

Research Briefing

9 February 2024

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# Special Educational Needs: Support in England



## Summary

- 1 Support for children with Special Educational Needs (SEN)
- 2 Funding system
- 3 Accountability: Ofsted and CQC inspections
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## Summary

### Background

The [Children and Families Act 2014](#) provides the statutory basis for the system for identifying children and young people (age 0-25) in England with special educational needs (SEN), assessing their needs and making provision for them.

The statutory [Special Educational Needs and Disability \(SEND\): Code of practice](#), first published in 2014, sets out detailed information on the support available for children and young people aged 0 to 25 under the 2014 Act.

Broadly, there are two levels of support:

- SEN Support, provided to a child or young person in their pre-school, school, or college
- Education, Health, and Care Plans which provide a formal basis for support for children and young people who need more support than is available through SEN Support

### How many school pupils have SEN?

In January 2023, there were around [1.6 million school pupils in England with identified SEN](#) (17% of all pupils).

Of these pupils with identified SEN, around 1.2 million receive SEN Support, and around 0.4 million have Education, Health, and Care plans.

### Review and improvement plan

In September 2019, five years after the introduction of the current system of support for children and young people with SEND, [the Government announced a major review of its effectiveness](#).

Following delays to the review during the pandemic, the Government published a green paper consultation on reform to the system, [SEND Review: right support, right place, right time](#), in March 2022.

The Government published its [SEND and alternative provision improvement plan](#) in March 2023. This confirmed the Government's future plans following the green paper consultation.

Among other changes, the improvement plan proposes a unified system for SEND and alternative provision, driven by new national standards, as well as local SEND and alternative provision partnerships to commission provision.

A [SEND and alternative provision roadmap](#) was published alongside the plan, setting out timelines for key parts of the Government's proposals.

Education is a devolved policy area and this paper applies to England only.

# 1 Support for children with Special Educational Needs (SEN)

## 1.1 Legislation and Code of Practice

The [Children and Families Act 2014](#) provided for a major reform of the system for identifying children and young people in England with special educational needs (SEN), assessing their needs and making provision for them.

The statutory [Special Educational Needs and Disability \(SEND\): Code of practice](#), first published in 2014, sets out detailed information on the support available for children and young people aged 0 to 25 under the 2014 Act.

## 1.2 Definition of SEN

The statutory SEND<sup>1</sup> [Code of Practice](#) sets out the definition of special educational needs used in England:

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

For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, mainstream post-16 institutions or by relevant

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<sup>1</sup> The Code of Practice refers to SEND, Special Educational Needs and Disability, whereas this briefing is focused on children and young people with SEN. While many children with SEN will also have disabilities (and vice versa), this is not uniformly the case. This briefing focuses on educational support.

early years providers. For a child under two years of age, special educational provision means educational provision of any kind.<sup>2</sup>

## 1.3 Levels of support

The type of support that children and young people with SEN receive may vary widely, as the types of SEN that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

### SEN Support

This will be support given to a child or young person in their pre-school, school, or college.

The [gov.uk website](#) sets out that SEN support for children under 5 includes:

- a written progress check when your child is 2 years old
- a child health visitor carrying out a health check for your child if they're aged 2 to 3
- a written assessment in the summer term of your child's first year of primary school
- making reasonable adjustments for disabled children, like providing aids like tactile signs

For children of compulsory school age, the following [indicative list](#) is provided of the type of help a child might receive:

- a special learning programme
- extra help from a teacher or assistant
- working in a smaller group
- observation in class or at break
- help taking part in class activities
- extra encouragement in their learning, for example to ask questions or to try something they find difficult
- help communicating with other children

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<sup>2</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), January 2015, p15-16



- support with physical or personal care difficulties, for example eating, getting around school safely or using the toilet

A young person of 16 to 25 in further education would need to contact their school or college before starting a course, to ensure their needs can be met.

## Education, Health and Care Plans

Education, Health and Care Plans are for children and young people aged up to 25 who need more support than is available through SEN support. They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

The [gov.uk website](https://www.gov.uk) makes clear that parents can ask their local authority to carry out an assessment if they think their child needs an EHC Plan.

A request can also be made by:

- anyone at the child's school
- a doctor
- a health visitor
- a nursery worker

A local authority has six weeks to decide whether or not to carry out an EHC needs assessment.

In conducting an EHC needs assessment, a local authority is required to:

- establish and record the views, interests and aspirations of the parents and child or young person
- provide a full description of the child or young person's special educational needs and any health and social care needs
- establish outcomes across education, health and social care based on the child or young person's needs and aspirations
- specify the provision required and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes<sup>3</sup>

Barring exceptional circumstances, the whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's

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<sup>3</sup> As above, p142

attention) until the final EHC plan is issued, must take no more than 20 weeks.<sup>4</sup>

A chart on page 154 of the [SEND Code of Practice](#) sets out the relevant processes and timescales.

## 1.4 Key aspects of the system

### The local offer

Since September 2014, local authorities have been required to publish a ‘local offer’ to clearly set out the services available for children and young people with SEND. The offer must have been developed in partnership with children and young people with SEN or disability and their parents, and education, health, and care partners. It should cover the support available for those with and without EHC Plans and from birth to 25 years, including SEN Support.

The Code of Practice states:

Local authorities must publish a Local Offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have Education, Health and Care (EHC) plans. In setting out what they ‘expect to be available’, local authorities should include provision which they believe will actually be available.<sup>5</sup>

The Code makes clear that this initial offer is intended to be the start of an ongoing process, with local offers developed and revised over time through regular review and consultation.

### EHC plans for 19-25 year olds with SEN

EHC plans may be provided for eligible students up to the age of 25. However, [DfE guidance](#) makes it clear that this does not mean that students have an automatic entitlement to education up to the age of 25:

Young people with SEND are not automatically entitled to maintain their EHC (education, health, and care) plans after they turn 19.

Reforms to the SEND system should mean that children and young people are better prepared for adulthood. Therefore, we expect the majority of young people with EHC plans to complete further education with their peers by age 19. However, we recognise that some young people with SEND need longer to

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<sup>4</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p152

<sup>5</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p59

complete and consolidate their education and training. The length of time will vary according to each young person.<sup>6</sup>

Nonetheless, 19 to 25 year olds with a learning difficulty or disability have the right to request an EHC needs assessment (unless one has been carried out in the last 6 months) and may appeal if a request is rejected.<sup>7</sup>

## Personal budgets

Young people and parents of children who have EHC plans have the right to request a Personal Budget, which may contain elements of education, social care, and health funding. A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC Plan where the parent or young person is involved in securing that provision. Local authorities must provide information on Personal Budgets as part of the local offer. Personal Budgets are optional for the child's parent or the young person, but local authorities are under a duty to prepare a budget when requested.<sup>8</sup>

A local policy should be available that includes:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets
- the mechanisms of control for funding available to parents and young people including:
  - direct payments – where individuals receive the cash to contract, purchase and manage services themselves
  - an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
  - third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
  - a combination of the above
- clear and simple statements of eligibility criteria and the decision-making processes that underpin them<sup>9</sup>

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<sup>6</sup> Department for Education, [SEND: 19- to 25-year-olds' entitlement to EHC plans](#), February 2017

<sup>7</sup> As above

<sup>8</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p178

<sup>9</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p48

## Requirement for consultation with children, young people, and their parents

The [Code of Practice](#) provides information on the requirements on local authorities to consult with children and young people with SEN, as well as their parents, in carrying out all duties relating to SEN:

Local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with special educational needs (SEN), must have regard to:

- the views, wishes and feelings of the child or young person, and the child's parents
- the importance of the child or young person, and the child's parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions
- the need to support the child or young person, and the child's parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood<sup>10</sup>

The Code states that these principles are designed to support:

- the participation of children, their parents and young people in decision-making
- the early identification of children and young people's needs and early intervention to support them
- greater choice and control for young people and parents over support
- collaboration between education, health, and social care services to provide support
- high quality provision to meet the needs of children and young people with SEN
- a focus on inclusive practice and removing barriers to learning
- successful preparation for adulthood, including independent living and employment<sup>11</sup>

The Code of Practice sets out what these principles should mean in practice, and how it is intended that they will be implemented.<sup>12</sup>

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<sup>10</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p19

<sup>11</sup> As above, p19-20

<sup>12</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), p20-29

## Disputes

Where a parent is not satisfied with the provision to support their child's SEN at school, or at an early years provider or a college, they should raise this as a complaint with the educational establishment concerned. All providers should have published complaints procedures to follow.

There is a different process where young people or parents [disagree with a local authority decision](#) about their child's support, such as a decision on whether to create an EHC plan, or the contents of a plan.

Disputes of this kind may be resolved using mediation processes. Where a dispute cannot be resolved in this way, appeals may be made to the [First-tier Tribunal \(Special Educational Needs and Disability\)](#).

The Tribunal is responsible for handling appeals against many local authority decisions regarding special educational needs, including a refusal to:

- assess a child or young person's educational, health and care (EHC) needs
- reassess their EHC needs
- issue an EHC plan
- change what's in a child or young person's EHC plan
- maintain the EHC plan

The Tribunal also deals with appeals about the content of plans, about alleged discrimination by schools or local authorities due to a child's disability, and about some decisions on support for young people in custody. Since a trial period between 2018 and 2021, the Tribunal also has the power to make recommendations about health and social care issues in all appeals where there was a valid appeal.

Chapter 11 of the [SEND Code of Practice](#) provides more detail on resolving disputes.

### Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman can also investigate some complaints relating to SEN which cannot be appealed through the Tribunal.

The [LGO website states](#):

The Ombudsman can investigate a complaint that a council has failed to appropriately address a child's special educational needs (SEN). This includes delay in assessing a child and issuing an Education Health and Care Plan (EHCP) and failing to implement an EHCP or carry out an annual review.

The law generally prevents us from investigating complaints for which a remedy is available through an appeal to a statutory tribunal. This means that the Ombudsman cannot investigate a complaint when the issues it raises can be dealt with through an appeal to the First Tier Tribunal (Special Educational Needs and Disability) (SEND). So, for example, we cannot question a council's decision not to assess a child for an EHCP as this can be appealed.

SEND can also hear appeals about the health and social care aspects of an EHCP, alongside the educational provision.

If you have appealed to SEND, it is unlikely we will be able to investigate any aspect of a complaint, such as interim provision, while the appeal is being heard. However, this will depend on the specific circumstances of each case.

The website also includes information on how to complain:

You should normally complain to the council first. Councils often have more than one stage in their complaints procedure and you will usually have to complete all stages before we will look at your complaint.

Then, if you are unhappy with the final outcome, or the council is taking too long to look into the matter - we think 12 weeks is reasonable - you can complain to us.

Usually, you should complain to us within 12 months of when you first knew about the problem. If you leave it any later, we may not be able to help.

For more information on how to complain, please [read our step by step process](#).

## Advice for parents, carers, children and young people

The following organisations may be able to provide advice for individuals on their particular situations:

- Local Parent Partnership Service through the [Information, Advice and Support Services \(IASS\) Network](#)
- [Independent Provider of Special Education Advice \(IPSEA\)](#)
- [SOS!SEN](#)

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## 2 Funding system

### 2.1 Background

Funding for SEN in England is not allocated as a separate amount per pupil. SEN funding is part of the overall Dedicated Schools Grant allocated to each local authority to fund their schools budget. It is for local authorities, in consultation with their schools forums, to determine the individual allocation to schools.

The following PQ response provides information on SEN funding for maintained schools:

**Steve McCabe:** To ask the Secretary of State for Education whether special educational needs coordinators are able to request funds from his Department for extra assistance with SEN students in maintained schools. [201299]

**Mr Timpson:** The Department for Education does not give funds directly to local authority maintained schools. Funds for extra assistance with students with special educational needs (SEN) come from schools' budgets and, if the extra cost is more than £6,000 per year for an individual student, from local authorities in the form of top-up funding for the school. Local authorities can also give extra funding to schools with a disproportionate number of pupils with SEN. Special educational needs coordinators should therefore seek any additional funds required from the relevant local authority.<sup>13</sup>

Mainstream academies are in a similar position. When planning their budgets, academies should take into account that they must meet the costs of additional support for pupils with SEN up to £6,000 from their school budget share (including the notional SEN funding).<sup>14</sup>

For maintained or academy special schools, a similar system is in place, but they are funded at the higher level of £10,000 per SEN pupil, with any extra 'top-up' funding then provided by the local authority.<sup>15</sup>

The charity Independent Provider of Special Education Advice (IPSEA), have produced a [helpful briefing](#) on changes to SEN funding that were introduced from April 2013, which provides more background.<sup>16</sup>

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<sup>13</sup> [HC Deb 23 Jun 2014 c83W](#)

<sup>14</sup> Department for Education, [Academy general annual grant allocation guide: 2023 to 2024 academic year](#), February 2023

<sup>15</sup> Department for Education, [High needs funding: 2022 to 2023 operational guidance](#), March 2023, provides an overview of relevant funding

<sup>16</sup> IPSEA, [School Funding Reform: SEN Funding](#), May 2013

## 2.2

# Reform: a national funding formula

The Government is undertaking major reforms to the way schools in England are funded. As part of this, it has introduced a national funding formula to allocate 'high needs' funding to local authorities – largely, this is for special educational provision.

The high needs national funding formula includes, among other factors, a basic unit of per-pupil funding for pupils in specialist SEN provision, a historic spend factor, and various proxy measures of likely SEN need such as population, school attainment, and the numbers of children in bad health.

The Department for Education's [High needs funding: 2024 to 2025 operational guide](#) provides detailed information on the allocation of funding.

Wider information is available in the Library briefing [School funding in England](#).

## Funding levels

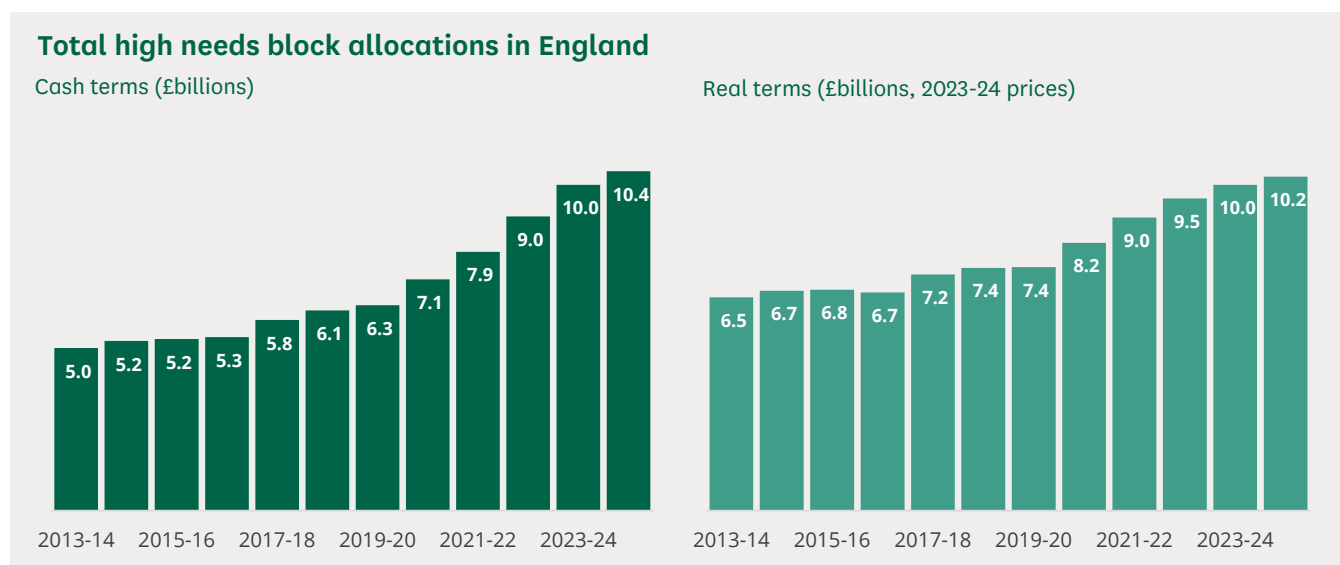
In a [written statement on 19 December 2023](#), Schools' Minister, Damian Hinds said high needs funding would be worth over £10.5bn in 2024-25. He said this was a cash terms increase of 4.3% compared to the previous year and a cash increase of over 60% over the past five years.

The chart below shows the total high needs block allocations over the last decade (2024-25 figures are taken from [published DSG allocations](#), which are slightly lower than the £10.5bn noted above and provisional, so subject to later updating). Some funding for SEN provision comes from other sources, including the core 'schools block' of the DSG and other sources of schools' income.

High needs block allocations have generally followed an upward trend, particularly in recent years.

The most meaningful way of making comparisons over time is on a per pupil basis. Per pupil high needs block allocations cannot be estimated because the Department for Education does not publish the total number of children and young people that benefit from high needs block funding.





Notes: When calculating real-terms figures, GDP deflator growth for 2020-21 and 2021-22 have been averaged across the two years to smooth the distortions caused by pandemic-related factors.

Figures for 2022-23 and 2023-24 include additional high needs funding for local authorities, made available in recognition of cost pressures.

Sources: Department for Education, [Dedicated Schools grant: Various years](#) (cash terms allocation), HM Treasury, [GDP deflators at market prices, and money GDP December 2023](#); OBR, [Economic and fiscal outlook, 22 November 2023 \(table 1.7 of supplementary economy tables\)](#) (real terms calculations)

## Transferring funding between blocks

Prior to 2018-19, the Dedicated Schools Grant was split into 3 blocks: the schools block, the high needs block and the early years block. These blocks were notional, with local authorities free to move funds between them.<sup>17</sup>

Following the introduction of the national funding formulas, this position is now more restricted:

131. The second stage of the consultation recognised that a degree of flexibility between the DSG funding blocks would be needed to ensure that local authorities could manage their high needs budget. Local authorities will therefore be able to transfer up to 0.5% of their schools block funding into their high needs budget, with the agreement of their schools forum. [...] [T]here will be a process for considering any reasonable requests for exceptions to these rules.<sup>18</sup>

<sup>17</sup> Department for Education, [School revenue funding: Current funding arrangements](#), March 2016, p4

<sup>18</sup> Department for Education, [The national funding formula for schools and high needs Policy document](#), September 2017, p38. See also section 30 of Department for Education, [Schools operational guide: 2024 to 2025](#), 19 December 2023

## 2.3 Funding system: Call for evidence

In May 2019 the Department for Education opened a [call for evidence](#) on the high needs funding system.<sup>19</sup>

This asked for view on a range of issues relating to SEN, including:

- SEN factors in the school funding formula, including the possibility of tiering funding for pupils with lower attainment in mainstream assessments and, by proxy, pupils with more complex SEN
- Targeted funding for pupils with SEN
- The notional SEN budgets provided to schools to support their spending decisions
- The expectation that mainstream schools pay for the costs of SEN support up to £6,000 before accessing extra funding
- The information available locally about the SEN support individual schools provide
- Whether existing funding arrangements provide perverse incentives against early intervention to support children with SEN

The call for evidence also included questions about SEN support in post-16 education, and funding for alternative provision.<sup>20</sup>

The call for evidence ran until 31 July 2019. The March 2022 green paper included proposals on SEND funding, and future consultations on wider school funding reform are expected to include more proposals on how local authorities manage their SEN budgets.<sup>21</sup>

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<sup>19</sup> Department for Education, [Education Secretary confirms plans to simplify school accountability](#), 3 May 2019

<sup>20</sup> Department for Education, [Provision for children and young people with special educational needs and disabilities, and for those who need alternative provision: how the financial arrangements work: Call for Evidence](#), May 2019

<sup>21</sup> Department for Education, [SEND Review: right support, right place, right time](#), March 2022, p74

## 2.4

## Education Committee funding report

In July 2019, the Education Committee published its report on [A ten-year plan for school and college funding](#), which included recommendations on SEN funding.

The report described special educational needs and disability funding as “completely inadequate...[with] simply not enough money in the system to provide for the scale of demand. Local authorities are expected to face a funding shortfall in excess of £1 billion by 2021.”<sup>22</sup>

The report recommended both increased funding and “a thorough assessment of the cost implications of local authorities’ duty to maintain an Education, Health and Care Plan up to the age of 25.”<sup>23</sup>

The report also recommended that the high needs funding formula be revised to become more responsive to changing local authority needs.<sup>24</sup>

### Government response

The Government published its [response to the report](#) in October 2019.

The Government highlighted its forthcoming SEND review, and recent additional funding:

Next year we will be investing £780 million in additional high needs funding to support children with complex special educational needs and disabilities (SEND). This represents an increase of 12% on the funding available this year, bringing the total high needs funding budget to £7.2 billion.

Every local authority will see a minimum increase of at least 8% per head of 2-18 population to their high needs funding.<sup>25</sup>

In response to wider concerns about the funding system and how money is allocated, the response highlighted the call for evidence on the funding system (see section 2.3), which it stated would feed into future decisions about the future of the funding system.<sup>26</sup>

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<sup>22</sup> House of Commons Education Select Committee, [A ten-year plan for school and college funding](#), Tenth report of session 2017-19, July 2019, HC 969, para 105

<sup>23</sup> As above, para 106

<sup>24</sup> As above, para 115

<sup>25</sup> Department for Education, [Government response to Education Committee report on school and college funding](#), Cm 190, October 2019, p19

<sup>26</sup> As above, p19-20

## 2.5

## Future plans for funding

The 2022 [Special Educational Needs and Alternative Provision green paper](#) (see section 4.2) said the existing SEND and alternative provision system is financially unsustainable.<sup>27</sup>

Chapter 6 of [the SEND and alternative provision improvement plan](#) published in March 2023 (see section 4.3) discusses how the Government will reform the system's funding.

As noted, SEND funding is part of the overall Dedicated Schools Grant (DSG) allocated to each local authority to fund their schools budget. It is for local authorities, in consultation with their schools forums, to determine the allocation to individual schools. Both SEND and alternative provision are funded out of the high needs block of the DSG.

The Government does not propose to change this basic setup but the improvement plan provides for a new national framework of banding and price tariffs for high needs funding, which would be matched based on need and type of education set out in the new national SEND standards.

### Consultation on school funding reform

From June to September 2022, the Department for Education ran a [consultation on school funding reform](#), including SEND funding.<sup>28</sup>

The [Government's response](#) was published in April 2023. The response said the Government would:

- Continue flexibility for local authorities to transfer funding to high needs budgets, with a corresponding adjustment to mainstream schools' funding allocations, through an application process to the Secretary of State
- Introduce a national approach to calculating schools' indicative SEND budgets and consult further on the design and operation of this approach

The response said SEND budgets:

...could only ever act as an indication of what might be needed, because head teachers, Special Educational Needs Coordinators and other professionals working in and with the school are best placed to decide what support each child needs, and a budget calculation at national level based on proxy measures of need could never accurately predict the precise level of resources required. An indicative SEND budget would, however, provide some assurance

<sup>27</sup> Department for Education, [SEND Review: right support, right place, right time](#), March 2022, p22

<sup>28</sup> Department for Education, [Implementing the direct national funding formula](#), 7 June 2022

that the level of SEND in the school's pupil population was reflected in their funding allocation.<sup>29</sup>

### **Bands and tariffs**

The Improvement Plan set out the Government's intention to develop a system of funding bands and tariffs to support the planned national standards for SEND, with more consistent funding across the country.

The plan said:

Whilst there will always be some local variation, to have a consistent, national SEND and alternative provision system and ensure value for money, we must move to a world where similar types of support are backed by similar levels of funding.<sup>30</sup>

It acknowledged that costs vary around the country and that any changes needed to take account of this:

We know that currently there is significant variation in the cost of provision across the country, so, starting in 2023, we will undertake research to gather more information about the costs of provision and then explore the best way to manage and reduce this variation as much as possible.<sup>31</sup>

The plan said many respondents to the green paper consultation "welcomed the proposal for a more nationally consistent and transparent system," but also that others were concerned the reforms needed to be flexible enough to adapt to the needs of individual children and young people, in particular those whose needs change over time.<sup>32</sup>

### **Independent schools**

The green paper proposed that national bands and tariffs would apply across the whole range of special education provision, including the independent specialist sector.

The Improvement Plan said while independent special schools represent a third of special schools and support 5% of pupils with EHCPs, and the sector's funding comes overwhelmingly from the state, it is not treated in the same way as state-maintained specialist provision, and its regulation is designed for private fee-paying schools:

Management is fragmented and small-scale, based on local authorities' individual pupil placements. This is inefficient for both commissioners and providers and makes it difficult to assess the overall impact of independent special schools. Provision can be opened or closed regardless of the effect on

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<sup>29</sup> Department for Education, [Implementing the Direct National Funding Formula Government consultation response](#), April 2023, p16

<sup>30</sup> Department for Education, [SEND and alternative provision improvement plan: right support, right place, right time](#), CP 800, March 2023, p84

<sup>31</sup> Department for Education, [SEND and alternative provision improvement plan: right support, right place, right time](#), CP 800, March 2023, p85

<sup>32</sup> As above, p84

the existing local offer of provision made by schools and colleges, leaving local authorities to deal with over or under supply.<sup>33</sup>

The plan continued:

We will re-examine the state's relationship with independent special schools to ensure the expectations we set are comparable to those on other state-funded specialist providers. We will work with the sector to consider how they should be aligned with the new National Standards, defining the provision they offer and bringing consistency and transparency to their costs.<sup>34</sup>

## 2.6

# Additional funding and support for local authorities facing financial challenges

## 'Safety valve' intervention programme

In the 2020-21 financial year, the DfE introduced a programme where a small number of local authorities facing the most significant financial challenges are given additional funding and support to address their DSG deficits. This is known as the safety valve intervention programme.

The original local authorities that signed safety valve agreements, committing them to addressing their budget deficits and managing overspends were Stoke-on-Trent, Bury, Hammersmith and Fulham, Richmond upon Thames, and Kingston upon Thames.

A further nine local authorities signed safety valve agreements with the DfE during 2021-22. 20 more agreements were signed in 2022-23, meaning a total of 34 local authorities are involved. A list of authorities involved in the safety valve programme [can be found on the DfE website](#). The DfE has [published guidance on sustainable high needs systems, and its intervention work with local authorities](#), last updated in October 2022.

In July 2023, the charity, IPSEA, [said it had written to all safety valve intervention local authorities](#) seeking assurance that they would meet their legal duties in relation to SEN provision, which it notes "remain unchanged in the context of both the Government's SEND Change Programme and the safety valve intervention programme". IPSEA Chief Executive, Ali Fiddy, said:

Individual safety valve agreements are explicit about containing numbers of EHC needs assessments, EHC plans and placements in non-mainstream settings, among other things. But it would not be lawful, for example, to introduce local policies on eligibility for EHC needs assessment that vary from the legal threshold, or blanket policies on access to particular services or placements.

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<sup>34</sup> Department for Education, [SEND and alternative provision improvement plan: right support, right place, right time](#), CP 800, March 2023, p88

While early intervention, effective multi-agency working and inclusive practices are all vitally important, there will always be children and young people who need additional statutory support. The Children and Families Act 2014 and the SEND Regulations 2014 set out clearly children and young people's entitlement to provision that meets their individual needs. However, the steady rise in appeals to the SEND Tribunal, and the high volume of unlawful decision-making evidenced by the overwhelming number of appeals upheld by the Tribunal, indicates that local authorities do not always prioritise compliance with SEND law.<sup>35</sup>

## Delivering better value in SEND

Alongside the safety valve programme, the DfE has also introduced the [Delivering better value \(DBV\) in SEND](#) programme. This is an optional programme, and works with 55 local authorities, which are able to apply for grants from the DfE, in connection with work to identify and address budget pressures. The authorities were chosen "based on those with the highest deficits as at 2020-21 (after those authorities that have already been invited to join the DfE's safety valve programme)."<sup>36</sup> However, DBV "will not 'write off' any high needs budget deficits".<sup>37</sup> A [list of participating local authorities](#) can be found on the DBV website.

There have been press reports suggesting participating DBV local authorities may face targets to reduce the number of EHC plans,<sup>38</sup> and concerns about the likely success of the programme in reducing local authority deficits.<sup>39</sup>

In response to a PQ on 23 October 2023, Minister David Johnston said:

The department's Delivering Better Value (DBV) programme has no targets to reduce the number of new Education, Health and Care (EHC) plans. Decisions about individual children and young people and whether they require EHC plans must be made on an individual basis, following the processes set out in the Children and Families Act 2014. The department is protecting every parent and family's existing legal right to an EHC plan when they need one, and that will not change.

The DBV programme is part of the wider reform work set out in detail in the Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan. DBV aims to put the SEND system on a more sustainable footing by funding system transformation in up to 55 local authorities with high dedicated schools grant deficits. It does so by providing diagnostic support to each local authority to engage with its stakeholders and identify opportunities to improve services and meet children's needs at an early stage and with the right level of support.<sup>40</sup>

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<sup>35</sup> IPSEA, '[IPSEA writes to local authorities over concerns with safety valve agreements](#)', July 2023

<sup>36</sup> Department for Education, [Guidance on our intervention work with local authorities](#), October 2022, p3

<sup>37</sup> Delivering better value in SEND, "[about](#)" [website article](#), undated

<sup>38</sup> See: Matt Keer and Tania Tirraoro, Special Needs Jungle, "[DBV Part 2: 20% EHCP cuts? After repeated denials, the Department for Education's got some explaining to do...](#)", 11 September 2023

<sup>39</sup> "[Government SEND savings plan will barely dent council deficits](#)", Schools Week, 29 September 2023

<sup>40</sup> [PQ 203508 \[on Special Educational Needs\]. 25 October 2023](#)

## 2.7

## Levelling Up, Housing and Communities Committee report on local authority finances

In February 2024, the Levelling Up, Housing and Communities Committee published a report on [Financial distress in local authorities](#). Among other areas, the report addressed financial pressures resulting from SEND expenditure.

As well as rising demand, the report highlighted the ‘statutory override’ introduced by the then-Ministry for Housing, Communities and Local Government in 2020. The override allows local authorities to exclude any deficits on their Dedicated Schools Grant (DSG) spending from their main revenue budgets, meaning that local authorities’ DSG deficits could be separated from their wider accounts.<sup>41</sup> The override ran initially until March 2023, but in December 2022 was extended to the end of March 2026.<sup>42</sup>

The Department for Levelling Up, Housing and Communities told the committee in oral evidence that a decision on whether the Government will fund, or expect local authorities to fund, deficits remaining when the statutory override ends is expected in the next Parliament.<sup>43</sup>

The committee raised concerns about the longer-term efficacy of the current support programmes in place for local authorities experiencing difficulties:

While we appreciate that some efficiencies may be achievable, it is not realistic to expect local authorities to manage down deficits of the scale of many billions of pounds over a period of two or three years. One-off ‘safety valve’ funding does not address the underlying mismatch between demand, costs, and annual DSG funding and it will not prevent local authorities from accumulating further deficits subsequently.<sup>44</sup>

Among the committee’s recommendations was for the Government to provide clarity to local authorities on its specific expectations for resolving existing DSG budget deficits, and agree with local authorities a set of “realistic and achievable steps, supplemented by sufficient additional funding,” for eliminating those deficits, by the end of March 2024.<sup>45</sup>

The Government has not yet responded to this report.

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<sup>41</sup> [PQ 98741 \[Special Educational Needs\], 7 December 2022](#)

<sup>42</sup> Levelling Up, Housing and Communities Committee, [Financial distress in local authorities](#), Third Report of Session 2023-24, HC 56, p30

<sup>43</sup> As above, p31

<sup>44</sup> As above, p31

<sup>45</sup> As above, p33



## 3

# Accountability: Ofsted and CQC inspections

## Overview of inspections

Since 2016, Ofsted and the Care Quality Commission (CQC) have been carrying out inspections of all local authority SEND support provision in England.

Under the [Local area special educational needs and disabilities inspection framework](#), inspectors review how local areas meet their responsibilities to children and young people (from birth to age 25) who have special educational needs or disabilities (or both).

The framework sets out that the purpose of these inspections is to:

- provide an independent, external evaluation of the effectiveness of the local area partnership's arrangements for children and young people with SEND
- where appropriate, recommend what the local area partnership should do to improve the arrangements

Inspectors do not carry out inspections of individual education, social care or health services or providers under this inspection framework

From 2023, inspections are taking place in a continuous inspection cycle, and there are three potential inspection outcomes, as set out in the framework:

- The local area partnership's SEND arrangements typically lead to positive experiences and outcomes for children and young people with SEND. The local area partnership is taking action where improvements are needed
- The local area partnership's arrangements lead to inconsistent experiences and outcomes for children and young people with SEND. The local area partnership must work jointly to make improvements
- There are widespread and/or systemic failings leading to significant concerns about the experiences and outcomes of children and young people with SEND, which the local area partnership must address urgently.<sup>46</sup>

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<sup>46</sup> Ofsted, [Area SEND inspections: framework and handbook](#), December 2023

Subsequent monitoring or reinspection of an area is dependent on its inspection outcome.

Separate [information for young people and families](#) about the inspections has also been published.

The relevant reports [are published](#) on the Ofsted and CQC websites.

## Revised approach in 2023

Ofsted and the CQC published a revised [area inspection framework and handbook](#) effective from January 2023, which amended their approach, following a [consultation on the new area SEND framework](#).<sup>47</sup>

The [SEND and Alternative Provision Improvement Plan](#) included the following summary:

In January 2023, Ofsted and the Care Quality Commission introduced a new approach for area SEND inspections. These place greater emphasis on the outcomes that are being achieved for children and young people, look more closely at children under 5 and those aged 16-25 years old and include alternative provision for the first time. It will have three possible inspection outcomes providing more nuanced judgements for areas to better inform a Department for Education response into local areas. Finally, as part of the framework, there will be a series of thematic visits each year, with the first focusing on alternative provision, publishing in autumn 2023.<sup>48</sup>

The Plan further said that the Department for Education would adjust its response to poor performance, in line with the new inspection framework, so that it could act proactively when areas fail to provide the necessary support to meet the needs of children and young people, including the removal of service control and imposition of a trust or commissioner on local authorities, where required.<sup>49</sup>

## Area inspection findings

[Ofsted's annual report for 2022/23](#) stated that, between January and August 2023, Ofsted and the CQC inspected 16 local area partnerships under the revised inspection framework.<sup>50</sup> Five of these inspections found local arrangements typically led to “positive experiences and outcomes for children and young people”.<sup>51</sup> In six areas, arrangements led to “inconsistent experiences and outcomes” and in five, there were “widespread and/or systemic failings”.

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<sup>47</sup> Ofsted, [HMCI commentary: publishing our new area SEND framework](#), 29 November 2022

<sup>48</sup> Department for Education, [SEND and alternative provision improvement plan](#), March 2023, p73-74

<sup>49</sup> As above

<sup>50</sup> Ofsted, [Annual report of His Majesty's Chief Inspector of Education, Children's Services and Skills 2022/23](#), 23 November 2023

<sup>51</sup> As above

The report summarised:

Inspections under the new framework are showing many of the same concerns as under the previous framework. Most significantly, families continue to experience long waiting times for some assessments and support, such as child and adolescent mental health services (CAMHS), educational psychology and speech and language therapy. The increase in EHC plans is having a negative impact on health and education services. The DfE has reported that services such as educational psychology are struggling to deal with the volume of EHC plan referrals, which is delaying access to other essential services. Educational psychologists are suggesting that better early interventions could reduce the need for EHC plans and the pressure on health and education services.<sup>52</sup>

## Background on the introduction of inspections

In March 2015, the Department for Education published [Special educational needs and disability: supporting local and national accountability](#), which provided a framework for monitoring the performance of the reformed SEND support system. The document indicated that the Government would develop a set of key indicators to monitor the progress and impact of the reforms locally and nationally,<sup>53</sup> and included information about new arrangements for independent assessment, including proposed inspections by Ofsted and the CQC.<sup>54</sup>

A [consultation](#) on the proposed inspections by Ofsted and the CQC was launched in October 2015 and ran until January 2016. It set out that, starting in May 2016, inspectors from these two bodies would inspect the provision of support for children and young people with SEND across the responsible local bodies in health, social services, and education. The full [consultation document](#) provides more detail.<sup>55</sup>

## Government Response and next steps: inspections began May 2016

Ofsted and the CQC published a [response to the consultation](#) on 10 March 2016. The response set out how Ofsted and the CQC would develop their approach, informed by consultative pilot inspections.

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<sup>52</sup> Ofsted, [Annual report of His Majesty's Chief Inspector of Education, Children's Services and Skills 2022/23](#), 23 November 2023

<sup>53</sup> Department for Education, [Special educational needs and disability: supporting local and national accountability \[link to PDF, 589kb\]](#), March 2015, p6

<sup>54</sup> As above, p14-15

<sup>55</sup> Ofsted, [Local area SEND consultation: The inspection of local areas' effectiveness in identifying and meeting the needs of disabled children and young people and those who have special educational needs \[link to PDF\]](#), October 2015

Ofsted and the CQC stated that there was “considerable agreement” with the proposals and that inspections would begin in May 2016.

The original Local area SEND inspection framework was published in April 2016, alongside guidance for inspectors and information for families. As noted above, a [revised area SEND inspection framework and handbook](#) were published in November 2022 and took effect in January 2023. The [current guidance for parents and carers can be found on the gov.uk website](#).

## 4 The SEND Review and the SEND and AP Improvement Plan

### 4.1 SEND review announcement (2019)

In September 2019, five years after the introduction of the current system of support for children and young people with SEND, [the Government announced a major review of its effectiveness](#).

The review aimed to “improve the services available to families who need support, equip staff in schools and colleges to respond effectively to their needs as well as ending the ‘postcode lottery’ they often face.”<sup>56</sup> It intended to look at how the system has evolved since its introduction, links with health and social care, and would “conclude with action to boost outcomes and improve value for money.”<sup>57</sup>

The Government said it would consider and propose action on:

- the evidence on how the system can provide the highest quality support that enables children and young people with SEND to thrive and prepare for adulthood, including employment;
- better helping parents to make decisions about what kind of support will be best for their child;
- making sure support in different local areas is consistent, joined up across health, care and education services, and that high-quality health and education support is available across the country;
- how to strike the right balance of state-funded provision across inclusive mainstream and specialist places;
- aligning incentives and accountability for schools, colleges and local authorities to make sure they provide the best possible support for children and young people with SEND;

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<sup>56</sup> For example, the Education Policy Institute identified a “postcode lottery” in the provision of SEND support in its study, “with the chances of receiving SEND support from the school or from the local authority largely dictated by the school that a child attends, rather than their individual circumstances” [Identifying pupils with special educational needs and disabilities](#), 19 March 2021

<sup>57</sup> Department for Education, [Major review into support for children with Special Educational Needs](#), 6 September 2019

- understanding what is behind rising numbers of education, health and care (EHC) plans and the role of specific health conditions in driving demand; and
- ensuring that public money is spent in an efficient, effective and sustainable manner, placing a premium on securing high quality outcomes for those children and young people who need additional support the most.

## 4.2

### SEND and Alternative Provision Green Paper (2022)

The Government published [SEND Review: right support, right place, right time](#), setting out plans for a single national system for SEND and alternative provision on 29 March 2022.

The Government said the green paper (a discussion paper) aimed to “improve an inconsistent, process-heavy and increasingly adversarial system that too often leaves parents facing difficulties and delays accessing the right support for their child.”<sup>58</sup>

A consultation on the proposals was open from March to July 2022.

The green paper envisaged:

- a new integrated national SEND and alternative provision system setting statutory, nationally consistent standards.
- establishing new local SEND partnerships, bringing together education (including alternative provision), health and care partners with local government and other partners to produce a local inclusion plan, setting out how each local area will meet the national standards.
- introducing a standardised and digitised EHCP process and template.
- local authorities providing a tailored list of SEND settings to support parents and carers to express their preference for a suitable placement.
- introducing a streamlined process for redress, including mandatory mediation. The SEND Tribunal, responsible for handling appeals against local authority decisions regarding special educational needs, would remain in place.
- a planned consultation on a new Special Educational Needs Coordinator (SENCo) National Professional Qualification for school SENCos, and to

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<sup>58</sup> Department for Education, [Ambitious reform for children and young people with SEND](#), 29 March 2022.

increase the number of staff with an accredited Level 3 SENCo qualification in early years settings.

- revised and clarified accountability for responsible bodies, such as schools and local authorities.
- a new national framework of banding and price tariffs for high needs funding, which covers SEND and alternative provision.

The Library briefing on [The Special Educational Needs and Disabilities and Alternative Provision Green Paper](#) (April 2022) provides more detail on the green paper and its publication.

## 4.3 The SEND and Alternative Provision Improvement Plan

The Government published its [SEND and alternative provision improvement plan: right support, right place, right time](#) in March 2023. This followed the green paper consultation and confirmed the Government’s future plans.

A [SEND and alternative provision roadmap](#) was published alongside the plan, setting out timelines for key parts of the Government’s proposals.<sup>59</sup>

In a [written statement to the House of Commons](#), Children’s Minister, Claire Coutinho, said that what the Government had heard in the consultation responses “gives us confidence to establish a new national SEND and alternative provision system.”<sup>60</sup> The Minister also published a [letter to parents](#) providing an overview of the Government’s plans.<sup>61</sup>

The Department for Education also published a blog post with an [overview of the plan](#).<sup>62</sup>

### Proposals

The [Special Educational Needs and Disabilities \(SEND\) and alternative provision improvement plan: right support, right place, right time](#) proposes a unified system for SEND and alternative provision, driven by new national standards. The standards were a central proposal of the green paper.

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<sup>59</sup> Department for Education, [SEND and alternative provision roadmap](#), 2 March 2023

<sup>60</sup> [HC Deb 2 March 2023 c42WS](#)

<sup>61</sup> Department for Education, [Message to parents of children with SEND from Claire Coutinho MP, Minister for Children, Wellbeing and Families](#), 2 March 2023

<sup>62</sup> Department for Education, [How we are improving support for children with Special Educational Needs and Disabilities \(SEND\)](#), 2 March 2023

There are no immediate plans to amend existing legislation, although the Government does intend to underpin the new national standards with legislation once they have been rolled out, which is planned to begin in 2025.

Alongside new national standards, the improvement plan sets out the Government's intention to:

- Create local SEND and alternative provision partnerships to lead change and commission provision
- Set up a National SEND and Alternative Provision Implementation Board to oversee the implementation of the plan
- Develop a standard template for Education, Health, and Care Plans (EHCPs), and digitise the plans
- Create a three-tier alternative provision system, focused away from long-term placements
- Develop options for providing parents and carers with a tailored list of SEND educational settings
- Support a SEND and alternative provision change programme to oversee the reforms
- Improve skills in the SEND workforce, with a particular emphasis on early intervention
- Strengthen accountability, including with a new local and national inclusion dashboard and refocused inspections of local SEND provision by Ofsted and the Care Quality Commission
- Explore options for strengthening mediation between schools and local authorities, before deciding on whether to make mediation mandatory
- Introduce a new national framework of banding and price tariffs for high needs funding, with more details on this to follow later in 2023

The Library briefing on [The Special Educational Needs and Disabilities and Alternative Provision Improvement Plan](#) provides more detailed information.

## 4.4 New SENCo qualification

As noted above, the SEND green paper and improvement plan announced reform of qualifications for special educational needs co-ordinators (SENCos).



In November 2023, [the DfE published details](#) of how the transition to a new leadership-level National Professional Qualification for SENCOs would work.<sup>63</sup>

This confirmed:

- The new NPQ will be taught from Autumn 2024
- SENCOs who already hold the existing qualification (known as NASENCO) will not have to gain the new qualification, and nor will SENCOs in post before 1 September 2024
- SENCOs newly appointed during the 2023/24 academic year can either start the existing NASENCO programme before September 2024, or enrol on a new NPQ course no later than Spring 2025

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<sup>63</sup> Department for Education, [Transition to national professional qualification for special educational needs co-ordinators](#), 7 November 2023

## 5 Statistics

### 5.1 Number of pupils with SEN

There are two broad levels of support for pupils with special educational needs (SEN) in England. Education Health and Care plans (EHC Plans) are for children and young people aged up to 25 who need more support than is available through SEN support. More detail is provided in section 1.3.

The trend in the **number** of school pupils in England with identified SEN has fluctuated between 2007 and 2023 (this includes pupils with SEN support and EHC plans).<sup>64</sup>

In January 2007 there were around 1.6 million pupils with SEN in England, the total increased gradually reaching a peak of around 1.7 million in 2010 before declining again and reaching its lowest level in 2016 (around 1.2 million). Since then, the number of pupils with SEN has increased in each year and reached around **1.6 million** in January 2023.

Only a minority of pupils with SEN have EHC plans, but the number and proportion has increased over time. In 2023, around 390,000 pupils had EHC plans (25% of pupils with identified SEN). This compared with around 233,000 pupils with statements in 2007 (15% of pupils with identified SEN).<sup>65</sup>

However, due to changes in overall pupil numbers over this period, the most meaningful way of making comparisons over time is to compare the proportion of pupils with SEN (known as the SEN incidence rate<sup>66</sup>) or the proportion of pupils with statements or EHC plans.

The SEN incidence rate was around 19% in 2007. It gradually increased reaching a peak of around 21% in 2010. The SEN incidence rate then declined and reached its lowest level in 2016 and 2017 (around 14%), before increasing again gradually to just above 17% in 2023.<sup>67</sup>

An Ofsted report published in September 2010 identified inconsistencies with SEN identification which may have contributed to the relatively high SEN

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<sup>64</sup> Includes SEN pupils with and without statements or EHC plans in all state-funded and independent schools in England; Department for Education, [Special Educational Needs in England: 2021](#), June 2021

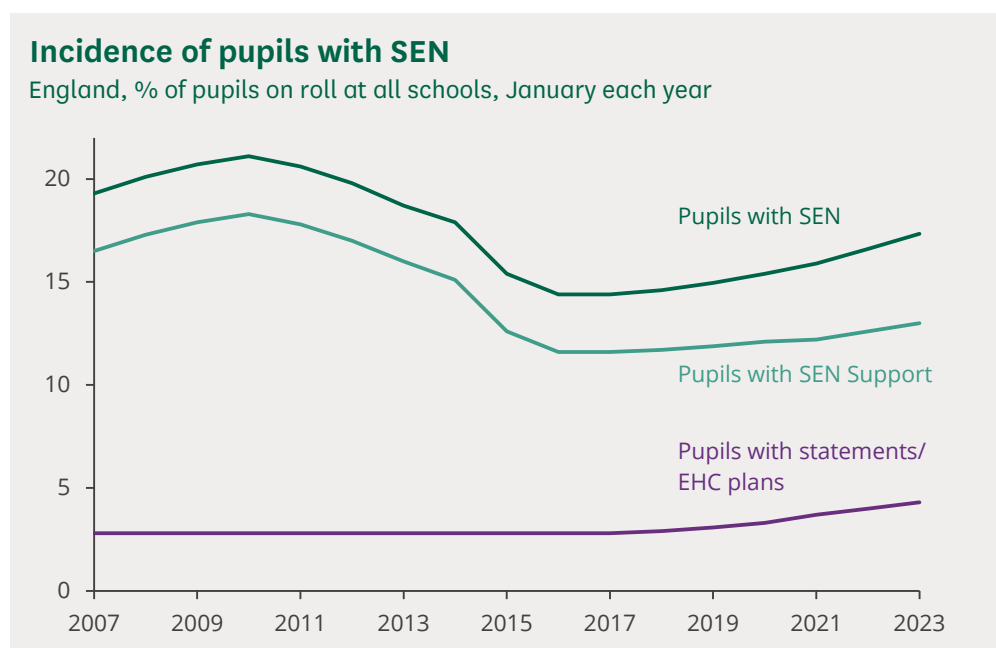
<sup>65</sup> Department for Education, [Special Educational Needs in England: 2023](#), June 2023, main text

<sup>66</sup> The number of pupils with SEN (with and without statements or EHC plans) as a proportion of the number of pupils on roll in all schools

<sup>67</sup> Department for Education, [Special Educational Needs in England: 2023](#), June 2023, main text

incidence around this time.<sup>68</sup> The report also recommended that “schools should stop identifying pupils as having special educational needs when they simply need better teaching and pastoral support”.<sup>69</sup>

The proportion of pupils with statements or EHC plans has been more stable over the period. The rate remained at 2.8% of pupils in each year between 2007 and 2017, however it has increased slightly in each year since then reaching a peak of 4.3% in 2023. More details are provided in the chart below.



Source: [DfE, Special Educational Needs in England: 2023, June 2023](#), main text; [DfE, Special Educational Needs in England: 2019, July 2019](#) (for all data prior to 2020, Table 1)

In January 2023, the most common type of primary need among pupils with an EHC plan was autistic spectrum disorder (around 116,000 pupils or 32% of all pupils with an EHC plan). The second most common type of primary need was speech, language, and communication needs (around 66,300 pupils or 18% of all pupils with an EHC plan).<sup>70</sup>

The most common type of primary need among pupils with SEN support was speech, language, and communication needs (around 278,600 pupils or 25% of all pupils with SEN support). The second most common type of primary need was social, emotional and mental health needs (around 229,700 pupils or 21% of all pupils with SEN support).<sup>71</sup>

<sup>68</sup> Ofsted, [The special educational needs and disability review](#), September 2010, p7

<sup>69</sup> Ofsted, [The special educational needs and disability review](#), September 2010, p13

<sup>70</sup> Department for Education, [Special Educational Needs in England: 2023, main text](#), June 2022. These figures exclude pupils with EHC plans in independent schools

<sup>71</sup> Department for Education, [Special Educational Needs in England: 2023](#), main text, June 2023. These figures exclude pupils in independent schools

## 5.2

## Education, health, and care plans across all age groups (0 to 25 years)

### Trends in number of statements and education, health, and care plans

Education, health, and care plans (EHC plans) are available to people aged 0-25 years old. The data in this section includes all people with EHC plans (unlike the previous section which only included school pupils).

In January 2023, there were around **517,000** children and young people of all ages with an EHC plan in England. Most of these were compulsory school age children. In January 2023, around 69% of those with EHC plans were aged between 5 and 15 years old, 20% were aged 16-19, 7% were aged 20-25, and 4% were aged under 5.<sup>72</sup>

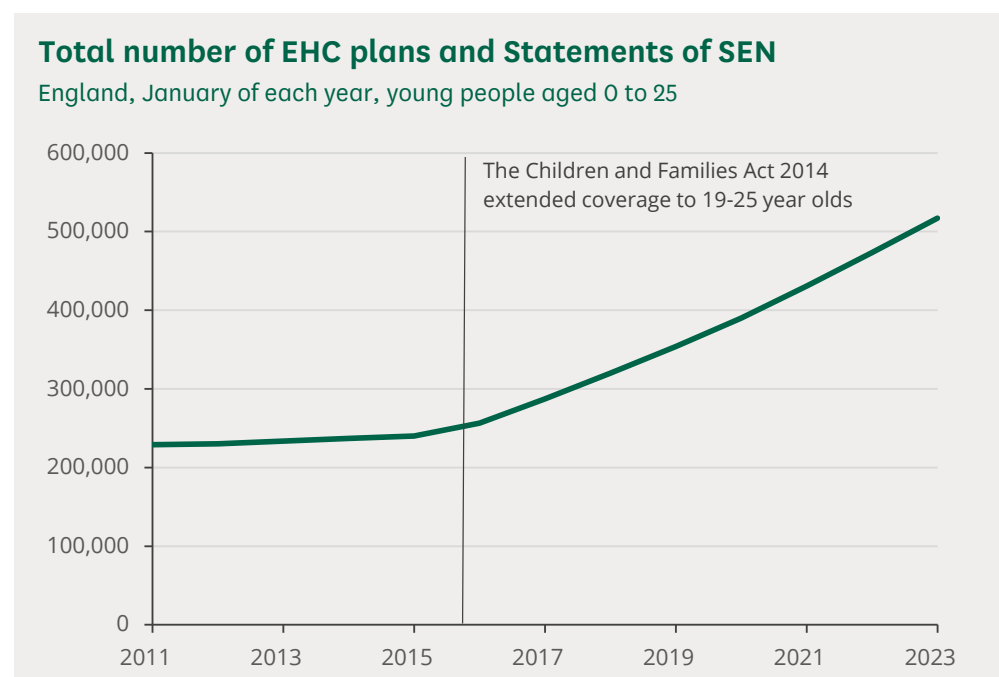
The number of EHC plans (and earlier, statements of SEN) maintained by local authorities has increased in each year since 2010 (when there were around 228,200). This increase has accelerated since 2015 (when there were around 240,200). This increase occurred in a wider context of rising pupil numbers, as well as reforms that extended the age group covered, to 25 years old.<sup>73</sup>

The chart below shows the trend in the number of EHC plans and statements maintained by local authorities, since 2011. The DfE does not publish incidence rates of EHC plans across all age groups (as it does for school pupils).

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<sup>72</sup> Department for Education, [Education, health and care plans: 2023](#), June 2023, main text

<sup>73</sup> As above



Notes: Figures include Statements of SEN and EHC plans, 31 March 2018 was the deadline for transferring Statements to EHC plans. The Children and Families Act 2014 extended coverage to 19-25 year olds. A very small number within this age group were recorded with EHC plans for the first time in 2015, and large increases were recorded in each year since

Sources: [Department for Education, Statements of SEN and EHC Plans: England 2019, table 1](#); Department for Education, [Education, health and care plans: 2023](#), June 2023, main text

## Timeliness of issuing new EHC plans

In calendar year 2022, around 66,700 new EHC plans were issued. This was the highest number of new EHC plans issued since they were introduced in 2014.

Of the new EHC plans issued in 2022, around 49% were issued within the 20 week time limit. This was the lowest proportion in any year since EHC plans were introduced, and a significant reduction on 2021, when the equivalent figure was 60%. 2017 saw the highest proportion of plans issued within 20 weeks, at 65%. These figures all exclude exceptions where the 20 week time limit did not apply.<sup>74</sup>

## Placements

In January 2023 of those with an EHC plan:

- 41% were attending mainstream schools
- 33% were attending special schools
- 15% were in further education institutions

<sup>74</sup> Department for Education, [Education, health and care plans: 2023](#), June 2023, main text

- 2% were not in any education, employment, or training (NEET)
- 1% were in alternative provision settings – such as pupil referral units
- 1% were in non-maintained early years settings

4% of children and young people with EHC plans (around 19,500) were recorded as “educated elsewhere” in different settings or situations (includes receiving elective home education, under other types of arrangements made by either the local authority or parents). For 3% of those with EHC plans, the type of placement was unknown or recorded as ‘other’.<sup>75</sup>

## 5.3 SEND Tribunals

Parents, and in some cases young people themselves, have statutory appeal rights to the independent First Tier Tribunal (Special Educational Needs and Disability). Appeals can be made against many local authority decisions on the special educational needs support provided to children and young people (such as the decision not to issue an education, health, and care plan, or amending one that has been issued). Appeals can also be made regarding disability discrimination against schools. Local authorities must comply with orders made by the Tribunal.<sup>76</sup>

In the academic year 2022/23, 7,968 cases were decided by the Tribunal.<sup>77</sup> Of these, 7,829, or around **98%**, were decided in favour of the appellant. However, this does not necessarily mean that all aspects of the decision were in the appellant’s favour.<sup>78</sup>

The proportion of cases decided in favour of the appellant has increased significantly since 2011/12, when it stood at 69%. The reasons for this increase are unclear, but it could be parents and young people are increasingly familiar with their right to appeal and more willing to do so, or that local authorities could be more likely to lose appeals over time due to funding or other constraints.

The following table sets out in more detail the trends in tribunal outcomes since 2011/12.

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<sup>75</sup> Department for Education, [Education, health and care plans: 2023](#), June 2023, main text

<sup>76</sup> IPSEA, [What is the SEND Tribunal](#), accessed 8 January 2024

<sup>77</sup> This excludes cases which were conceded or withdrawn

<sup>78</sup> Ministry of Justice, [Tribunal statistics quarterly: July to September 2023](#), 14 December 2023, SEND Tribunal tables 2022 to 2023 (SEND1)

**SEND Tribunals**

England, academic year ending 31 August

	Outcomes decided	Number in favour of appellant	% in favour of appellant
2011/12	823	564	69
2012/13	808	682	84
2013/14	797	660	83
2014/15	788	680	86
2015/16	883	780	88
2016/17	1,599	1,418	89
2017/18	2,298	2,035	89
2018/19	2,614	2,416	92
2019/20	3,770	3,577	95
2020/21	4,825	4,651	96
2021/22	5,600	5,393	96
2022/23	7,968	7,829	98

Note: Excludes cases that were withdrawn or conceded

Source: Ministry of Justice, [Tribunal statistics quarterly: July to September 2023](#), SEND Tribunal tables (SEND1), December 2023

In the academic year 2022/23, a total of 13,658 appeals were registered (this includes appeals where an outcome was not decided). Some more detailed information about the nature of appeals registered is published which is not available for outcomes actually decided.

As in previous years, in 2022/23 the most common special educational need for **appeals registered** was autistic spectrum disorder (6,190, or 45% of appeals registered).<sup>79</sup>

<sup>79</sup> Ministry of Justice, [Tribunal statistics quarterly: July to September 2023](#), SEND Tribunal tables (SEND3), December 2023

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