement with bottom line impact: Custom care planning for patients with acute and chronic illnesses in a managed care setting". The American Journal of Managed Care Vol 3(7) pp 1039-1048

<sup>12</sup> Kinmonth et al (1998), "randomised controlled trial of patient centred care in diabetes in general practice: impact on current wellbeing and future disease risks", BMJ vol 317 pp1202-1208, <https://bmj.bmjournals.com/cgi/content/abstract/317/7167/1202?ck=nck>

<sup>13</sup> Fuller et al (2004), "Is client-centred care planning for chronic disease sustainable? Experience from rural South Australia", Health and Social Care in the Community Vol 12(4), pp318-326

<sup>14</sup> Audit Commission (2002), "Statutory assessment and statements of SEN: in need of review?", [Statutory assessment and statements of SEN: in need of review? PDF](#) (The Audit Commission reported that the average statutory assessment cost was around £2,500. Applying a price deflator, the estimated cost in 2011 would be £3,186.

<sup>15</sup> Further assumptions are made about the number of reassessments that can be avoided in each year between 2014/14 and 2023/24. The HM Treasury 'Green Book' discount rate of 3.5% is applied to estimate the 'present value' of the benefits in 2013.

<sup>16</sup> The Government is requiring them to continue until the end of the academic year in which they turn 17 from 2013 and until their 18th birthday from 2015.

<sup>17</sup> NAO (Nov 2011) Oversight of special education for young people aged 16-25

<sup>18</sup> Bercow (2008) 'the Bercow Report, source: [The Bercow Report](#)

By 2015/16, the Department estimates that there could be just over 3,000 young people per year for whom no re-assessment will be required as they move into further education or training. This could rise to just over 8,000 by 2023/24, amounting to a maximum total saving in the region of £170m, in Net Present Value terms over the ten year appraisal period (from 2014/15 when EHCP is first implemented).<sup>15</sup> It should be noted that these estimates are uncertain and represent an upper estimate – savings may be lower where young people need a re-assessment if their needs change. In addition, the projections also assume that raising the participation age (RPA) means all academic age 16 year olds are participating in education and training during the appraisal period.<sup>16</sup>

**Benefits of improved support for young people who are NEET.** Maintaining an EHCP for a young person until they achieve their desired educational outcomes is likely to have an impact in terms of supporting young people into employment and semi-independent living. NAO evidence suggests that the costs of supporting a person with moderate learning difficulties through adult life (16-64) are £2.3m in today's prices. Equipping a young person with the skills to live semi-independently rather than in fully supported housing could reduce these costs by up to £1m. Supporting one person with a learning difficulty into employment could reduce these costs by £170,000.<sup>17</sup> Much of these cost savings would be realised by local health, housing and adult care services.

**Earlier identification of needs.** The late identification of needs poses an opportunity cost as costly remedial interventions could according to Bercow (2008),<sup>18</sup> be targeted at earlier identification and support. We expect that the introduction of the single assessment process may lead to an improvement in earlier identification of needs due to a more rigorous categorisation of needs, thus avoiding the need for very expensive and intensive remedial interventions and support. Goswami (2008) reports that early detection and intervention would alter development learning trajectories for children with SEN, with consequent benefits through the life courses. In particular, improvements in early capability makes later learning more efficient, and enhancing early capability at the outset of learning also increases the complexity of what can be learned. The Department has not been able to monetise these likely benefits.

**Reduced number of appeals.** The Department expects that the number of new appeals should decline in the medium to long term due to the new co-ordinated assessment process and the EHCP, which aim to better assess and cater for children and young people's needs, involving the family in the decision making process and thus decreasing the likelihood of formal disputes. We have not monetised these benefits.

**The impacts (costs) of these measures are:**

The Department is testing approaches to the development of a co-ordinated assessment process and EHC Plan through local authorities who are participating in a pathfinder programme. This will help inform an estimate of the likely resource requirements in terms of transition to a new system and on-going implementation. The next interim evaluation report, with quantitative analysis and an assessment of the costs of new approaches will be published in September 2013. These resource requirements relate to a step change in the current set-up of multi-agency working and will include changes in workforce deployment, development of systems, and improvements in advocacy and support in the assessment and planning process.

The Department expects that local authorities will require transitional support to develop the new approach and during a period where they are maintaining both statements and LDAs and converting these into education health and care plans. The Department has selected 20 'pathfinder champion' LAs, covering all nine English regions, to support implementation in non-pathfinder areas on a regional and national basis, by sharing examples of effective approaches.

The Department expects the non-monetised benefits and monetised savings will significantly outweigh the costs of moving to the new system.

### **What other measures were considered and why were they not pursued?**

The Department has considered the option of maintaining the current system. This would involve local authorities continuing to provide statutory assessment for children and young people and developing either a statement of special educational needs for those in a school setting or a learning difficulties assessment for those entering further education or training. The Department has heard representations over a long period which detail the problems that parents and young people have encountered in the current system, and also has observed the consistently high number of appeals in cases of dispute and the disproportionately high number of young people with LDD who are in the NEET group. Consultation responses received in advance of the publication of the Green Paper confirmed the problems families and young people were encountering in the current system.

An alternative option of promoting culture and practice change within the existing legislative framework, building on the findings of the pathfinder programme was considered. However, this was dismissed as among other issues, it would fundamentally

not address the issue of the lack of parity pre and post 16, and therefore would not be effective in improving equity in the system.

## Are there any key assumptions or risks?

### Assumptions

The department assumes a flexible definition of the term “co-ordinated (or single) assessment process” acknowledging that local authorities are under statutory duties to complete statutory plans in certain circumstances (e.g. a care plan for a looked after child). We do not expect the co-ordinated assessment process to negate the need for other statutory processes. Pathfinder experience has shown that the EHCP can act as a ‘filing cabinet’ – reducing the amount of duplication between statutory assessments and bringing together their results into a single, coherent family facing document.

Improved partnership working and information sharing between agencies will deliver cost savings and cost efficiencies in the longer term as well as improvements in the quality of support planning. The evaluation of the pathfinder programme will explore the cost of these reforms to the different agencies involved, and this information will help refine considerations about how best to support local authorities in implementing the legislation.

Further evaluation evidence from the pathfinder programme (in particular the findings from the formal evaluation) will help refine the estimates presented here.

### Risks

There are a number of important risks to delivery of the benefits set out here:

1. Working practices prove to be intractable and local areas are unable to achieve truly effective partnership working within the defined timescales, meaning that children, families and young people do not experience improved outcomes.

**Mitigations:** pathfinders will champion changes and sharing their experiences of effecting culture change across workforces with non-pathfinders, particularly through the work of the pathfinder champions; we will work to maximise the impact of the health system reforms in particular the new duties for joint planning and commissioning of services for children and young people with SEN.

2. Local authorities are unable to fund the cost of extending protections up the age range.

**Mitigations:** we are considering transitional arrangements for the new legislation, which will enable LAs to take a staged approach and plan and commission services



accordingly over the longer term. The Department has also made clear that it will take action to support local authorities that are not fulfilling their duties to increase participation of young people. We are already providing improvement support for local areas with the most challenging data on NEET and participation.

- Local authorities who choose to operate wider eligibility criteria for EHC Plans than they do currently for statements, going beyond their statutory requirements, risk additional costs in co-ordinating and preparing plans.

**Mitigation:** A number of pathfinders are taking this approach and implementing system wide reforms in order to reap longer term benefits. The evaluation will explore the cost of reform and the impact on improving outcomes at system and individual level. Non pathfinder areas will be able to build on the experience of findings of the pathfinder in order to inform their own approach to eligibility. The Children and Families Bill does not change the eligibility for a statutory EHC Plan compared with statements or Learning Difficulty Assessments.

## ANNEX 1: What are the impacts of the measure and which groups of people does it affect?

Number of children/young people participating with statements/LDAs that would have an EHCP plan

Age	Number	Notes
0-5	10,415	
5-16	187,275	
16/17	20,462	
18-24	12,234	
<b>Total</b>	<b>230,385</b>	

Number of potential **additional** EHCP Plans

Age	Number	Notes
16/17	15,918	Participating, low needs but had statements at school. However, this figure does not necessarily represent all <u>new</u>

		EHC Plans as students can be low needs and have an LDA now or an EHC Plan in future.
16/17	9,361	NET 16/17 year olds. We assume 100% participation under RPA then these would all be participating as a result of RPA and would all have LDAs.
18-24	6,171	<p>It is estimated that 61,700 young people aged 18 to 24 with a statement of SEN will be NEET in 2014/15. This is based on combining numbers of young people who currently are or were in the school system with a statement of SEN with an estimate of their likelihood to be not in education, employment or training (NEET).</p> <p>It is then assumed that overall 10% of that 18-24 age NEET group will both choose to and be successful in applying to their Local Authority for an Education, Health and Care Plan (EHC Plan).</p> <p>For more details see Annex 2.</p>
<b>Total</b>	<b>31,450</b>	

So, as an expected upper limit, total additional numbers of EHC Plans is 31,450 - i.e. 25,279 (NEET 16/17 year olds plus low needs 16/17 year olds who had statements at school) plus 6,171 NEET 18-24 year olds. This assumes RPA doesn't have any impact. If this were to occur, the total number of EHC Plans would be 261,835. It is possible that there may be an increase in the number of 0-5 children with an EHC Plan as the system becomes more integrated, with earlier identification and intervention. However, an expected number is not yet known and depends on local implementation of the reforms.

The lower limit of additional EHC Plans would be 6,171 – ie those 18-24 year old NEETs that we think might re-enter the system. This assumes RPA is 100% effective for 16/17 year olds and that all those 16/17 year olds participating with low needs already have an LDA.

## **ANNEX 2: Estimating the number of 18 to 24 year olds who are not in education, employment or training (NEET) and have high special educational needs**

It is estimated that 61,700 young people aged 18 to 24 who had a statement of SEN will be NEET in 2014/15. This is based on combining numbers of young people who currently are or were in the school system with a statement of SEN with an estimate of their likelihood to be not in education, employment or training (NEET).

There are no routine national statistics available that breakdown the number or proportion of young people NEET by whether they had or had a statement of SEN, and so the likelihood cannot be calculated directly. However, it can be estimated for 18 and 19 year olds based on data from the Longitudinal Study of Young People in England, and a combination of whole cohort and disability data from the Annual Population Survey (APS) to create a proxy group for young people with a SEN statement for 18-24 year olds [using the methodology underpinning the national statistics].

It is then assumed that overall 10% of that 18-24 age NEET group will both choose to and be successful in applying to their Local Authority for an Education, Health and Care Plan (EHC Plan), and that this proportion will vary with age (from 30% at age 18 to 4 % at age 24). It is unlikely that many people in this group would seek to re-enter the system. Many will be on active benefits – which they would lose if they returned to education - or will be firmly embedded within the adult care system and will not want to risk losing established support

<b>Academic age</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>Total</b>
Statement at 15	21,300	21,900	22,000	22,700	23,400	23,400	23,400	158,200
of which NEET	5,100	8,100	8,500	9,300	10,000	10,600	10,000	61,700
Of which receive EHCP	1,900	1,600	1,100	600	500	300	200	6,200

## SECTION 3: PERSONAL BUDGETS

### Summary of the measures in the policy area

Introduction of an option for a personal budget for parents of children and young people with an Education Health and Care Plan.

### What are the problems that the measures address?

**There are three main problems that this measure is seeking to address:**

**Lack of parental control** – Local Authorities are currently responsible for arranging the delivery of services which are required for a child with a statement of special educational needs but are not similarly required to arrange delivery of services for young people with a learning difficulties assessment.<sup>19</sup> In arranging services, families frequently report that this is characterised by often uniformly delivered services and many parents and young people share a concern that this does not provide services which meet their child's/ an individual's needs. Parents have expressed a preference to have more choice and control over the services they receive.

**Lack of transparency** – There is currently no transparency about the funding committed across the different public services to support a child's needs as identified in a statement / Education Health and Care Plan.

**Limited market development of services** – There is currently a very limited market in the provision of some services for children and young people with SEN, with local authorities both commissioning and delivering within rigid service structures, which limits innovation and could affect the price paid for services.

### What are the measures and what is the rationale for their introduction?

The policy measure aims to provide parents and young people who have an EHCP, the option to have a personal budget. For a child or a young person with an EHCP, the Local Authority will identify an amount of money available to secure provision that is

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<sup>19</sup> Other measures within the Children and Families Bill will introduce a single 0-25 Education Health and Care plan to replace a child's statement or a young person's learning difficulties assessment. In doing so it will retain all the protections of statements for children and extend these to 16-25 year olds

specified in the EHCP with a view that the child's parents or the young person is involved in securing the provision. The personal budget will cover the individualised support activity as set out in an EHCP, but not the school or college / training provider place.

This policy measure seeks to improve access to services and support the effective use of public resources for special educational needs. It seeks to empower parents and their children by giving them choice and control over the services they access, thus improving transparency and encouraging a special educational needs service that is more responsive to families' needs and preferences. This in turn could improve the quality and efficiency of service provision, satisfaction and lead to improved longer term outcomes for children and young people with SEN.

Evidence from the Individual Budget Pilot (2010)<sup>20</sup> and from individual health budget pilots led by the Department of Health<sup>21</sup> provides evidence regarding the extent to which personal budgets can improve outcomes and create wellbeing effects from greater choice and control and changes in the type of services families choose to access. Further evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility and they feel empowered.<sup>22</sup>

Efficiency arguments apply to the case for introducing personal budgets. Asymmetric information exists such that while parents in theory have better information on what services are most appropriate given their personal circumstances, local authorities currently arrange for services to be put in place on behalf of the family which are generally uniformly provided by local authorities. This means it is not specifically linked to an understanding of the child or their family circumstances. Families participating in the IB pilot benefited from the flexibilities afforded by an individual budget, including: changing the emphasis in the care package on respite and short breaks, having more family centred interventions and being able to innovate with new services that better suit their requirements.

## **What are the impacts of the measures and which groups of people do they affect?**

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<sup>20</sup> Department for Education (2011), 'individual budgets for families with disabled children' source: [individual budgets for families with disabled children' source](#).

<sup>21</sup> Department of Health (2012), Personal health budgets pilot - final evaluation report – source [Personal health budgets pilot - final evaluation report](#)

<sup>22</sup> See for example Greig et al (2010), Glendinning et al (2008) and SCIE (2009)

The option for parents and young people to request a personal budget can benefit all parents and young people with an EHCP. However, we know that not all families will want the responsibility of managing their own budget which, in some cases, can include employing their own personal assistants. Based on the findings from the Individual Budget Pilot we estimate up to 13% of families will wish to take up the option of a personal budget. The Department estimates that this could mean between 31,000 and 34,000 families and young people taking up this option. This range is partly dependent on the number of young people for whom an EHCP continues to be maintained.

Local Authorities will be affected by this measure, as they will be expected to run systems in parallel. This will mean for parents and young people not requesting a personal budget they will continue to commission services which are required and detailed in a child / young person's plan. For parents and young people who do request a personal budget, local authorities will need to make arrangements for a sum of money to be identified for the child or young person. Parents will be able to choose whether to direct where they wish this funding to be spent (with the local authority managing the funds on their behalf) or receive a direct payment in order that the family or young person holds the budget and directly commissions services.

**The main impacts (benefits) for parents and young people will be:**

**Choice and Control** – The Government wants to provide families with greater choice and control over the services they receive, allowing them to tailor provision to meet their own unique needs. A personal budget will enable parents or young people to have a much greater say in the way their child or they themselves are supported. This will provide a clear role for the service recipient in designing a package of support that is personalised. This can lead to welfare benefits for parents and young people, and longer term to improved outcomes for the child / young person. These benefits cannot be readily monetised however a recent NAO report<sup>23</sup> highlighted that in special educational needs, focussed support over many years can bring high net returns. The public sector costs of supporting a person with a moderate learning disability through adult life (16-64) is £2-3 million, while the impact of supporting one person with a

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<sup>23</sup> National Audit Office (2011) – Oversight of special education for young people aged 16-25 source : [Oversight of special education for young people aged 16-25](#)

learning disability into employment could, in addition to improving their independence and self-esteem, reduce lifetime costs to the public purse by around £170,000 and significantly increase that person's income by 55-95%.

**Transparency** – The Government wants to provide families with greater transparency. A personal budget will provide clear information about the funding committed across the different public services to support their child, according to the needs identified in the EHCP. This will provide both commissioners and families with better information about the costs of different options which may in turn, for some, enable savings to be made. This, in turn, should help to create a more competitive market in the provision of service, encourage market development, and potentially address post code variation in the cost of service provision and funding provided to support children young people with similar needs. These benefits cannot be readily monetised.

**Innovation** – The individual budgets pilots have shown shifts in the types of services families use and individual case studies have highlighted innovative approaches to meeting needs. This is to be expected and encouraged to ensure that the package of support is truly personalised to meet the unique needs and circumstances of any individual child with an EHCP. Families will be supported in this process and good providers that offer innovative and responsive services will be able to grow.

**Preparing young people for adulthood** – Young people will find that in the adult social care and health services there is increasing use being made of personal budgets and direct payments. Introducing young people or older children to personal budgets will assist with the transition to adult services.

**The main impacts (costs) for Local Authorities will be:**

The Department has been able to draw on independently evaluated evidence from the Individual Budget Pilot to assess the likely costs of implementing this measure. The IB pilots included 6 sites, where individual budgets for provision of social care services for disabled children were tested. The IB pilots were delivered through a common delivery framework, which was a model including activities for both the initial transitional set up and on-going delivery of the pilot. The Department has assessed the likely costs to Local Authorities for the implementation of the option for a personal budget using the qualitative analysis from the IB pilots, and those elements of the common delivery model, established as part of that pilot, which would be relevant to the roll out of SEN personal budgets. The Department is in discussions with the Department for Communities and Local Government regarding how this will be funded at implementation.

### **Transitional costs:**

The Department estimates that it will cost all 152 local authorities in aggregate between £17.5m and £47m to implement the personal budgets measure (over a 2 to 3 year period). Within this range, our central case estimate is around £32.5m. From the common delivery model, this is made up of: staff costs (44%) change management costs (18%) awareness raising with families (18%), IT development (3%) developing a resource allocation system (5%), developing systems which to put in place a choice of services (5%) and market development activities (18%).

### **Recurring Annual Costs:**

The Department estimates that it will cost all local authorities in aggregate between £11.5m and £35m per annum to sustain this measure. Within this range, our central case estimate is around £23m pa. This will be made up of staff costs (63%), awareness raising activities (1%), on-going IT development (2%) maintaining a resource allocation system (1%), maintaining systems which put in place a choice of services (4%) and on-going market development activities (22%).

The Department believes the benefits to parents and young people afforded through individualised support has the potential to significantly outweigh the costs of setting up and running a personal budget system. In addition, the market stimulation and transparency that this measure is likely to generate, may have a downward impact on the cost of services and stimulate more innovation in the market.

### **What other measures were considered and why were they not pursued?**

There are two alternative options which the Department has considered:

**Leave the current funding arrangements for SEN provision unaltered** – In the absence of the opportunity to request a personal budget, parents would continue to experience a system where Local Authorities put in place the specific services to be delivered as part of a child or young person's EHCP. There would continue to be a lack of transparency and empowerment for parents.

**All parents and young people access personal budgets for children and young**



**people with an EHCP** – While this would create a single system for local authorities to manage, consultation responses to the SEN Green Paper<sup>24</sup> indicated that around 60% of respondents felt some concern that managing a personal budget would be an unwelcome extra responsibility. The provision of an option for a personal budget means that parents can select to continue to have the Local Authority commission the services set out in a child’s plan. Parents who are concerned about the complexities of accessing a personal budget would be supported by the Local Authority to help them understand the system and navigate through it.

## **Are there any key assumptions or risks?**

**No evaluated evidence yet of SEN direct payments** – While the evaluated Individual Budget Pilot has given the Department some good evidence to develop an understanding of likely take up and the costs of implementation, the IB pilots were not based on either personal budgets or direct payments in relation to educational services, which will be one core part of the EHCP. In mitigation of this risk, the Department is testing SEN personal budgets and direct payments as part of a pathfinder programme and further evidence from the evaluation of this programme will support the Department in refining our estimates of costs and benefits. A qualitative evaluation of the pathfinder programme will be available in September 2013 as well as a number of case study examples of personal budgets in an SEN context. As part of this process the Department has put into place a number of safeguards to prevent the misuse of funds including conditions for receipt of direct payments and requirements for the monitoring and review of their use.

**Distribution of outcomes** – The Department is alert to risks around the distribution of outcomes i.e. that personal budgets may be more likely to be taken up by middle to upper income families as these families may feel more equipped to understand the complexities of managing a personal budget / direct payments. However, analysis of the take up in the Individual Budget pilot suggested this was broadly in line with the population and around a quarter of families were categorised in social grade E (main earner in casual or lower grade employment or dependent on the welfare state).

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<sup>24</sup> Department for Education (2010) Support and Aspiration: A New Approach to Special Educational Needs and Disability

## **SECTION 4: APPEALS AND MEDIATION**

### **Summary of the measures in the policy area**

This document appraises three complementary measures:

- Establishing a common right of appeal across the post compulsory school (16-25) age range.
- Establishing a small number of pilot schemes to enable children to make appeals in relation to their Special Educational Needs (SEN) and disability discrimination claims.
- Promoting use of mediation through a mandatory mediation information telephone call.

### **What are the problems that the measures address?**

There are currently different redress arrangements between:

- children and young people with special educational needs of compulsory school age (and 16-19 year olds in schools); and
- young people over compulsory school age who are not in school.

Under current arrangements, young people outside of the school setting are in an inferior position relative to children of compulsory school age and 16-19 year olds still in school. They have no legal right to access a Tribunal directly, or through their parents. Currently, young people are only able to use Judicial Review or an Ombudsman for dispute resolution. As we seek to introduce Education, Health and Care Plans across the 0-25 age range regardless of educational setting, we want to ensure that equivalent access to redress is available.

The United Kingdom of Great Britain and Northern Ireland ratified the UN convention on the rights of the Child (UNCRC) in 1991 and the Government continues to make progress to ensure that every child and young person in England has all the rights laid down in the Convention. The UNCRC examined the UK on its progress in 2008. Among other concerns, the UN was concerned that children (with SEN or suspected SEN) have no rights to appeal a decision to the First-tier Tribunal. The rights are currently restricted to parents, which represents a particular problem for looked after children. They recommend that children who are able to express their views have the

rights to appeal to the special educational needs tribunals

To ensure children and young people with SEN have the right assessment so services can be put in place quickly, both users and providers of special educational needs and disability services have an interest in resolving disputes in a resource efficient way. The length of the statutory assessment process means that a child or young person with SEN may not be receiving the right support for six months or more, often at a crucial point in their development. This can increase to over a year once any appeals to the First-tier Tribunal (SEN and Disability) are taken into account. The current set of incentives for users may be distorting an optimal choice. It is possible that parents **exercise the right to appeal, instead of using alternative options such as independent dispute resolution services** which may have a lower overall cost and avoid the need for formal hearings.

## What are the measures and what is the rationale for their introduction?

There are three measures proposed:

- **Establishing a common right of appeal across the post compulsory school (16-25) age range.** This includes extending the right of appeal to the First-tier Tribunal (SEND) by allowing young people in school and post-16 education over compulsory school age the right to appeal up to the end of the academic year in which they turn age 25. The rationale for this measure is based on equity arguments, to ensure that there are the same appeal rights across the 16-25 age range.
- **To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims.** Establishing a small number of pilot schemes for children of compulsory school age and below to make appeals in relation to their special educational needs and to bring disability discrimination claims. On completion of any pilots the Secretary of State would have the power to extend the right to all children in England. The rationale for this measure is based on equity arguments. The pilot and any subsequent move to give all children a right of appeal which will specifically help ensure that looked after children and older children have a right of appeal. This will also fulfil commitments made under the UNCRC. Government intervention is necessary to amend the current legislation and thus to ensure children and young people's interests are being treated and protected equally.
- **Promoting use of mediation/ mandatory mediation information telephone**

**call.** Introducing a mediation information call for parents and young people before appeal aims to improve the take-up of mediation services. This will reduce costs and the time and stress of resolving disagreements by avoiding the formal appeal process. If the parent or young person wished to appeal to the Tribunal they must first contact an independent mediator for advice and information on mediation with the local authority unless the case is an exception (e.g. only relates to the naming of a school or post-16 institution)<sup>25</sup> The parent or young person will then decide whether to participate in mediation or go straight to appeal. Currently, only around 23% of SEN appeals registered with the Tribunal are heard. The rest are either withdrawn by parents or are conceded by the local authority.<sup>26</sup> This is time consuming, expensive and stressful for the families involved. Voluntary mediation, which was supported by the responses to the Green Paper and the Education Select Committee during pre-legislative scrutiny, would provide an effective practical solution. Parents and young people will have the opportunity to discuss with an independent mediator how mediation may help them, before deciding whether to go to mediation with the aim of avoiding the delays / costs / stress which would be incurred through the Tribunal route.

## **What are the impacts of the measures and which groups of people do they affect?**

**Figures are based on the best estimates and assumptions we have currently but there will be some variation in reality.**

### **Who will these measures affect?**

**Establishing a common right of appeal across the post compulsory school (16-25) age range.** This measure is likely to benefit between 23,500 and 39,400 young people aged 16-25. This estimate does not include those 16, 17 and 18 year olds who are in a school setting, whose parents currently have a right of appeal. We estimate that there could be some 600 additional appeals per year from young people aged 16-25 (see annex A.2).

**To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims.** Initially this measure will only impact those children who are resident within the pilot site areas and these areas have not currently been selected. The pilot schemes may also test which

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<sup>25</sup> Parents and young people will not have to contact a mediation adviser if the potential appeal is solely about the school or college named on the EHC plan, the type of school or college named or that no school or college or type of school or college is named. Parents and young people will not have to contact a mediation adviser if they want to make a disability discrimination claim.

<sup>26</sup> Data from Ministry of Justice - <http://www.justice.gov.uk/downloads/statistics/tribs-stats/tribs-tables-q2-2012-13.xls?type=Finjan-Download&slot=00000239&id=00000238&location=0A64020D>

age ranges such a measure would have greatest impact upon. However, on the assumption that the pilot demonstrates this is a beneficial approach and full roll-out is extended across England, this measure would potentially apply to around 200,000 children (0-16) with statements of SEN. The group which we expect to make greatest use of the right of appeal may be looked after children, where around 30% of all looked after children currently have statements of special educational needs. Some 6,780 looked after children have statements of SEN.<sup>27</sup>

**Promoting use of mediation / mandatory mediation information telephone call.**

This measure will impact on all local authorities in England. It will also impact on all parents and young people who find themselves in dispute with their local authority on matters relating to their EHCP or a decision not to make or amend a Plan. We estimate that there will be over 250 additional calls per year from under 16 year olds and 16-19 year olds in school (see annex A.6) and 500 additional calls per year (see annex A.8) from young people outside of the school setting.

**What are the desired effects (benefits) of the measures?**

**Establishing a common right of appeal across the post compulsory school (16-25) age range.** The benefits relate to welfare improvements for young people outside the school setting, who are currently not able to appeal in the same way as the parents of those in school or early years settings.

**To enable children to make appeals in relation to their SEN assessments and statements/plans and to make disability discrimination claims.** The pilots will help the Department to make an assessment of the benefits of this measure. There are possible welfare benefits for children who are able to appeal in their own right, particularly those who are looked after by their local authority.

**Promoting use of mediation / mandatory mediation information telephone call.**

The benefits of this measure include a range of welfare improvements, including the potential to avoid the time commitment, stress and anxiety caused by going through the appeals process. There are however, also savings which are likely to result in the event that participation in telephone mediation results in more cases being managed successfully through mediation and avoiding the need for an appeal to the Tribunal. The use of compulsory phone call should give users the opportunity to take more

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<sup>27</sup> See [Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2012](#)

<sup>28</sup> These estimates are taken from research by the National Centre for Social Research (2008) 'Special Educational needs Disagreement Resolution Services National Evaluation' [Special Educational needs Disagreement Resolution Services National Evaluation PDF](#) However, the figures quoted in the research of between £500 and £800 have been expressed here in 2012 prices.

responsibility towards a settlement that avoids the courts or the Tribunal. There is currently no large scale, robust research available showing to what extent current voluntary mediation sessions have been able to resolve disputes and thus lead to a reduction in court applications. Interviews between DfE officials and three mediation organisations (specifically providing dispute resolution services for SEN appeals), in July 2012 suggests that mediation could fully resolve between 60 and 80% of cases referred (see annex A.5)

**A reduction in appeals in the younger age group.** Savings will be generated for the Exchequer and local authorities as a result of mediation reducing the number of appeals that go to Tribunal. We estimate that 10 - 20 per cent of appeals would access mediation and where the mediation session successfully manages these cases there will be fewer cases reaching the Tribunal hearing stage. We estimate this would generate savings in relation to avoided appeals of approximately £300k pa for the Exchequer and £500k pa for local authorities (see annex A.10).

#### **What are the desired effects (costs) of the measures?**

**Establishing a common right of appeal across the post compulsory school (16-25) age range.** There are costs associated with an increased number of appeals from the older age group, who previously had no right of appeal to the First –tier Tribunal. This excludes those who avoid a Tribunal as a result of mediation. We estimate that there will be a total cost of £350k to the Exchequer and £600k for local authorities to defend these additional cases (see annex A.12) per annum. There will also be some information provision costs to local authorities in setting out the new process for parents and young people. This has been estimated based on administrative time drafting correspondence and guidance at approximately £20k across all LA areas (see annex A.14).

**To enable children to make appeals in relation to their SEN.** The Department will support the costs of establishing a pilot, which we have estimated at £150,000 pa over two years (see annex A.4). If this pilot is successful, the Department will make a further appraisal of the costs of implementing the findings of the pilot across all English local authority areas.

**Promoting use of mediation / mandatory mediation information telephone call for the older age group and parents of the younger age group.** There are a range of costs which this measure will create. First there will be costs in relation to providing the phone call. We estimate additional costs of £30k per annum to local authorities from

parents of the younger group (see annex A.6) and £5k per annum to local authorities from the older age group (see annex A.8). It is also expected that the mediation information sessions will generate more referrals to mediation. This will require further costs to be met. Market evidence suggests that mediation in this area has a cost of between £520 and £840 per session<sup>28</sup>. Assuming that 16% of cases result in mediation taking place, this has a cost of £350k for parents of the younger age group (see annex A.7) and £50k for the older age group (See annex A.9).

The total costs set out in this section are around £1.40m per annum (including pilot costs). While the monetised benefits of these three measures taken together create a small net additional annual cost, this does not include the significant welfare improvements for young people in being able to effectively appeal against decisions made in relation to their SEN by local authorities and to have this appeal heard in the same way which parents of children with SEN have had in place for some time. It also does not include the significant welfare improvements for parents who could benefit from avoiding Tribunal hearings and delays in resolving matters with the local authority. Taking into account these non-monetised benefits, the Department considers across these three measures that the benefits outweigh the likely costs.

## **What other measures were considered and why were they not pursued?**

**Not establishing a common right of appeal across the post compulsory school (16-25) age range.** This do-nothing option was not pursued. With the implementation of a 0-25 year old single assessment process and plan, it would be inappropriate to consider maintaining the existing differentiated systems for redress across the two age ranges.

**To enable children to make appeals in relation to their SEN.** The Department considered an option of legislating to put in place the children's right without the pilot occurring first. However, there is a need to test on a small scale to understand more about what age of children would be likely to take advantage of this right, and in what number children may come forward. A pilot would also enable the appeals system (mediators and the court system for example) to start to understand the implications of working directly with children and learn lessons for other sites.

**Promoting use of compulsory mediation.** The Green Paper, Support and Aspiration: a new Approach to Special Educational Needs<sup>29</sup> set out the proposal that parents would be obliged to participate in mediation before they would be eligible to have their appeal registered with the First-tier Tribunal. This measure would have led to a net cost of £550,000 per annum, which slightly exceeds the net cost under the option set out above. In this scenario, significantly greater cost would have been incurred in providing mediation services, but this would have resulted in more mediation cases helping to reduce the number of cases heard at Tribunal. However, responses to consultation during PLS suggested that this option was deeply unpopular across a range of interested parties. Therefore the Department is proposing the alternative option which ensures that the benefits of mediation are discussed with all appellants.

## Are there any key assumptions or risks?

### Key assumptions and risks:

- The costs and benefits presented here assume that the new system generates the same volume of appeal cases as the current system. We have assumed that on average 3,600 appeal cases arise each year and have assessed the costs under the new system on this basis. There is a risk that the new system as it is implemented, creates a higher case load of appeals, as professionals develop their understanding and expertise in working in the new system. There is also a likelihood that the reforms with their intended effects of giving parents more control, ensuring that professionals work together and providing more information to parents about the process and locally available services, will mean that there is a much less adversarial system which emerges. This may mean the costs are much lower as the number of cases reduces longer term.
- There is an assumption that there will be capacity amongst providers of mediation to meet the increased demand following on from this new duty or capacity can be quickly expanded.
- Mediation information sessions will not cover disability discrimination claims or cases where the appeal is only about the education provider to be named on a statement/Plan. These cases will be permitted to progress directly to the Tribunal, as it is likely that mediation would be ineffective where the matter only relates to the named establishment.
- Children and young people may need, due to the introduction of the right to appeal and compulsory mediation information call, additional help to understand the mediation process and the appeal process through advocacy support. We

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<sup>29</sup> Support and Aspiration: A New Approach to Special Educational Needs and Disability (2010)



are unable to estimate how many children and young people may opt to take up advocacy support, so we have not monetised this cost.

## Annex: Supplementary Evidence and Cost Benefit Calculations

1. In this annex we lay out additional sources of information and narrative and the calculations behind the cost and benefit estimates reported above.

### A.1. Establishing a common right of appeal across the post compulsory school (16-25) age range.

2. Under this option, legislation would be used to give young people aged 16-25 equal access to appeal in connection with their new Education, Health, and Care Plan, regardless of the young person's age or education setting.

### A.2. Impact on the number of young people launching an appeal

3. Beginning with *under 16 year olds and 16-19 year olds in school*, the parents of children who have either been denied assessments, statements or disagreed with the contents of the statements launched 3,600 appeals in 2011-12. We expect that there will be no, or near zero, additional on-flow from this group as their parents already have the right to appeal and we expect the additional numbers of children launching an appeal independently of their parents to be small.
4. Turning to the *young people outside of the school setting*, this group can currently only attempt to resolve disputes through either Judicial Review or the use of an Ombudsman, not through Tribunals, but through the widening of the right to appeal, we expect the number of formal appeals to rise. We estimate that between 23,500 and 39,400 young people could be additionally drawn into the Right to Appeal.
5. To obtain an estimate of the number of additional appeals launched from this age group in England, we have firstly taken the number of appeals launched by parents from the younger age group in 2011-12 (this is 3,600 in total) and have expressed this as a proportion of the population with statements (this is 197,675).<sup>30</sup> Therefore, our central estimate is that 1.8% of young people currently outside of the school setting who could be drawn into the Right to Appeal will launch an appeal each year. In addition to this central estimate, we have also made two assumptions on what the higher and lower case could look like, assuming double the proportion for the higher case (3.6%) and half the proportion for the lower case (0.9%).
6. Given these assumptions, our *high case* estimate is that there are 1,418 additional

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<sup>30</sup> Source MoJ (2011) SEND Annual Report 2009/10.

appeals from this age group per annum (3.6% of 39,400 young people). Our *central case scenario* is 566 additional appeals per annum (1.8% of 31,450 young people). Our *lower case scenario* is 212 additional appeals per annum (0.9% of 23,500 young people).

### **A.3. On-going cost of additional Tribunal cases to the older age group**

7. The increase in the number of appeals from the older age group will lead to an increase in the number of cases heard per year. We can use data on the proportion of appeals launched by the parents of the younger age group that go to Tribunal to estimate the number of additional Tribunal cases that will be generated by the older age group.
8. The average number of appeals launched by parents from the younger age group was 3,600 in 2011-12. The number of cases heard in 2011-12 was 830. Therefore around a quarter (23%) of appeals go to Tribunal.<sup>31</sup> Applying this proportion to the additional appeals coming from the older age group implies an increase of 130 cases going to Tribunal (e.g. 23% of the 566 additional appeals).
9. The cost to the Exchequer of a Tribunal case ranges between £2,067 and £3,909 (in 2012 prices).<sup>32</sup> Therefore, the annual additional cost could range between £269k (130 Tribunal cases x lower cost estimate of £2,067) and £508k (130 Tribunal cases x higher cost estimate of £3,909). The cost to a Local Authority of defending a Tribunal case is estimated at £5,116 (in 2012 prices). Therefore, the annual additional cost for local authorities would be £665k (130 Tribunal cases x cost estimate of £5,116).

### **A.4. Establishing a small number of pilot schemes to enable children to make appeals in relation to their Special Educational Needs (SEN).**

10. There are currently no pilots in England which could offer us an insight into the true magnitude of costs and benefits associated with the Right to Appeal. Thus we intend to establish a pilot in two or three local authority areas to test out children's willingness to use their new right and its operation, working with the First-tier Tribunal (SEND). The proposed two year pilot could, based on estimates provided by the Welsh Government, cost around £130,000 (in 2010 prices) per annum. The equivalent in 2012 prices is £133,023.<sup>33</sup>

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<sup>31</sup> Ministry of Justice (2011), <http://www.justice.gov.uk/downloads/statistics/tribs-stats/quarterly-tribs-stats-q2-11-12.pdf>

<sup>32</sup> Legal Services Commission internal statistical data pack 2010/11, [http://www.legalservices.gov.uk/docs/about\\_us\\_main/Statistical\\_information\\_pack\\_2010-2011.pdf](http://www.legalservices.gov.uk/docs/about_us_main/Statistical_information_pack_2010-2011.pdf)

<sup>33</sup> Welsh Government, Department for Education and Skills (2010/11)

## **A.5. Promoting use of mediation / mandatory mediation information telephone call**

11. The use of compulsory phone call should give users the opportunity to take more responsibility towards a settlement that avoids the courts or the Tribunal. There is currently no large scale, robust research available showing to what extent current voluntary mediation sessions have been able to resolve disputes and thus lead to a reduction in court applications.
12. Interviews between DfE officials and three mediation organisations (specifically providing dispute resolution services for SEN appeals) on 4<sup>th</sup> July 2012 suggests that mediation can fully resolve between 59<sup>34</sup> per cent, 70 per cent<sup>35</sup> and 80 per cent<sup>36</sup> respectively. The three mediation companies provide services collectively for 69 local authorities. It is expected that we can see a similar success rate in new referrals to mediation that the compulsory phone call is expected to lead to due to the similar nature of it being voluntary for parents and young people (although compulsory for local authorities) and these customers being informed of the prospects. To anticipate the total avoided appeals to tribunal, we would have to estimate how successful the phone calls are likely to be in leading to mediation in cases where this would not have occurred previously. It is also the case that the percentages quoted above are for dispute resolution sessions where the involvement of parents and local authorities is voluntary whereas under this proposal involvement will be voluntary for parents but compulsory for authorities. Therefore the percentages quoted above might be slightly optimistic for this proposal.

## **A.6. The cost of arranging a telephone call for parents of the younger age group to Local Authorities**

13. There will be additional costs for Local Authorities in arranging telephone calls for all appeals lodged with the Local Authority. Local Authorities have been required under section 332B of the Education Act 1996 to make arrangements for independent people to provide a service for avoiding or resolving disagreements between parents, local authorities and schools. The Department for Education provides the Local Authority with funding to cover the provision of these services. However, our evidence shows that very few cases are currently referred to mediation services.
14. As laid out above, there will be on average, 3,600 appeals each year from the younger age group who will require a phone call. However, as the legislation is to be set out, an estimated 10% of these appeals will not be subject to this, because the case would relate solely to the naming of a school or college within the EHCP and in this instance the call will not apply. Therefore, an estimate of 3,240 (3,600 x (1-0.10)) is provided for the purposes of estimating the costs and benefits of the compulsory

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<sup>34</sup> Annual Quality Report (2010-12) of Global Mediations, Link: <http://www.globalmediation.co.uk/uploads/files/Annual%20Quality%20Report%202011%282%29.pdf>

<sup>35</sup> A mediation firm, providing services in the North West of England.

<sup>36</sup> A mediation firm, providing services in the North East and West Midlands.

phone call measure.

15. The estimated cost of a phone call, covering all required training and possible multiple attempts for 3,240 cases is estimated to be £30k. This is calculated from an estimated mediator's fee of £9.38 for a 10 minute call. This estimate was gathered from mediation companies and is an indicative, upper bound estimate.

#### **A.7. On-going cost of providing additional mediation sessions to the younger age group**

16. The estimated unit cost of a mediation case can range, according to a 2008 evaluation from the National Centre for Social Research<sup>37</sup>, from £500 (2008 prices) where the LA also paid a retainer fee (of an unknown amount), to £800 (2008 prices) where the LA paid no retainer fee and the cost of any associated administration was included in this per case figure. The adjusted figures in 2012 prices (using the GDP deflator) are £523 and £836.
17. From a mediation tribunal pilot, 67 parents were referred, with 11 parents calling opting for full mediation services. We therefore estimate that 16% of appeals will now go and use a mediation service. The true figure is likely to be slightly different, given the nature of the trial against the proposed measure. The expected on-going cost of mediation is therefore estimated to be £433k in the high case scenario [3,240 appeals x £836 x 0.16], and £271k in the lower case scenario [3,240 appeals x £523 x 0.16]. Our central estimate is £353k [3,240 appeals x £680 x 0.16].

#### **A.8. The on-going of arranging a telephone call for the older age group to Local Authorities**

18. Again, we assume that 10% of the additional appeals from the older age group (10% of 566) will not be subject to mediation because they relate solely to the naming of a school, so there will be 509 additional appeals subject to mediation. The estimated cost of a phone call, covering all required training and possible multiple attempts for these 509 cases is estimated to be £5k. This is calculated from a mediator's fee of £9.38 for a 10 minute phone call.

#### **A.9. On-going cost of providing additional mediation sessions to the older age group**

19. We expect there to be an increase in the number of appeals due to the extension of the right to appeal to the older age group. These appeals will also be subject to a compulsory phone call and will thus require LAs to arrange some additional mediation sessions. We anticipate the overall number of cases to go through mediation to be

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<sup>37</sup> National Centre for Social Research (2008), "Special Educational Needs Disagreement Resolution Services National Evaluation", [Special Educational Needs Disagreement Resolution Services National Evaluation PDF](#)

16%. Therefore, the on-going cost of mediation is estimated to range between £68k in the high case scenario [509 appeals x 16% x £836] and £43k in the lower case [509 appeals x 16% x £523]. Our central estimate is £55k [509 appeals x 16% x £680].

20. Regarding possible additional training costs of mediators, an indicative departmental allocation has been suggested that is understood to cover the additional costs involved. The allocation will be confirmed once development plans are further discussed in the autumn.

#### **A.10. The benefit to the Exchequer and Local Authorities from a reduction in Tribunal cases for the younger age group**

21. The number of avoided Tribunals in the younger age group is estimated to be 78 (16 per cent x 59 per cent x 830) in the lower case, 106 (16 per cent x 80 per cent x 830) in the higher case, and 93 (16 per cent x 70 per cent x 830) for the central estimate. Given this, the estimated savings to the Exchequer could range between £414k in the high case (106 avoided Tribunal cases x £3,909), £161k in the low case (78 avoided Tribunal cases x £2,067) and £278k in the central case (93 avoided Tribunal cases x £2,988). Similarly, the estimated savings to Local Authorities would be £542k in the high case (106 avoided Tribunal cases x £5,116), £399k in the low case (78 avoided Tribunal cases x £5,116), and £476k in the central case (93 avoided Tribunal cases x £5,116)

#### **A.11. The benefit to parents of avoiding Tribunal cases**

22. The primary non-monetisable benefit of the measure, is to improve the wellbeing of children and families through ensuring that fewer families go through the process of a Tribunal hearing, which involves a delay ensuring that the right services are in place for the child and young person, as well as the opportunity costs associated with the time and effort that both parties experience from having to go through an appeal hearing. This wellbeing improvement was a key rationale within the Green Paper.

23. Encouragingly, 70 per cent of respondents to the consultation<sup>38</sup> felt that there should be mediation before a parent registers an appeal with the Tribunal, although many of them said it should not be compulsory. A study by the Ministry of Justice (2010)<sup>39</sup> on the use of mediation in employment tribunals states that some claimants felt a lessening of stress involved in mediation compared to a formal case. However, exploring how mediation could improve parents' and carers' experience of the system should be one of the elements which all the pathfinders will be making available to parents who are unhappy with their children's assessments and Education, Health and Care Plans.

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<sup>38</sup> Department for Education (2012), "Support and Aspiration, A new approach to special educational needs and disability. Progress and next steps", Link: [Support and aspiration: A new approach to special educational needs and disability](#)

<sup>39</sup> Ministry of Justice (2010), "Evaluating the use of judicial mediation in Employment Tribunals", Link: [Evaluating the use of judicial mediation in Employment Tribunals PDF](#)

## **A.12. Net effect of the three changes: On-going cost of additional Tribunal cases to the older age group**

24. When examining the extension of the right to appeal above, we estimated the cost to the Exchequer and Local Authorities of additional Tribunal cases for the new appeals coming from the older age group. We expect that the introduction of compulsory mediation alongside extending the right to appeal will reduce these costs as a greater number of appeals will be resolved before going to Tribunal, although they will still be higher than the current Tribunal costs for this age group (which are zero).
25. As outlined above, we estimate that the proportion of disputes resolved by mediation to range from 59 per cent to 80 per cent. We expect a similar success rate for cases where parent and young people choose to go to mediation under the proposed arrangements as under the current dispute resolution arrangements. We estimated there would be an additional 130 Tribunal cases from the older age group from extending the right to appeal. Therefore the **additional** number of Tribunal cases per annum (taking into account both the introduction of compulsory mediation information call **and** extending the right to appeal) is estimated to be 118 in the high case [ $130 - (16 \text{ per cent} \times 59 \text{ per cent} \times 130)$ ], 113 in the lower case [ $130 - (16 \text{ per cent} \times 80 \text{ per cent} \times 130)$ ], and 115 in the central case [ $130 - (16 \text{ per cent} \times 70 \text{ per cent} \times 130)$ ].
26. The cost to the Exchequer of a Tribunal case ranges between £2,067 and £3,909 (in 2012 prices), therefore, the annual additional cost could range between £461k in the higher case (118 cases x £3,909) and £234k in the lower case (113 cases x £2,067). The central case estimate is £345k. The cost to a Local Authority of defending a Tribunal case is estimated at £5,116 (in 2012 prices). Therefore the annual additional cost could range between £602k in the higher case (118 cases x £5,116) and £580k in the lower case (113 cases x £5,116). The central case estimate is £591k.

## **A.13. The cost to Local Authorities from communicating changes and providing advocacy support**

27. It has not been possible to separate out the information and advocacy costs for local authorities for each of the specific policy measures. This is because we expect local authorities to provide information on the changes together, and children and young people may need additional help to understand the new process as a result of both changes.

## **A.14. Transitional Information cost**

28. The primary responsibility for promotion lies with the Local Authorities, which can use

a range of modes for promoting independent SEN mediation services to young people. It is likely that LAs will experience a cost for the dissemination of the new policy to children, young people and parents. This is the cost of producing a letter and guidance to parents to raise awareness. We are assuming (based on discussions with three Local Authorities) that producing and distributing the letter and guidance takes one day of clerical worker's time, one hour for a junior manager to check the accuracy of the literature and half an hour for a senior manager to sign off. Taking into consideration the average wage costs, the hourly wage cost<sup>40</sup> is estimated to be:

- £12.93 for a Clerical Worker (£10.18 per hour x 27 per cent onset cost<sup>41</sup>)
- £24.03 for a Junior Manager (£18.92 per hour x 27 per cent onset cost)
- £25.03 for a Senior Manager (£19.70 per hour x 27 per cent onset cost)

29. The total transitional information cost comes to [(£12.93 x 8 hours) + (£24.03 x 1 hour) + (£25.03 x 0.5 hours) x 174 Local Authorities in England and Wales] = £24,357.

#### A.15. Advocacy cost (on going)

30. Children and young people may need, due to the introduction of the right to appeal and compulsory mediation information call, additional help to understand the mediation process and the appeal process through advocacy support. We have been unable to obtain a unit cost for support for advocacy services, though a proportion of Local Authority social care expenditure is currently focussed on advocacy work. We thus have assumed (based on discussions with colleagues at the Ministry of Justice) that an advocacy service may require six hours (four hours preparation time and two hours to attend a mediation session) of a mediators time and we have assumed a median hourly earning of £16.10 for professional, scientific and technical activities<sup>42</sup>, including uplift for onset cost of 27 per cent the hourly cost is £20.45 (£16.10 x 27 per cent). This gives us an approximate cost of £122.68 per case (£20.45 x 6 hours). However, we are not able to say how many children and young people may opt to take up advocacy support.

#### A.16 Summary of costs and benefits

Costs	Group	Best estimate
Additional Tribunal cases from older age group (A.12)	Exchequer	£345k per annum

<sup>40</sup> Office for National Statistics (2010), "Annual Survey of Hours and Earnings (ASHE)", <http://www.ons.gov.uk/ons/publications/reference-tables.html?edition=tcn%3A77-227495>

<sup>41</sup> Department for Education Appraisal and Evaluation Guidance 2012, unpublished

<sup>42</sup> Office for National Statistics (2010), "Annual Survey of Hours and Earnings (ASHE)", <http://www.ons.gov.uk/ons/publications/reference-tables.html?edition=tcn%3A77-227495>

	Local Authority	£591k per annum
Establishing pilot schemes to enable children to make appeals (A.4)	Exchequer	£133k per year of pilot
Cost of arranging a telephone call for the younger age group (A.6)	Local Authority	£30k per annum
Cost of providing additional mediation sessions to the younger age group (A.7)	Local Authority	£353k per annum
Cost of arranging a telephone call for the older age group (A.8)	Local Authority	£5k per annum
Cost of providing additional mediation sessions to the younger age group (A.9)	Local Authority	£55k per annum
Information costs (A.14)	Local Authority	£24k (one-off)
Advocacy cost (A.15)	Local Authority	un-monetised (on-going)
<b>Benefits</b>		
Reduction in tribunal cases for the younger age group (A.10)	Exchequer	£278k per annum
	Local Authority	£476k per annum
	Children and Families	un-monetised

## **SECTION 5: Impact on the NHS of the Special Educational Needs Reforms**

### **Summary of the measures in the policy area**

The Children and Families Bill will introduce from September 2014:

- 1) **New joint-arrangements for assessing, planning and commissioning services for children and young people with special educational needs,**



which make it clear what will be offered, and who will deliver and pay for it, underpinned by a process to swiftly resolve local disputes between partners.

- 2) A **new local offer**, so children, young people and their families are clear what is available locally, with a clear complaint process and redress system.
- 3) Introduction of local **Education, Health and Care (EHC) Plans from 0 to 25** which set out in one place the support from education, health and care services children and young people will receive; with a new focus on helping to improve outcomes, including future employment and independent living.
- 4) **Personal budgets** for those families who want to have them.
- 5) **A duty on clinical commissioning groups (CCGs) (and in some limited cases, the NHS Commissioning Board) as health commissioners to secure the provision of health services which they have agreed in the EHC plan**, similar to the duty on local authorities in respect of special educational services.

Overall, these reforms will deliver a new more child and family-centred system, which is quicker, more streamlined, less combative, and better able to identify need early (for example through the two year old progress check). The approach dovetails with the changes to NHS Commissioning made by the Health and Social Care Act 2012. This will enable professionals to work with families to start meeting children's needs from a much earlier point and prevent some problems from escalating. Above all the new arrangements will provide a platform for integration. The EHC plan approach will bring services together, with as focus on personal outcomes for the child. The introduction of a clear local offer and personal budgets will put families of children and young people with SEN in control of their support.

## **What are the problems that the measures address?**

The current system of SEN support tends to be system-focused rather than child-focused.

The Government wants to address the co-ordination failure of the current system. For parents, their children and young people the low level and inconsistency of joint working across services in some areas leads to confusion and a sense of unfairness. The late identification of needs, duplication of assessments and variation in provision of support has significant cost implications. In the longer term, this system failure can

lead to young people with special educational needs having high welfare dependency in adulthood, with significantly lower employment rates, poor health (with its consequent impact on the NHS) and often a higher than necessary dependency on parents and /or support services.

Specifically:

- **Education, Health and Social Care are separate:** families of children with complex needs often have to negotiate each element of their child's statement separately, giving professionals the same information on multiple occasions. This means that the process of assessment and agreeing support is time consuming, onerous and unnecessarily stressful.
- **Lack of accountability:** this increases the likelihood of disputes between services and the risk of needs going unmet. The onus often falls overly on local authorities as the only body with a statutory duty to deliver the services identified in the SEN statement.
- **Poor health and educational outcomes for children and young people with SEN:** outcomes for children and young people whose parents are unable to navigate the complex, education, health and social care systems are disproportionately affected.

The Government's 2011 Green Paper, *Support and Aspiration: A new approach to Special Educational Needs*<sup>43</sup> and *Disability* summarised the evidence base for this position. It described parents' views of the current system for SEN as bureaucratic, bewildering and adversarial. Responses to the consultation informing the Green Paper found that the legislative framework underpinning the system for the assessment of needs and provision of support has created a combative culture which is resource-driven rather than needs-led. This has resulted in late interventions for this very vulnerable group of children and young people, which ultimately results in increased costs, and poorer outcomes.

The number of these children expected to need an Education, Health and Care Plan is comparatively small (1.64% of the overall 0-24 population), their outcomes are markedly lower than the rest of the population. As adults, they are likely to have significantly lower employment rates, poor health and often a higher than necessary dependency on parents and /or support services than the wider population.

## What are the measures and what is the rationale for their introduction?

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<sup>43</sup> Department for Education (2011): *Support and Aspiration: A new Approach to Special Educational Needs and Disability*.

- 1) **New joint-arrangements for assessing, planning and commissioning services for children and young people with special educational needs**, which make it clear what will be offered, and who will deliver and pay for it, underpinned by a process to swiftly resolve local disputes between partners.

Joint commissioning arrangements will ensure that assessments and arrangements for special education, health and care provision are agreed locally and meet the needs of the local population. The Bill requires local authorities and clinical commissioning groups to work together with their partners to make a strategic agreement over what provision is needed, how it will be funded and by who; arrangements in place to support a joined-up single assessment process, for developing EHC plans and for agreeing personal budgets; arrangements for providing information, advice and handling complaints about the EHC Needs Assessment and EHC plans.

By requiring partners to work together to agree these key areas in advance, funding agreements and strategic plans will be in place to make sure that families get access to the support they need. It should also ensure that all of the key agencies are involved in assessing and meeting children and young people's needs from the start of the process.

- 2) **A new local offer**, so children, young people and their families are clear what is available locally, with a clear complaints process and redress system.

The local offer will enable families to see what support they should expect from mainstream services and how to access more specialist provision. This should make it easier for them to make informed choices about their health provision and care. Children, young people and families will be able to develop the local offer with the local authority to ensure that it focuses on local needs. This will make services more responsive and more accountable. As every area will produce a local offer, parents and young people can make comparisons between them. This will stimulate debate locally about what should be included and should also encourage local authorities to work more closely together to meet local needs. Local authorities will also have to involve children, young people and parents in reviewing local provision. 74 per cent of respondents to the relevant question in the Green Paper supported the idea of a locally published offer which made clear what support was available for parents. They thought this would offer clarity around what could be accessed and expectations could be managed. Respondents stressed that the offer should be a comprehensive information service which set out a full directory of services, the criteria for accessing them and explanations of the different options open to parents to help with their decision-making. Information specific to each local authority was also proposed for

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<sup>44</sup> *Support and Aspiration: A new Approach to Special Educational Needs and Disability – Progress and Next steps* (Department for Education, December 2012)

[A new Approach to Special Educational Needs and Disability – Progress and Next steps](#)

<sup>45</sup> *Personal health budgets – final evaluation report* (Department of Health, November 2012)

[Personal health budgets – final evaluation report](#)

publication, including its policy on SEND, disagreement resolution procedures and funding information. More detailed evidence is given in the accompanying IA of the local offer.

3) Introduction of local **Education, Health and Care Plans from 0 to 25**.

These plans will have all the statutory protections offered by a statement, but will set out the services children and young people will receive; with a new focus on helping to improve outcomes, including future employment and independent living. They will reflect the child or young person's own aspirations and a child's parents' views.

The SEN Green Paper consultation showed 49 per cent of respondents believed that a single EHC assessment and plan process would result in a more holistic approach to determining the support needed and quicker access to services. 41 per cent of respondents stressed the success of the single assessment process and the EHC plan depended on agencies working together. They noted the present difficulties in getting busy professionals together, establishing accountability and maintaining effective communication. 23 per cent felt that to have the confidence of parents the EHC plan would need to have the same statutory basis as the statement of SEN and a comparable legal obligation on all agencies to provide the services in the plan. 42 per cent respondents thought that a helpful outcome for families would be a reduction in the number of appointments they needed to attend and less delay in getting the help they needed. A single assessment process was envisaged to be quicker and less complex for parents, saving them time in having to repeat information to a succession of different professionals. Respondents considered that simplifying the process would give parents a better understanding of the system and that they would benefit from having agencies working together to put into effect one co-ordinated plan covering all their child's needs.<sup>44</sup>

4) **Personal budgets** for those families who want to have them.

Every family with an EHC Plan will have the right to a personal budget. Personal budgets will enable parents and young people to have a much greater say in the way they get support, and give them a clear role in designing a personalised package of support. Evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility, choice and control. We are not starting from scratch in this area. Our commitments around personal budgets are based on strong evidence from the three-year pilot of individual budgets for disabled children and the recent evaluation of the personal health budgets pilot. Pathfinder local authorities are building on the learning from these

pilots to test out personal budget payments for children and young people with SEN – including how direct payments can be used for special educational provision. Early findings are very positive.<sup>45</sup>

- 5) **A duty on CCGs (and in some cases, the NHS Commissioning Board) as health commissioners to secure the provision of health services agreed in the plan**, similar to the duty on local authorities in respect of special educational services.

Securing strong commitment from the National Health Service for joined up working, has been a recurrent theme through every stage of the SEN reforms. During pre-legislative scrutiny, the Education Committee reported that “the active involvement of the NHS in commissioning, delivery and redress is critical to the success of the legislation.” Without health’s full engagement, the SEN reforms will fail. This duty will ensure health engagement in an integrated process, and delivery against agreed local plans.

Under the Duty, CCGs would retain their existing legal duties to determine what services would be commissioned to meet the reasonable needs of their population (under section 3 of the NHS Act 2006). They would retain their duty to lead and manage the local planning and allocation of resources, which will determine the health element of the local offer, which includes the services which might be included within a Plan. Clinicians would of course retain their discretion to determine a child or young person’s clinical needs. The NHS Commissioning Board has responsibility for commissioning health services for some groups of children (for example, the children of members of the armed forces), and commissioning specialised services.

The NHS Commissioning Board will have responsibility for holding CCGs to account for the exercise of their statutory functions, and this would include their duties in relation to meeting the needs of children with SEN. The Board will of course determine how it does this, and will itself be held to account by the Secretary of State for Health for its delivery of the Mandate, which includes a very clear expectation in relation to children with SEN and disabilities.

## **What are the impacts of the measures and which groups of people do they affect?**

**Who will the measures affect:**

- **Parents, children and young people.** There are currently 261,835 children and young people with high level needs who would be likely to have an EHC Plan under the new system. This is 1.64% of the 15,954,962 0-24 year old population registered to a GP surgery in England (Annex 1 refers).
- **Local authorities and the health service.** The changes to the system will need to be implemented by all local authorities (education and social care services for children and adults) and clinical commissioning groups (and in some cases the NHS Commissioning Board).

### The impacts (benefits) of these measures:

**Improved wellbeing for children and young people.** The introduction of the EHC plans aims to improve joined up working and could lead to a better experience for both children and young people with SEN and their families. An on-going support approach provides a better locus of control of their lives leading to an improved sense of wellbeing and potentially improved longer term outcomes. Evidence from the Department of Health (2008) suggests that treatment satisfaction can be improved following the introduction of care planning for treatment of long-term conditions. Similar health based evidence (see for example: Forman et al,<sup>46</sup> Kinmonth et al,<sup>47</sup> and Fuller et al<sup>48</sup>) provide further evidence of the benefits of care planning and self-management approach in terms of health outcomes. Evidence from the Individual Budget Pilot (2010)<sup>49</sup> and from individual health budget pilots led by the Department of Health<sup>50</sup> provides evidence regarding the extent to which personal budgets can improve outcomes and create wellbeing effects from greater choice and control and changes in the type of services families choose to access. Further evidence from the UK and internationally shows that where personal budgets work well they give families more flexibility and they feel empowered.<sup>51</sup>

**Reduced number of appeals.** The Department expects that the number of new appeals should decline in the medium to long term due to the new co-ordinated

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<sup>46</sup> Forman et al (1997), "Clinical improvement with bottom line impact: Custom care planning for patients with acute and chronic illnesses in a managed care setting". The American Journal of Managed Care Vol 3(7) pp 1039-1048.

<sup>47</sup> Kinmonth et al (1998), "randomised controlled trial of patient centred care in diabetes in general practice: impact on current wellbeing and future disease risks", BMJ vol 317 pp1202-1208, <https://bmj.bmjournals.com/cgi/content/abstract/317/7167/1202?ck=nck>

<sup>48</sup> Fuller et al (2004), "Is client-centred care planning for chronic disease sustainable? Experience from rural South Australia", Health and Social Care in the Community Vol 12(4), pp318-326.

<sup>49</sup> Department for Education (2011), 'individual budgets for families with disabled children' source: [individual budgets for families with disabled children](#).

<sup>50</sup> Department of Health (2012), Personal health budgets pilot - final evaluation report – source [Personal health budgets pilot - final evaluation report](#)

<sup>51</sup> See for example Greig et al (2010), Glendinning et al (2008) and SCIE (2009)

assessment process and the EHC plan, which aim to better assess and cater for children and young people's needs, involving the family in the decision making process and thus decreasing the likelihood of formal disputes. We have not monetised these benefits.

### **Integration and increased effectiveness of assessment, planning and provision**

Requiring joined-up arrangements for commissioning of services across education, health and care, focused on the individual EHC plan, provides a far stronger basis for ensuring clarity of responsibility, and the relevant interdependencies of services, partnership working and agreements (e.g. under section 75 of the NHS Act 2006) between local authorities and CCGs, including pooling of budgets. The arrangements will result in fewer disagreements between the different commissioners, who will have a framework for collaboration. Health commissioners have clear statutory responsibilities in relation to their contribution to the assessment and planning process, and for securing health services as planned. The SEN reforms have been trialled in a range of pathfinders across the country, and some have found that new approaches can be delivered from within existing resources through cutting out duplication.

Patient and parental satisfaction should also be greatly improved, as a result of the joined-up services and the joint arrangements for providing advice, liaison and mediation. The Green Paper consultation found that 74% of respondents to the question thought that arrangements for provision of health advice for existing statutory SEN assessments could be improved by agencies working together. 379 (62%) respondents thought that reducing the amount of paperwork generated would help to reduce the bureaucratic burdens on frontline professionals, schools and services. Many respondents highlighted the paper trail associated with the referral, assessment and statementing process. They also noted that the completion of paperwork impacted on the time professionals had to spend with children with SEND.

A mandated, joined up approach will ensure also that the needs of the child are considered across the different sectors, and the question of what to provide will not necessarily focus on educational or clinical need, but take into account the patient (and their family's) preference for independent living, or mobility and wellbeing.

### **The impact (costs) of these measures:**

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<sup>52</sup>Audit Commission (2002), "Statutory assessment and statements of SEN: in need of review?", [Statutory assessment and statements of SEN: in need of review](#) (The Audit Commission reported that the average statutory assessment cost was around £2,500. Applying a price deflator, the estimated cost in 2011 would be £3,186.

<sup>53</sup>DfE: Special Educational Needs in England, January 2012 [Special Educational Needs in England, January 2012](#)

We consider these reforms will be cost neutral. CCGs already have a statutory duty under section 3 of the NHS Act 2006 to commission services to meet the reasonable needs of their population; note too the existing requirement for co-operation with local authorities, for which this Bill provides a framework. CCGs will work with LAs and other agencies to agree a local offer of services available which will reflect their commissioning plans (and the identified local need). This will in turn have been informed by local health and wellbeing strategies (alongside the content of existing EHC Plans). EHC plans will then draw on this offer. Therefore the SEN reforms are entirely consistent with CCGs' existing statutory duties and the NHS Mandate.

By working with LAs and other local agencies, CCGs will be able to make the most efficient use of funds that are locally available, and will keep their local offer under regular review to ensure it continues to reflect the needs of children or young people in their area, commissioning and decommissioning their support to ensure their provision meets the needs of local children and young people with SEN. The SEN reforms place greater emphasis on early intervention and support than the current system, which will in turn reduce costs over time.

The Department estimates the average cost of statutory assessments to be around £3,200, and assume that the cost of an ECHP assessment will be similar.<sup>52</sup> The number of new statements issued in 2011 was 27,445. Over the past few years, this number has in general fluctuated around 25,000<sup>53</sup>. This is around 10% of the total number of statements/LDAs or expected EHC plans.

### **Key risks**

1. The capacity implications of a more sophisticated assessment and planning process.

**Mitigation:** the Pathfinder programme is testing new approaches to a co-ordinated assessment and planning approach – which will identify a body of learning which will inform local authorities and CCGs in moving to the new system; an interim evaluation report will be published in September 2013 with an indicative assessment of the costs of the reforms based on the Pathfinder experience. It is anticipated that the non-monetised benefits will significantly outweigh the costs of moving to the new system, which builds significantly on existing capacity requirements, and partnership working between health and social care whilst promising potential savings through partnership working (e.g. key-working across health and education, single planning process and document, etc.)

2. The duty on CCGs may force CCGs to commission additional services, placing



pressure on CCG commissioning budgets.

**Mitigation:** The Children and Families Bill does not change the eligibility for a statutory EHC Plan compared with statements or Learning Difficulty Assessments. CCGs will retain their duty to determine the services to be commissioned to meet the reasonable needs of their population;<sup>54</sup> this will ensure that the requirement to deliver on agreed EHC plans does not undermine the autonomy of commissioners and does not lead to CCGs having to commission services additional to those which their local health and wellbeing strategies recommend, or which they would have chosen to commission if the current system had been maintained.

There is a range of evidence on attitudes towards, and satisfaction with, the current process, some suggesting satisfaction once services are provided, others suggesting significant problems in the process for ensuring services are provided in a seamless and timely way without burdens falling on parents (which the reforms as a whole are intended to avoid).

The most recent survey of parental experience (with 31,466 respondents) suggests there is unlikely to be significant unmet need for health services: 80% of parents rated the health care received in the last twelve months as good or very good - the equivalent figure for education services, by way of comparison, was 73%, and for social care and family support 57%. Satisfaction with health assessments was very high. Only 4% of respondents said that health services were poor (the lowest rating for the three sectors).<sup>55</sup>

In terms of access, only 6% of parents felt that their child received little or none of the health services they required (with 80% of those who responded on these questions stating that their child had received all or most of the health services their child required). See Annex 1 for further information on satisfaction levels and access to health services.

3. The inclusion of health within a single assessment and plan framework for commissioning may lead to an increase in requests for assessment from the

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<sup>54</sup> Section 3 of the NHS Act 2006 as amended by section 13 of the Health and Social Care Act 2012 places a duty on each CCG - unless the NHS CB is under a duty to do so - to arrange for the provision of secondary care health services to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility.

<sup>55</sup> Data is taken from the second - and most recent - parental experience survey conducted in 2009-10: Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, *Parental experience of services for disabled children. Findings from the second national survey* (March 2010), p. viii.

[Parental experience of services for disabled children. Findings from the second national survey PDF](#)

families of children and young people with disability or complex health needs, but which have no special educational needs (for example, a child confined to a wheelchair, who could attend a mainstream school).

**Mitigation:** there are clear criteria for determining whether or not a child has special educational needs and is eligible for an Education, Health and Care plan. Health commissioning plans will be informed by local joint strategic needs assessments and health and wellbeing strategies, which should identify the broader health needs across the population, and provide the basis for ensuring commissioning for complex care and disability is not neglected. The local health offer will provide far greater clarity for parents and patients, in the services available.

4. The duty on CCGs to secure the health services agreed in the plan may lead to CCGs significantly limiting their local offer for services in respect of children with special educational needs, to avoid over-commitment (as services cannot be reduced towards the end of the financial year in response to financial pressures), which could place pressure on the local authority to make up the deficiency.

**Mitigation:** CCGs will remain statutorily obliged to commission services to meet the reasonable health needs of their population and will be held to account for this by the NHS Commissioning Board. Joint Commissioning arrangements will be closely aligned with the local joint strategic needs assessment and health and wellbeing strategy. The NHS Commissioning Board will have a duty to perform an annual assessment of how well each CCG has fulfilled its duties in the previous financial year. This will include, in particular, an assessment of how well it has taken account of the Joint Strategic Needs Assessment, and the agreed Health and Wellbeing Strategy. It will also include an assessment as to how well the group has met its statutory functions such as delivering on the objectives set out in the Mandate (which includes a specific objective to ensure that children and young people with SEN can access the services set out in their agreed care plan). The local Health and Wellbeing Board (which must include the Director of Children's Services and patient representatives through Healthwatch) can report to the NHS Commissioning Board on how well it feels the commissioning plans meet the agreed local Health and Wellbeing Strategy. The apparatus for involving patients and public in NHS commissioning will provide a significant means of assurance/ challenge that services are being commissioned.

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<sup>56</sup> For example, one-to-one speech and language therapy costs an average of £84 per session: *Unit Costs of Health and Social Care 2011* (PSSRU, 2012), p. 73, [Unit Costs of Health and Social Care 2011 PDF](#)

5. The duty on CCGs to secure the health services in an EHC plan will prevent CCGs from changing commissioning plans, or decommissioning / scaling back a service, if delivered to children or young people in fulfilment of an EHC plan, reducing their flexibility in managing cost pressures.

**Mitigation:** given the very small proportion of CCG health commissioning in respect of children with special educational needs (just 1.6% of 0-24 year olds are likely to be in receipt of an EHC plan - see Annex 1, Table 2), the marginal cost of any changes which CCGs would theoretically be inhibited from making by this statutory duty will be negligible. The average costs collated by the PSSRU provide a useful index to the potentially marginal nature of these costs.<sup>56</sup>

Note also the ability for plans to be reviewed and revised to take account of changing needs. The emphasis on earlier identification means that many special educational needs will be less expensive to address. The introduction of personal budgets will also help reduce cost (evidence from the Pathfinders backs this suggestion).

## **ANNEX 1: Impact of the duty on CCGs to secure provision in EHC plans.**

**Table 1:** Number of children/young people participating with statements / LDAs that would have an EHCP plan<sup>57</sup>

<b>Age</b>	
<b>0-under 5</b>	<b>10,415</b>
<b>5-16</b>	<b>187,275</b>
<b>16 and 17 year olds</b>	<b>45,740</b>
<b>18-24 year olds – participating or NEET and likely to participate</b>	<b>18,405</b>
<b>EHCP total</b>	<b>261,835</b>

**Table 2:** Comparison of total eligible population with likely numbers of children and young people having an EHC plan.

<b>Age</b>	<b>Total</b>

<sup>57</sup> Data taken from Children and Families Bill - Evidence of Impact.

0-24 total in population in England (based on GP practice registrations) <sup>58</sup>	15,954,692
0-24 year olds projected to be in receipt of an EHC plan.	261,835
% of total eligible population projected to be in receipt of an EHC plan.	1.64%

**Table 3: Satisfaction with health services**

Extent to which parents felt their child had received the health care services required over last 12 months.<sup>59</sup>

	% (rounded)	Number
All that he/she required	50	14,881
Most of what he/she required	27	8,108
Some of what he/she required	14	4,096
Little/none of what he/she required	6	1,865
		(29,760)

**Table 4: Health services used.**<sup>60</sup>

<sup>58</sup> Data as at 30 September 2011 (General and Personal Medical Services Statistics), The Health and Social Care Information Centre.

<sup>59</sup> Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, *op. cit.* p. 18.

<sup>60</sup> Becky Hamlyn, Catherine Grant, Barry Fong, Jessica Moran, *op. cit.* p. 11.

### HEALTH CARE SERVICES USED IN LAST 12 MONTHS

	2008-09	2009-10
	%	%
GP	79	78
Dentist	68	68
Paediatrician or other specialist doctor	48	48
Optician or eye specialist	39	41
Practice nurse	28	30
Speech & language therapist	20	20
Emergency health care/A&E	16	17
Hospital in-patient	16	16
Health visitor, district or community nurse	12	12
Psychologist	12	12
Occupational therapist	10	11
Psychiatrist/behavioural specialist	11	11
Physiotherapist	11	11
Dietician or nutritionist	8	9
Podiatrist or chiropodist	6	6
Community equipment & wheelchair services	5	5
Complementary/alternative medical practitioner	3	3
Palliative care	*	*
Other health services	9	10
None used	2	2
<i>Base (n): All children</i>	12,226	31,466

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