



## **Young Offenders with Special Educational Needs In Youth Custody**

## **Introduction**

This policy sets out the arrangements in Gateshead to meet the requirements of the Children and Families Act 2014 (C&F Act). Part 3 of the C&F Act places significant responsibilities on local authorities and other services in relation to children and young people with special educational needs (SEN) who are detained in youth custody.

The C&F Act transforms the system for disabled children and young people and those with SEN. Part of the legal framework introduces requirements for supporting children and young people with SEN when they are detained in youth custody

The Department for Education is working with the Ministry of Justice and the Department of Health to develop statutory regulations guidance which will provide more detail to support the primary legislation.

## **Legal Definition of Special Educational Needs**

A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- Has a significantly greater difficulty in learning than the majority of others of the same age, or
- Has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.

## **Key aspects of the system**

The wider changes to the SEND system provide an important context to why and how the system will change for children and young people with SEN in custody.

Compiled using the Council for Disabled Children's factsheet 'The SEND Reforms: Young Offenders with Special Educational Needs', 2015,

- The SEND system works with children and young people from 0 - 25 years old (for young offenders the framework applies up to age 18)
- Working towards clearly defined outcomes
- Joint working between education, health and social care; co-ordinated assessments and Education, Health and Care plans
- Engagement and participation of young people, children and their parents with greater transparency and information about what is available in the local area through the Local Offer
- Personalisation and personal budgets (personal budgets will not apply in the secure estate)

- School Action and School Action plus has been replaced by a single category 'SEN support'
- Rights and responsibilities for young people. The C&F Act 2014 defines a young person as over compulsory school age (the end of the school year in which the pupil turns 16). As a young person, rights and responsibilities which would have sat with a child's parent, such as the right to request an assessment, the right to name a school in an EHC plan or the right to appeal, now sit with the young person themselves.

### **The Needs of Children and Young People in Custody**

According to the Ministry of Justice (Transforming Youth Custody consultation 2013):

- 18% of sentenced young people in custody had a statement of special educational needs, compared to 3% in the general population.
- Of 15-17 year olds in a Young Offender Institute (YOI), 88% of young men and 74% of young women had been excluded from school at some point. Of 15-17 year olds in YOIs, 36% of young men and 41% of young women were aged under 14 when they last attended school
- Research suggests that the prevalence of neuro-developmental disorders (e.g. dyslexia, communication disorders and epilepsy) among young people in custody is higher than in the general youth population
- Over 60% of people in youth justice estate have difficulties with speech, language or communication.

### **The Secure Estate**

Education provision in the secure estate is arranged differently depending on the type of establishment.

- **Secure Children's Homes (SCH)** - education is arranged by the local authority.
- **Secure Training Centres (STC)** - education is arranged via contracts between the Youth Justice Board and the private providers (currently G4S and Serco).
- **Young Offender Institutes** - the National Offender Management Service is responsible for the overall running of YOIs, but it (and the person in charge of a YOI) does not manage the education provision. In YOIs, education is arranged by a contract between the Ministry of Justice and the Youth Justice Board and a private education provider.

Health provision in the secure estate is the responsibility of NHS England. It is arranged by health providers in each establishment overseen by NHS England local area teams.

### **Assessments**

- When a child or young person enters the youth justice system or custody, he or she will be assessed using two main tools:
- Assetplus is completed by the Youth Offending Team (YOT) when a child or young person first comes to the service. Assetplus looks at the child or young person's offence and identifies factors or circumstances which may have contributed to their behaviour. The education element is built on in

custody by literacy and numeracy tests carried out by the education provider. New, additional screening tools have been developed to be used alongside Assetplus, including a Speech Language and Communication Tool and a Physical and Mental Health tool.

- Comprehensive Health Assessment Tool (CHAT) is carried out by the health provider in custody. It includes a screening to be carried out before the first night of admission. Following this a physical health assessment, a mental health assessment, a substance misuse assessment and a neuro disability assessment will be carried out within 3-10 days.

### **Implementation of the Legislation**

The youth justice elements of the legislation apply to:

- Children and young people aged 18 and under.
- Children and young people who have been sentenced or remanded by the Courts to relevant youth accommodation in England
- Relevant youth accommodation in a Young Offender Institution, a Secure Training Centre or a Secure Children's Home

The aims for detained children and young people are to achieve:

- One responsible local authority for a child or young person's special educational provision while they are in the community and in custody
- Continuing and appropriate special educational provision when a child or young person is in custody
- To help the resettlement process by identifying need and ensuring that provision continues when a child or young person returns to the community
- To make the best use of the time that the young person is in detention so that an assessment can get under way and support can be put in place immediately on release

### **Powers and Duties Brought in by the Children & Families Act 2014**

Local authorities in England are empowered to supply goods and services to any authority or other person making special educational provision for a detained person.

'Home' local authorities have the duty to:

- Keep an EHC plan when a child or young person enters custody
- Arrange SEN provision for a child or young person with an EHC plan while they are in custody
- Consider a request for an EHC needs assessment from the parent of a child in custody, a young person in custody or the person in charge of a custodial establishment.
- Consider whether an EHC needs assessment is necessary when a child or young person is brought to their attention as having or may have SEN.
- Cooperate with relevant providers of youth custodial institutions, YOTs, Clinical Commissioning Groups and NHS England.

YOTs are empowered to bring a child or young person to the attention of the authority as someone who has or may have SEN.

YOTs have the duty to:

- Co-operate with local authorities
- Have regard to the SEND Code of Practice

### **Further Information**

Children and Families Act 2014

[www.legislation.gov.uk/ukpga/2014/6/contents/enacted](http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted)

SEND 0-25 Code of Practice

[www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25)

Transitional arrangements guidance

[www.gov.uk/government/publications/send-managing-changes-to-legislation](http://www.gov.uk/government/publications/send-managing-changes-to-legislation)

## Child or young person in youth custody with an EHC plan

### Child or young person with an EHC plan is in youth custody

A CYP may have entered custody (remand or sentenced) with an EHCP or the EHCP may have been developed in custody.

The YOT **must** notify the LA that the CYP has gone into custody.

The LA **must** share the EHC plan with the YOT, the person in charge of the establishment, NHS England within 5 working days.

While the CYP is in custody their home LA **must** keep their EHC plan

The home LA should monitor the CYP's progress against the outcomes and aspirations set out in the EHC plan. Monitoring meeting should take place at least every 12 months.

The LA and NHS England **must** arrange appropriate provision while the CYP is in custody

Arrange provision as set out in Sections F and G of the EHC plan.

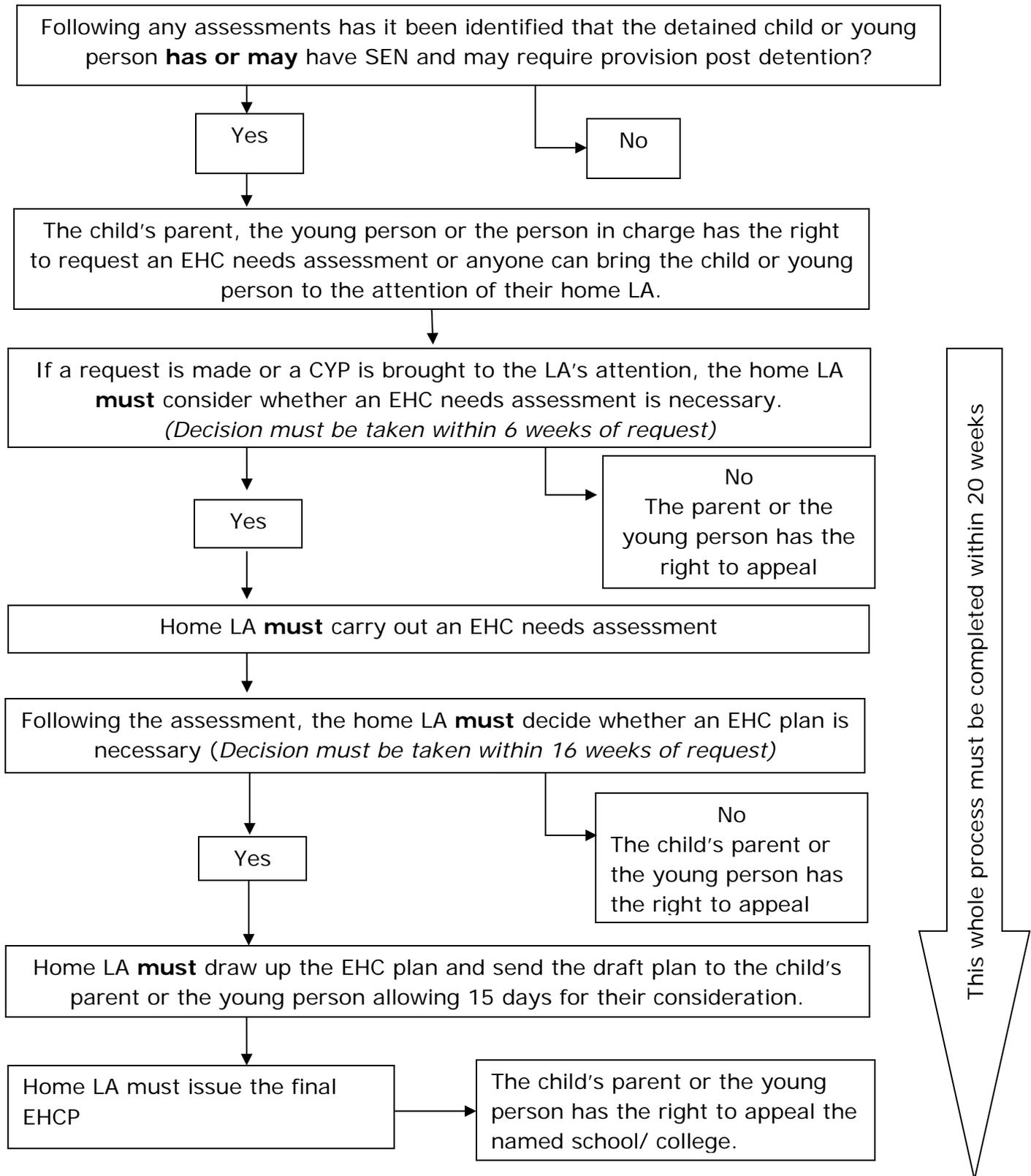
When the CYP is released from youth custody the home LA **must** maintain their EHC plan and **must** review their EHC plan as soon as possible.

If it is not practicable to arrange what is in the EHC plan, provision as close as possible must be arranged.

If the CYP's needs have changed and the provision is no longer appropriate it must be arranged.

- If a YP transfers to the adult secure estate, the person in charge of the youth establishment should ensure that all relevant SEN information is passed to the receiving establishment.
- If a YP aged under 25 is released from the adult secure estate and plans to stay in education, the LA **must** maintain and review their EHC plan on release.

## A child or young person enters custody without an EHC plan



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