

CDC digest

~Special edition~



The voice of the disabled children's sector

September 2012

Dear all,



Life at CDC remains hectic but exciting. In the last two weeks we have had the publication of the SEN provisions and a government re-shuffle which saw significant changes across the Department for Education, Department of Health and Department for Work and Pensions. Details, as always, [are on the CDC website](#).

For the Department for Education, the new Minister taking the Children and Families Bill through will be Edward Timpson and you will see a quote from him on page 15 of the special edition Digest. It is always interesting working with a new Minister. You miss the level of relationship and understanding you had with the previous one but they also bring a welcome new perspective and set of ideas. A change in post-holder at the same time as the draft provisions are published brings an additional set of interest and challenges.....

New

Want to hear more about what Christine has to say including why she wants to see real integration across health, education and social care?

Visit the newly launched CDC blog at <http://councilfordisabledchildren.wordpress.com/> for the latest and up to date in disabled children's policy in practice! 



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Draft SEN and disability provisions



Reform of provision for children and young people with Special Educational Needs

In May 2012 the government published *Support and Aspiration: new approach to special educational needs and disability – Progress and next steps*, to report on progress following the 2011 *Special Educational Needs and Disability (SEND) Green Paper*. That report provided proposals to reform provision for children and young people with special educational needs or with disabilities.

On Monday 3rd September the Department for Education released the [draft provisions on SEN and Disability](#) which sets out the draft legislation to put those proposals into practice.

The provisions include duties to draw up Education, Health and Care plans, to set out a 'local offer' of services available to parents and young people as well as provisions to require joint commissioning between local authorities and clinical commissioning groups.

Along with the provisions Sarah Teather, former Minister for Children and Families, issued an invitation to the Education Select Committee inviting them to lead the pre-legislative scrutiny process of these provisions during the autumn.

The [draft provisions and explanatory notes](#) can be found online along with the [accompanying Ministerial statement](#) announcing their publication.

The draft provisions have also been circulated to parents via the National Network of Parent Carer Forums, along with [their statement on the provisions](#).

Next steps in the reform process



As part of the next steps the Education Select Committee, a group of MPs who specialise in this area, will examine the draft law and make recommendations to Government. The Committee have asked people to submit evidence on the proposals by 11th October. [The call for evidence can be viewed here.](#)

Once the Government have considered the proposals by the Select Committee, they will introduce a Bill to Parliament in early 2013. The changes to SEN and disability will be part of the Children and Families Bill which will also include measures affecting adoption and family law. The Bill will then go through the Parliamentary process and MPs and members of the House of Lords will be able to propose further changes.

During this time the 20 Pathfinders continue to test out the different ways of implementing the Green Paper reforms. Their findings will inform draft regulations and the draft code of practice. [The Pathfinder case studies on page 18](#) show how their work is developing.

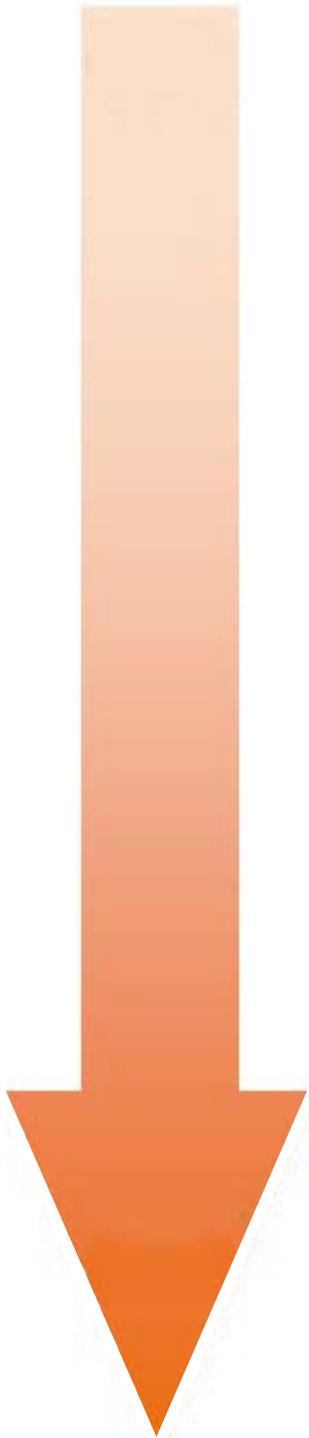
Education Select Committee calls for evidence to inform SEND reforms

The Education Committee is now [conducting pre-legislative scrutiny of the Government's proposed reform of provision](#) and invites submissions of evidence for this. Their questions cover several key areas including whether the provisions meet the objective to improve provision for disabled children; what transitional arrangements should be put in place, and whether the provisions achieve the aim of integrated planning and assessment across agencies.

The Committee asks for written submissions to be sent to educom@parliament.uk marked "Pre-Legislative Scrutiny: SEN" by **noon on 11 October 2012.**

Timings on next steps

Below are some indicative timings for the steps following the publication of the draft provisions.



Monday 3rd September 2012

Draft provisions for a Bill published

September - December 2012

Pre-legislative scrutiny of the draft provisions carried out by the Education Select Committee. This allows the provisions to be informed by the views and evidence of key stakeholders and learning from the local pathfinders.

11 October 2012

Deadline for sending evidence to Select Committee

December 2012

Education Select Committee publishes a report of its findings

Early 2013

Bill introduced to Parliament

During 2013

Outline Regulations and draft Code of Practice published

Spring 2014

Royal Assent to Bill (subject to Parliament)

September 2014

Implementation

A summary of the draft provisions

To help with understanding of the reforms our [Special Educational Consortium](#) has produced a summary of some of the key provisions within the draft legislation on reform of provision for children and young people with Special Educational Needs (SEN).

Definitions and scope (provisions 1-4)



- The definition of a learning difficulty and special educational provision will remain the same as in the Education Act 1996;
- The definition of SEN, and the definition of those for whom the local authority is responsible, will be extended to young people as well as children. Young people are defined as being over compulsory school age but under 25;
- The local authority will be given a duty to identify all the children in their area with SEN. This duty is wider than the current duty in the Education Act 1996, which only requires Local Authorities (LAs) to identify children where they may need to determine the special educational provision (i.e. children who may need a statement of SEN). Importantly, this duty will not include a duty to identify disabled children or those with a health condition unless they need special educational provision;
- Provision 4 makes local authorities responsible for all the children and young people in their area with SEN. Again, this duty is more expansive than the current one. The intention is that the provisions in this draft Bill should apply to all children with SEN, not just children with education, health and care (EHC) plans. However, again, this will not include disabled children or those with a health condition unless they need special educational provision;
- All the references to mainstream schools include academies (including free schools) and maintained schools.

Local integration and information (provisions 5-12)

- Named partners will be required to cooperate in relation to meeting the education, health and care needs of children and young people with SEN. Partners include all special and mainstream schools and colleges, local authorities (including in relation to social services), providers of alternative provision and key health agencies (8 and 9);
- Local authorities will be required to promote integration in the exercise of their functions, specifically between education, health, and social care services, in order to improve children's wellbeing. This applies to provision made outside an LA's area (5);
- Local authorities will be required to keep education and social care provision under review, including whether local provision is "sufficient" to meet local need. It must have regard to the joint health and wellbeing strategy when undertaking this (7);
- Local authorities and clinical commissioning groups "must" make arrangements for joint commissioning. This includes arrangements for considering and agreeing reasonable provision to meet the needs of all children with SEN in the area, and specifically for children with EHC plans. LAs and clinical commissioning groups have to have regard to these agreements, and also to the joint health and wellbeing strategy, when undertaking their functions (6);
- If health providers decide not to cooperate with any specific request from an LA they must respond in writing, in prescribed timescales, setting out why (10);
- Local authorities will be required to produce information on the education, health and care services "it expects" to be available locally (the local offer). This will include information in relation to provision available outside its area. The details of what the local offer should include and who should be consulted will be defined in regulations. There will be a complaints mechanism in relation to the local offer although there are no details of how this will work (11);
- Local authorities must ensure there is advice and information available locally for parents and young people (12).

Education, health and care needs assessment and EHC plans (provisions 16-28)

- Statements of SEN are replaced with education, health and care plans (EHC plans).

Most of the provisions in relation to EHC plans remain the same as for statements;

- The threshold for an EHC plan is the same as for a statement – effectively that a school is unable to meet a child’s special educational needs. Regulations may set out how this assessment must be conducted and how it might be combined with other assessments. The plan will cease when a young person is no longer in education or training;
- The duty on the local authority to secure the educational provision set out in an EHC plan is the same as it is currently with a statement;
- Health and social care needs must be explicitly recorded in the EHC plan. There are no new duties on health and social care in relation to delivering what is in a EHC plan, though there is a duty to co-operate with the local authority, see above;
- The section 139A assessment (Learning Difficulty Assessments) ceases to apply and is replaced with a re-assessment/annual review of the EHC plan;
- EHC plans extend all the statutory rights currently in a statement into the further education and training sector for the first time. Young people in apprenticeships are not covered;
- Rights of appeal to the Tribunal remain the same but is extended to further education.

Education providers (provisions 40-43)



- All of the provision of the Bill will apply to academies in full;
- Schools will continue to be required to have an SEN coordinator (40);
- Schools will still be required to inform parents and young people if they believe their child has SEN (41);
- Schools and post-16 institutions will still be required use their ‘best endeavours’ to meet SEN (42);
- Schools must publish information on how they meet the needs of disabled children and children with SEN (43).

Inclusion (provisions 13-14)

- The presumption in favour of a mainstream education is retained, and extended to academies and further education.

Personal budgets (provision 26)



- Local authorities must prepare a personal budget in relation to an EHC plan where a request has been made by the parent and the young person. In some circumstances this may include the making of a direct payment;
- The details of this provision will be set out in regulations.

Mediation (provision 29)

- The parent or young person will be required to participate in mediation before they can appeal to the Tribunal. The mediator must be independent of the LA.
- Regulations may set out:
 - in what circumstances mediation is not necessary;
 - the training and qualifications required by mediators
 - how the voice of children and young people should be sought;
 - time limits.



SEN Code of Practice (provision 44)

- There will be a revised Code of Practice.
- Unlike the current Code of Practice, the draft will not be laid before Parliament.

Special Educational Needs Code of Practice

LEAs, Head Teachers and Governors of Schools, early education practitioners and other interested parties.
Date of Issue: November 2001
Ref: DfES/S81/2001
Related Documents:
The Education Act 1996

www

The summary above can also be [downloaded from our website](#).

Frequently asked questions on the draft provisions

Based on queries from our membership we have begun to pull together an series of FAQ on the draft provisions. Below is the beginning of these questions. The rest can be found within the policy section of our website.



If you would like to submit a question to one of our policy experts at CDC please e-mail jcrangle@ncb.org.uk.

What is happening?

In March 2011 the Government published a 'green paper' called *Support and Aspiration: A new approach to SEN and disability*. In this document the Government set out a series of proposed changes to the way disabled children and children with special educational needs (SEN) receive support. The central idea of the green paper was to make services more joined up.

In August 2011, the Department for Education (DfE) asked for bids from local authorities and Primary Care Trusts (PCT) to test out the main proposals in the green paper. The test areas are known as 'pathfinders'. [More detailed information on the ongoing work of pathfinders can be found on the Pathfinder website.](#)

In September 2012, the Government published [draft SEN and disability provisions](#) which are proposals to change the law. These draft provisions particularly relate to changes to the current law on special educational needs, but will also affect other services.

There will also be a new SEN Code of Practice.

What are the proposed changes?

There are many proposed changes in the draft SEN and disability provisions including:

- Statements of SEN will be replaced by 'education, health and care plans' (EHC plans).
- The EHC plan will extend legal protections to young people aged 16–25 while they are in further education.
- Local authorities and clinical commissioning groups must make arrangements for jointly commissioning services for children with SEN in their area.
- Local authorities must produce information on the education, health and care services it expects to be available locally (the 'local offer').

What do these changes this mean for services now?

There are currently no changes in the law. All the current duties on schools, local authorities and other services still apply and disabled children and children with SEN should continue to receive support.

When will these changes be finalised?

The Government's plan is for this new law to be in place by early 2014. This is when the Children and Families Bill will become an Act. It is likely that implementation will take place from September 2014 onwards.

How can I influence the changes?

As outlined on page 4, the Education Select Committee have asked people to submit evidence on the proposals by 11th October. The Select Committee's questions include:

- What can be learned from the current pilot schemes and how can these lessons be applied to the provisions of the draft Bill?
- Should the scope of the integrated provision requirement be extended to all children and young people, including those with special educational needs?

[The call for evidence can be viewed here.](#)

www

More frequently asked questions are available on our website.

CDC's key messages on the draft provisions



CDC welcomes the broad aims of the draft SEN and disability provisions of the Children and Families Bill, in particular, the intention to create a much more joined up approach to the educational, health and care needs of children and young people. The commitment

to extend entitlement into further education settings and academies will clarify responsibilities and improve the system.

CDC has concerns that, in a number of areas, the draft provisions fall short of the vision set out in the Green Paper. CDC is committed to working with Government to strengthen the duties in these areas:

Ensuring the Bill applies to all disabled children and children with SEN



CDC welcomes the extension of local authority responsibility to all children with SEN, rather than the current duties which only extend to children who may need a statement of SEN. However, the provisions do not apply to disabled children or those with a health condition unless they require special educational provision. This would mean, for example, that the local authority duty to provide a local offer will only apply to children with SEN.

CDC is committed to securing entitlement under this legislation for disabled children as well as those who need special educational provision.

A coordinated response to meeting the needs of disabled children and children with SEN



Health and Social Care Act 2012

The draft provisions require local authorities to keep education and social care provision under review and to promote integration across services. There is a new duty on local authorities and clinical commissioning groups to make arrangements for joint commissioning of education, health and care services. CDC welcomes these provisions. We believe that the assessment of local need must be joined up with commissioning arrangements undertaken by Health and Wellbeing Boards.

CDC wants to ensure that the duties in the Children and Families Bill link to and complement the duties set out in the [Health and Social Care Act 2012](#).

A robust local offer

CDC welcomes the duty on local authorities to provide information on the education, health and care services it expects to be available locally, the local offer. The local offer is crucial in meeting the full range of children's needs and avoids the potential for 'a plan or nothing' approach. The majority of children and young people will rely on the local offer. Better information for parents and young people is welcome, but the provisions on the local offer do not go far enough.

CDC believes that there should be a legal duty to provide what is set out in the local offer; parents and young people need to be able to challenge agencies if it is not delivered.

Assessment and Education, Health and Care Plans

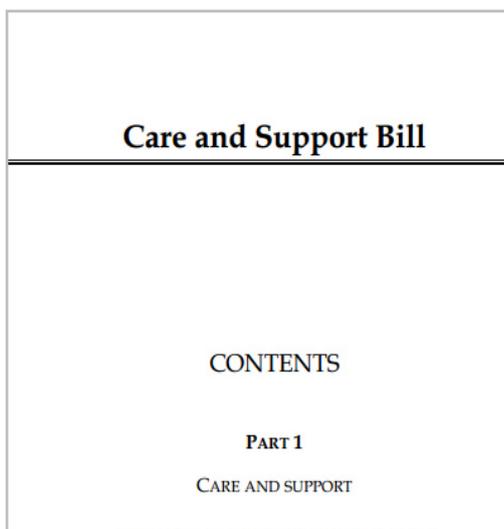
CDC welcomes the provisions setting out a multi-agency assessment and planning process for children and young people from birth to the age of 25, the tighter focus on outcomes, and the extension of the duties into further education and training and to Academies. CDC wants to ensure that disabled children and young people who have

health and care needs but who do not need special educational provision are included, see above.

CDC wants to see the assessment and planning duties extended to include disabled children and young people who do not need special educational provision but need health and/or care provision.

CDC welcomes the increased co-ordination between different agencies at a strategic level but wants to see a strengthened entitlement to the health and care elements in an EHC plan.

CDC wants a strengthened entitlement to the health and care elements in an Education Health and Care plan.



CDC welcomes the extension of the current duties to give an entitlement to an EHC plan to young people up to 25 who are in FE and training. CDC wants to ensure that those young people not in FE and training, for example those in apprenticeships, and those who may be in and out of different settings, are supported through a continuous planning process.

CDC wants to ensure that there is robust linkage between an EHCP and a Care and Support Plan from adult services.

Young people who are not in education or training should be entitled to support through an EHC plan.

CDC urges the Government to ensure that the duties in the Children and Families Bill link to and complement the duties set out in the draft Care and Support Bill.

The participation of children and young people

Disabled children and young people have the right to participate in all matters that



affect them individually, and in all strategic decisions about national and local authority service provision, development and delivery.

Disabled children and young people should be provided with disability- and age-appropriate assistance to be able to participate in decision-making.

Appropriate structures and a range of mechanisms need to be in place to ensure that professionals take the views of disabled young people into account when making decisions about their care and support.

CDC believes that the Bill should provide disabled children and young people with the right to participate in all matters affecting them individually, including an EHCP, and in wider planning arrangements such as the development of the Local Offer and joint planning and commissioning. We also believe the Government should provide clarity regarding an individual's ownership of their EHCP.

Disabled children and young people need to be provided with age-appropriate information about services that are available to them and information and support to be able to participate in decision-making.

CDC welcomes the commitment to provide information and advice to young people. We urge the Government to ensure that providers of this information are trained and resourced to provide age-appropriate information and advice.

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These key messages are also [available on our website](#).

Government Reshuffle



On Tuesday 4th September the Prime Minister announced a **widespread reshuffle of the current cabinet and ministerial teams across many Government departments**. Key changes include:

Within the Department for Education

- Tim Laughton is replaced as Parliamentary Under Secretary of State by Elizabeth Truss.
- John Hayes is replaced as Parliamentary Under Secretary of State by Matthew Hancock.
- Nick Gibb is replaced as Parliamentary Under Secretary of State by Edward Timpson. **Edward Timpson will be leading in the Department on the draft SEN and Disability provisions within the Children and Families Bill.**
- Sarah Teather is replaced as Minister for Children and Families by David Laws.
- Michael Gove retains his position as Secretary of State for Education.

Within the Department of Health

- Andrew Lansley is replaced as Secretary of State for Health by Jeremy Hunt.
- Paul Burstow is replaced as Minister of State for Care Services by Norman Lamb.
- Ann Milton is replaced as Parliamentary Under Secretary of State by Daniel Poulter.

Within the Department for Work and Pensions

- Maria Miller is replaced as Minister for Disabled People by Esther McVey.
- Iain Duncan Smith retains his position as Secretary of State for Work and Pensions.

A message from Minister Edward Timpson

As part of the reshuffle Edward Timpson MP takes on the brief for special educational needs within Department for Education.

In a recent statement to CDC the Minister welcomed the opportunity to make a difference for disabled young people.



It is a real privilege to have the opportunity to help make the aspirations that we share for disabled children and young people and those with special educational needs a reality. I am excited to be able to join you in playing a part to help overcome the challenges and celebrate the future successes. I have seen at first hand the outstanding achievements made by young disabled people and those with special needs when the right opportunities are available to them.

I have also seen too many families and young people let down. The difference is often because of the crucial and determined role played by charities and volunteer groups.

There is much to do over the coming months and I look forward to working with you and the parents, children and young people that you represent, as well as the pathfinder areas, to bring about changes that will make a lasting difference to the lives of children and young people.

The Minister's responsibilities also include:

- Adoption, fostering, and residential care home reform
- Child protection
- Family law and justice
- Children's and young people's services
- School sport
- CAFCASS
- Office of Children's Commissioner

Pathfinder case studies



Map of pathfinder areas

© Preparing for Adulthood

In September 2011 the Government announced that 20 pathfinders, covering 31 local authorities and their Primary Care Trust (PCT) partners, had been selected to test out the proposals outlined in the SEN and disability Green Paper.

The Pathfinders are now one year into this 18 month programme. There has been a great deal of interest in the work of pathfinders. To demonstrate some of the progress

made to date the SEND Delivery Partners, led by the [Early Support and Key Working Consortium](#) and the [Preparing for Adulthood Programme](#), have developed a number of pathfinder case studies. These case studies, listed below, provide evidence of the positive work occurring across the UK.

Bromley and Bexley

[Case study](#) and [appendix 6](#) and [7](#) (developed with the Early Support delivery partner)

Calderdale

[Case study](#) and [appendix 1](#) (developed with the Preparing for Adulthood delivery partner)

Devon

[Case study](#) and [appendices 1 to 8](#) (developed with Early Support)

Manchester

[Case study](#) (developed with Preparing for Adulthood)

SE7

[Case study](#) and [appendices 2, 3, and 4](#) (developed with Early Support)

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Further information, including the Pathfinder areas own case studies, can be found on the 'Food for thought' page of the pathfinder website.

Evaluation of the SEND pathfinder programme

An update from SQW

bpsr Bryson Purdon
Social Research

OPM Office for
Public Management

Ipsos MORI

SQW

SQW was commissioned by the Department for Education (DfE) to lead a consortium, including Ipsos MORI, BPSR and the Office of Public Management (OPM), to undertake the Evaluation of the SEND Green Paper Pathfinder Programme.

The evaluation has to date published three reports – The Evaluation Briefing Report (Jan 2012) and two Quarterly Evaluation Reports (March and June 2012), which are available on the [Department for Education website](#).

The most recently published report (June 2012), presents commentary and analysis on the first set of monitoring returns received from all Pathfinder areas, which detailed self-reported progress and cost information from the outset of the Pathfinder Programme to the end of March 2012. A summary of the conclusions and implications from this report are presented in the table below.

Conclusion	Implications
All areas had set up a Project Board/Governance structure, which included engagement from the following stakeholders	<ul style="list-style-type: none">• How to engage the stakeholders that have proven to be more difficult to engage or that may not be linked to the immediate target group, but will play a part in the development of a 0-25 yrs approach• How to ensure accountability of the resource that is required for the service packages

The majority of areas had a designated Lead and a Project Manager in post

- The extent to which operational staff had been actively engaged in the development of the Pathfinders was unclear
- Change management of operational staff will be crucial, and needs progressed to fit with family recruitment

Around half of the areas reporting they had at least reached the partial development stage of their assessment and single plan pathway

- How areas can scale up their developing approach for the whole 0-25 yrs and for existing and new cases post the Pathfinder
- To date most recruitment has been of families already in receipt of services
- There is less progress on personal budgets and information sharing

*Evaluation of the SEND Pathfinder Programme
Quarterly Report*

Executive summary

1. This report is the second of a series of progress reports that will be produced throughout the course of the 18 month evaluation of the SEND Pathfinder programme. This report presents:
 - Commentary and analysis on the progress made to date by the ten in-depth case study sites, based on a first case study visit over the course of February-March 2012

SQW's June quarterly evaluation report

A fourth more substantial evaluation report – The Interim Evaluation Report (August 2012) – which presented commentary and analysis of the second set of monitoring returns (Quarter 1 2012/13) and

supplementary evidence gathered from a second round of visits with the ten in-depth case study areas was recently submitted to the Department for Education. The report is due to be published in October.



The evaluation team would be happy to answer any queries you may have about the research. Please direct all queries to SENDpathfinder@sqw.co.uk and we will ensure that the appropriate member of the team comes back to you.

A briefing note on the Local Offer

The Green Paper, [Support and aspiration: A new approach to special educational needs and disability](#) and the [Next Steps document](#) signal the Government's intention to require local authorities to set out a local offer. The purpose of the local offer is to enable parents and young people to see more clearly what services are available in their area and how to access them. The offer will include provision from birth to 25, across education, health and social care and should be developed in conjunction with young people, parents and carers, and local services.

To help with understanding of the local offer CDC has produced briefing note that can now be downloaded from our website. It looks at

- elements of the local offer that are current requirements;
- how current requirements link to school funding changes from April 2013nd local budget decisions being made to plan for that; and
- how the local offer might develop in the future.

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CDC's briefing on the local offer is [available for download from our website](#).

Auxiliary aids and services in schools

On 1 September 2012, the 'reasonable adjustments duty' was extended to include the provision of auxiliary aids and services for disabled pupils in schools.

Section 20 of the Equality Act 2010 requires schools to take 'such steps as it is



An auxiliary aid refers to 'anything which provides additional support or assistance to a disabled pupil'

reasonable to have to take' to ensure that a disabled pupil, or prospective pupil, is not placed at a substantial disadvantage. This is usually known as the 'reasonable adjustments' duty.

When the disability discrimination duties were extended to include schools in 2001, the duty to make reasonable adjustments did not apply to the provision of 'auxiliary aids and services' in schools; it was assumed this support would be delivered through the special educational needs framework.



Equality Act 2010

Following a recommendation made by the Lamb Inquiry, the duty to provide auxiliary aids or services, as part of the reasonable adjustments duty, was added to the provisions in the Equality Act 2010. Following a consultation towards the end of 2011, the new duty was commenced on 1 September 2012.

The definition of an auxiliary aid or service is very broad. The Equality and Human Rights Commission's draft Code of Practice for schools states that it is 'anything which provides additional support or assistance to a disabled pupil'. Under the new duty, schools will need to consider whether a disabled pupil may need an auxiliary aid or service to prevent them being at a substantial disadvantage. The reasonable adjustments duty is anticipatory, so schools need to think ahead to avoid the disadvantage.

The group who are most likely to benefit from the duty are disabled children who do not have special educational needs, for example, children with a medical condition such as cancer, diabetes or severe asthma.

CDC will shortly be publishing a booklet for schools, bringing together all schools' duties towards disabled pupils under the Equality Act 2010.

Applications open for Young People's Advisory Group



The Department for Education is recruiting disabled children and young people and young people with special educational needs (SEN) to join a Young People's Advisory Group (YPAG). This group will influence and advise Government on the SEN and Disability Green Paper reform programme.

The group will provide feedback and expertise, tackle challenges and work directly with Department officials to ensure that the reforms reflect the views and experiences of disabled young people and young people with SEN.

The group will be supported by the Department for Education and the Council for Disabled Children.

Find out how to apply

Visit www.councilfordisabledchildren.org.uk/youngpeoplesadvisorygroup to download an application form.

Applications are open to disabled young people and young people with SEN aged 14-25.

Applications must be received by 26th September 2012



About the Digest

The CDC Digest is a quarterly round-up of all the essential policy, practice and other news involving disabled children and young people, and their families. You can download the latest issues from [the CDC website](#).

If you would like to be added to the list to receive this digest, email jcrangle@ncb.org.uk with 'Subscribe to CDC Digest' in the subject line.

About CDC



The [Council for Disabled Children](#) (CDC) is the umbrella body for the disabled children's sector in England, with links to other UK nations.

We are the only national body that brings together the diverse range of organisations that work with and for disabled children to support the development and implementation of policy and practice. Our work impacts on over 800,000 disabled children and their families.

CDC hosts the [Making Ourselves Heard network](#), the [National Parent Partnership Network](#), the [Special Educational Consortium](#) the [Transition Information Network](#) and the [Every Disabled Child Matters](#) campaign.

Find out more

For further information on CDC or on the Digest:

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...or contact us on cdc@ncb.org.uk or 020 7843 1900