

## Factsheet and FAQ on EHC plan eligibility for 19-25 year olds

### Key messages

- The aim of the SEND reforms is for children, young people and their families to have a positive experience of the system; to improve outcomes for children and young people with SEND; and to prepare them for adulthood and independent living as best as can be achieved.
- As for all children and young people, preparation for adulthood should start early. As the [SEND Code of Practice](#) says, parents and professionals should have high aspirations regarding attainment and the four preparation for adulthood outcomes: employment and higher education, living independently, the best health possible and having friends and relationships and participating in their communities.
- Education, Health and Care (EHC) plan annual reviews must have an explicit focus on preparing children and young people for adulthood from year 9 onwards. Clearly defined EHC plan outcomes are critical to set out the steps that enable young people to transition successfully to adult life. This should start with the young person's aspirations, the outcomes required to help them to get there, and the education and training that enable a young person to meet the outcomes in their plan.
- Reforms to the SEND system should mean that children and young people are better prepared for adulthood, and we expect the majority of young people with EHC plans to complete further education alongside their peers, i.e. by age 19. But we recognise that some young people with SEND may take longer to learn, and may need their EHC plans extended so they can access the special educational provision that enables them to achieve the education and training outcomes specified in their EHC plans.
- Section 45 of the Children and Families Act ('the Act') sets out the circumstances when a local authority may cease to maintain an EHC plan. This is when the local authority is no longer responsible for the young person, or they determine it is no longer necessary for the plan to be maintained. Circumstances in which it is no longer necessary to maintain a plan include when the young person no longer requires the special educational provision specified in the plan. In determining that issue, a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved when the young person is aged over 18 (section 45(3)). A local authority must not cease an EHC plan simply because a young person has turned 19.
- We would expect the majority of young people post-19 who needed more time to complete the outcomes in their EHC plans to study in appropriate further education (FE) provision. Provision should be delivered through a coherent study programme, providing stretch and progression, which enables them to achieve the best possible outcomes in adult life. This should, where appropriate, include opportunities to experience the world of work, develop independent living skills and make independent choices and decisions in an adult context.<sup>1</sup> We want all young people with an EHC plan to undertake a supported internship, unless there is a good reason for them not to. Young people can undertake their education and training in non-educational settings if appropriate. For example, a supported internship should be primarily based at an employer's premises.
- Young people with SEND but without an EHC plan, who still wish to continue in further education, may be able to access adult programmes funded by the Skills Funding Agency – see below for more information.

### 19-25 EHC plan eligibility: FAQs

#### **Do all young people continue to have their EHC plans maintained after the age of 19?**

No. There is no automatic entitlement in the SEND reforms that young people can maintain their EHC plans post-19. Reforms to the SEND system should mean that children and young people are better prepared for adulthood, and we expect the majority of young people with EHC plans to complete further education

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<sup>1</sup> The key elements of a coherent study programme are set out in non-statutory departmental advice, [16-19 Study Programmes](#). This states they should include substantial academic or applied and technical qualifications; non-qualification activity including work experience; and English and maths where students do not hold a A\*-C GCSE grade by age 16. Study programmes should be personalised for each young person, depending on their prior attainment, abilities and ambitions.

alongside their peers, i.e. by age 19. We recognise, however, that some young people with SEND need longer to complete and consolidate their education and training needs. The length of time will vary according to each young person.

It is important that young people start to think about their aspirations as early as possible and it is critical that from year 9 at the latest, local authorities and young people with their parents / carers start to plan for a successful transition to adulthood. This includes considering any education or training to be undertaken in further education that will enable young people to secure paid work, and where this is not possible, what opportunities exist for the young person to have a positive adult life. Young people should be supported to exercise choice and control over independent living, including considering different housing options; they should have friends and relationships and be part of their communities; and they should be supported to gain the skills and experience that enables them to find paid employment. They should also be supported to be as healthy as possible.

Where an EHC plan will still be maintained for a young person aged 19 or over, it must continue to be reviewed at least annually. The plan must continue to contain outcomes which should enable the young person to complete their education and training successfully and so move on to the next stage of their lives, including employment or higher education and independent living. This will happen at different stages for individual young people and EHC plans extended beyond age 19 will not all need to remain in place until age 25.

For young people with more complex needs who are likely to continue to need specialist support in adult life, services will need to work together at a local level, e.g. across children's services, adult social care, housing and health to plan and fund a smooth transition for the young person. This strategic planning, aided by joint commissioning and integrated services, will support a young person to transition successfully to adult life, and receive the right support from adult services where needed.

### **Can a new entrant request an assessment of their SEN if they are over 19?**

Yes. A young person aged 19-25 who does not currently have an EHC plan has the right to request an EHC needs assessment (unless one has been carried out in the last six months). This will be in circumstances where the young person has a learning difficulty or disability which calls for special educational provision to be made for him or her. Examples of when this might happen include when a young person has acquired a brain injury following illness or accident, when they have been out of learning for an extended period, or those with degenerative conditions. Where the local authority judges that an assessment is not necessary, the young person has the right to appeal to the Tribunal about this decision.

### **Issuing an EHC plan post-19**

Having undertaken the assessment, the local authority has to make a decision as to whether a plan is necessary by following section 37 of the Act and the guidance set out in the [SEND Code of Practice](#). Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made in accordance with an EHC plan, the local authority must prepare a plan. The local authority must also consider whether the young person requires additional time, in comparison to others of the same age who do not have SEND, to complete his or her education or training.

The outcomes specified in the EHC plan should reflect the need to be ambitious, showing how they will enable the young person to make progress towards their aspirations. The local authority, in collaboration with the young person, his or her parent where appropriate, and relevant professionals should use the annual review process to consider whether special educational provision provided through an EHC plan will continue to enable young people to progress towards agreed outcomes that will prepare them for adulthood and help them meet their aspirations (paragraph 9.150 of the SEND Code of Practice).

### **What educational provision is available for those over 19 with an EHC plan for whom HE is not the intended destination?**

It is crucial that Local Offers clearly set out what is normally available for 19-25 year olds with SEND to enable any ongoing educational and training needs to be met, regardless of whether they have an EHC plan.

Students aged 19 or above with EHC plans who are continuing in education may have a range of options, including attending further education, a training provider and/or accessing an apprenticeship.<sup>2</sup> As stated in the [Post 16 Skills Plan](#), we want all young people with an EHC plan to undertake a [supported internship](#) unless there is a good reason for them not to. Supported internships are one of the most effective routes to employment for young people with EHC plans: they are a structured study programme, based primarily at an employer, which enable young people aged 16-24 to achieve sustainable paid employment by equipping them with the skills they need for work through learning in the workplace. Supported internships are unpaid, and last for a minimum of six months. Wherever possible, they support the young person to move into paid employment at the end of the programme. Alongside their time at the employer, young people complete a personalised study programme and have the support of an expert job coach where needed.

Young people aged 19 cannot remain in a special school unless they are completing a secondary education course started before they were 18 years old. Special schools have the option of setting up a legally and financially separate entity to make provision for 19 to 25 year olds, as advised in the [High needs funding: operational guide 2016 to 2017](#).

As the SEND Code of Practice says, where young people have EHC plans, local authorities should consider the need to provide a full package of provision and support across education, health and care that covers five days a week, where that is appropriate to meet the young person's needs. Packages could involve amounts of time at different providers and in different settings and may include periods outside education institutions with appropriate support. The package of provision can include non-educational activities such as:

- volunteering or community participation
- work experience
- opportunities that will equip young people with the skills they need to make a successful transition to adulthood, such as independent travel training, and/or skills for living in semi-supported or independent accommodation, and
- training to enable a young person to develop and maintain friendships and/or support them to access facilities in the local community.

It can also include health and care related activities such as physiotherapy. Local authorities will need to work with providers and young people to ensure there is a range of opportunities that can be tailored to individual needs, including the use of Personal Budgets.

A young person's progress whilst they have an EHC plan can be recognised in a variety of ways, including when they do not undertake formal qualifications. This includes [RARPA](#) (Recognising and Recording Progress and Achievement) – a five stage process to measure the progress and achievement of learners on non-accredited learning programmes.

### **Who pays for provision for those over 19 with an EHC plan?**

What is funded from the local authority's high needs budget would depend on the outcomes and provision specified in the young person's EHC plan. The local authority is responsible for putting the plan together and working with the Clinical Commissioning Group (CCG) and other partners to secure appropriate provision.

The high needs budget is expected to fund any special educational provision that is described in Section F of the EHC plan. A local authority can jointly fund some provision with its partners and may decide to add health or care funding to the education (Dedicated Schools Grant (DSG)) funding to provide for a full package of support for an individual.

The EFA allocates place funding for students aged 19-25 with an EHC plan. The local authority's schools budget cannot be used to fund places, or incur other expenditure (such as top-up funding), for 19-25 year-olds in schools (maintained mainstream schools, maintained special schools, mainstream and special

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<sup>2</sup> For more information, see regulation 14 and paragraph 18 of schedule 2 to the School and Early Years Finance (England) Regulations 2015, and in due course the regulations that will replace these for 2017 to 2018.

academies, non-maintained special schools and independent schools), or for 19-25 year-olds without EHC plans.

### **Can special educational provision be delivered outside a study programme?**

As the Code states, provision for the majority of those aged over 16 should be delivered through a study programme. Young people with EHC plans are expected to be on a programme focused on their education and training. There may be times, however, when it is judged that some special educational provision can legitimately be made outside an EFA-funded institution, such as in a residential care home or other non-educational setting. In these cases, it would be appropriate for the education service to fund this specific aspect of provision. Decisions about provision are made on an individual basis and currently, these cases are rare.

### **The Children and Families Act (s21(5)) states that health care provision and social care provision which is necessary for the education or training of a child or young person is to be treated as special education provision. Does this mean that young people with health and social care needs can maintain their EHC plans until they turn 25?**

Decisions about whether a young person's EHC plan should be maintained post-19 will depend on whether it is necessary for special educational provision to be made for that young person post-19 to meet the outcomes sought for him/her which are set out in their EHC plan. If a young person has achieved the outcomes in their EHC plan by age 19, then no further special educational provision should be required after that age.

### **What does adult health and social care look like for young people aged over 19 with EHC plans?**

If a young person over the age of 18 continues to have an EHC plan, they may have social care and health needs. Each local authority's Local Offer must set out the relationship between the Children and Families Act 2014 and the Care Act 2014, and how the requirements of both Acts are being implemented locally. It is critically important that Clinical Commissioning Groups (CCGs) and health providers work closely with local authorities to provide a coordinated and coherent offer to young people with social care and health needs post-19.

The Care Act 2014 places a duty on local authorities to conduct transition assessments for children or young people, their carers and young carers where there is a likely need for care and support after the young person in question turns 18 and a transition assessment would be of 'significant benefit'.

#### Social care

Where young people aged 18 or over continue to have EHC plans, and are receiving care and support, this will be provided under the Care Act 2014. The statutory adult care and support plan should form the 'care' element of the young person's EHC plan. (See further [Care and Support Statutory Guidance](#), issued under the Care Act 2014.) While the care part of the EHC plan **must** meet the requirements of the Care Act 2014 and a copy should be kept by adult services, the EHC plan should be the overarching plan that ensures young people receive the support they need to enable them to achieve agreed outcomes.

#### Health

CCGs should use the National Framework for NHS Continuing Healthcare and supporting guidance and tools to determine what on-going care services people aged 18 years or over should receive. The framework sets out that CCGs should ensure that adult NHS continuing healthcare is appropriately represented at all transition planning meetings of young people whose needs suggest that there may be potential eligibility. CCGs and local authorities should have systems in place to ensure that appropriate referrals are made. The framework sets out best practice for the timing of transition steps.

In addition to this, many young people with chronic health conditions will require ongoing care from their local General Practitioner (GP) surgeries.

### **When should an EHC plan cease?**

Section 45 of the Children and Families Act sets out the circumstances when a local authority may cease to maintain an EHC plan. This is when the local authority is no longer responsible for the young person, or they determine it is no longer necessary for the plan to be maintained. Circumstances in which it is no

longer necessary to maintain a plan include when the young person no longer requires the special educational provision specified in the plan. In determining that issue, a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved when the young person is aged over 18 (section 45(3)).

When a young person will soon be completing their time in education and training, the local authority should use the annual review prior to ceasing the EHC plan to agree the support and specific steps needed to help the young person to engage with the services and provision they will be accessing once they have left education.

Where a young person aged 18 or over leaves education or training before the end of their course, the local authority must not cease to maintain the EHC plan unless it has reviewed the young person's EHC plan to determine whether the young person wishes to return to education or training, either at the educational institution specified in the EHC plan or somewhere else. If the young person does wish to return to education or training, the local authority should consider whether this is appropriate. If the local authority decides it is appropriate, then the local authority must amend the EHC plan as necessary and it must maintain the plan. The local authority should seek to re-engage the young person in education or training as soon as possible.

### **Can a young person aged over 19 without an EHC plan continue to have any education funded?**

The Government, through the Skills Funding Agency (SFA), funds a range of learning, including apprenticeships and traineeships, to support young adults aged 19 and over to gain the skills and qualifications they need to get work or to progress in their chosen career.

Eligibility to receive public funding through the SFA is the same for all eligible learners regardless of disability. Details of eligibility can be found at <https://www.gov.uk/government/collections/sfa-funding-rules-2016-to-2017>.

For students aged 19 and above who do not have an EHC plan, Learning Support funding may be available. Learning Support funding is available to colleges and training providers to help them meet the additional needs of learners with learning difficulties and/or disabilities and to meet the costs of reasonable adjustments as set out in the Equality Act 2010. This support can cover a range of needs including: funding to pay for specialist equipment and helpers; arranging note takers; particular help in lectures and seminars; and special arrangements for exams. Details of Learning Support funding is contained within the funding and performance management rules in the above link.

In all instances learners should contact their provider to confirm they are eligible for funding, and to establish that the qualification they wish to study is funded by the SFA.

Under the Equality Act 2010, FE providers must make reasonable adjustments to avoid disabled students being placed at a 'substantial disadvantage'. All aspects of studying are covered including course admissions, the provision of education, access to any benefit, facility or service and exclusions. For students aged over 19 without EHC plans, FE providers receive money from the SFA to meet the costs of reasonable adjustments. Private education and training providers also have duties under Part 3 of the Act as service providers.

### **Can a young person study in a Higher Education Institution (HEI) and still have an EHC plan?**

Yes. Although generally an institution within the higher education sector would not be covered, the EFA funds courses that are not prescribed HE within HEIs, meaning it is possible to have an EHC plan in these circumstances. HEIs can use their EFA allocation to provide support for particular students provided it meets the funding, study programme and eligibility criteria that EFA publish every year for 16-19 learners (see [www.gov.uk/guidance/16-to-19-education-funding-guidance](http://www.gov.uk/guidance/16-to-19-education-funding-guidance)). It should, however, be made clear to students considering an FE course within an HEI that HEI providers are under no legal obligations under the Children and Families Act 2014, although they are covered by the Equalities Act 2010.

### **Can a young person study a level 4 (HE level) qualification and still have an EHC plan?**

No. Some FE colleges offer HE provision and although the institution is covered by the Children and Families Act, a young person studying at level 4 would **not** be entitled to an EHC plan. Studying at this level would be considered a positive outcome from an EHC plan, and a pathway to finding a good job.

There are, however, separate systems in place to support disabled young people in HE, including Disabled Students' Allowances (DSAs) – non-repayable grants that assist with the additional costs incurred by disabled students in relation to their study in HE. DSAs fund a range of support, including the purchase of specialist equipment, assistance with travel costs and the cost of non-medical helpers (e.g. sign language interpreters).

### **What support is available for young people leaving education who haven't found a job?**

Young people over 18 who make a benefit claim will be invited to meet a Work Coach at the Jobcentre. For people claiming Job Seekers' Allowance (JSA) this will be as soon as possible. For those claiming Employment Support Allowance (ESA) and presenting a Fit Note, this will be within 4-6 weeks of their claim. At the Jobcentre, the Work Coach will discuss with the young person their needs and any barriers to work, and agree a plan of action (a Claimants' Commitment) detailing their plans to find work.

Those with a longer term disability or health condition will have a Work Capability Assessment. The Department for Work and Pensions (DWP) offers specialist employment programmes to support people into work. These include the Work Programme, Work Choice and the Specialist Employment Service. Work Coaches will also signpost claimants to other local provision. Access to Work provides support to those people with a disability or health condition who need help to work.

### **How does the Mental Capacity Act 2005 apply to this group of young people?**

The Mental Capacity Act applies to everyone over the age of 16 and is based on the fact that individuals may or may not have the capacity to make a single decision at a single time.<sup>3</sup> The test of capacity is set out in the Mental Capacity Act's [Code of Practice](#). It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

The Children and Families Act 2014 states that local authorities must have regard to the importance of participating 'as fully as possible' in decision making and the importance of information and support to assist participation.

It also identifies specific decision-making rights about EHC plans which apply to young people directly, from the end of compulsory school age:

- request an assessment for an EHC plan (any time up to their 25<sup>th</sup> birthday)
- make representations about the content of their EHC plan
- request that a particular institution is named in their EHC plan
- request a Personal Budget for elements of an EHC plan
- appeal to the First-tier Tribunal (SEN and Disability) about decisions concerning their EHC plan.

It should therefore not be assumed that parents will make decisions on behalf of young people over 19 with an EHC plan, even if there are questions over the young person's mental capacity.

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<sup>3</sup> For more information on the MCA you can download the Preparing for Adulthood programme's free factsheet: <http://www.preparingforadulthood.org.uk/resources/all-resources/pfa-factsheet-the-mental-capacity-act-2005-and-supported-decision-making>