

## **SECTION 4: STATUTORY ASSESSMENT**

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## About this Section

4.1 This Section of the SEN Code of Practice (the Code) sets out the three Steps within the statutory assessment process. It acknowledges that consideration of whether to make a statutory assessment may not always lead to the Education Authority (EA) making an assessment. The three Steps and the procedures within those Steps are as follows:

- Step 1** A request or referral of a child with special educational needs for a statutory assessment.
- Step 2** EA considers whether to make a statutory assessment (“consideration stage”) including advice and information which may be sought and the timeframe in which the EA is required to decide whether it is necessary to conduct a statutory assessment.
- Step 3** EA conduct a statutory assessment, including timeframes for submitting advice and information and timeframe (including an upper timeframe) in which the EA decides whether a ‘Statement of Special Educational Needs’ (a Statement) is necessary.

**Key point: See the Glossary for the definition of the key terms used in this Code.**

4.2 The procedures set out in this Section apply in an initial statutory assessment or a further assessment. The EA is required to complete the statutory assessment process within statutory timeframes. Where technology and electronic communication e.g. use of e-mail, is available to the relevant party, and with their agreement, any Notice to be served by the EA may be transmitted using this method. In addition, to assist in seeking and receipt of representations, advice and information as well as co-operation and timely engagement with stakeholders within the assessment process, all concerned should maximise the use of technology and electronic communication where available.

### **This Section is underpinned by:**

- Article 15 (Assessment of educational needs) and Schedule 1 (Making of assessment) supported by draft regulations:
  - 9 (Information to be sought by the EA at consideration stage);
  - 10 (Advice to be sought by the EA);
  - 11 (Educational advice);
  - 12 (Psychological advice);
  - 13 (Matters to be taken into account in making an assessment);
  - 14 (Time limits and prescribed information relating to assessment);
  - and
  - 15 (Exceptions).
- Article 20 (Assessment of educational needs at request of child (over compulsory school age) or parent).
- Article 20A (Review or assessment of educational needs at request of responsible body, namely a mainstream school or the proprietor of an independent school).

(of the Education (Northern Ireland) Order 1996)

## **Introduction**

4.3 Within the SEN and Inclusion Framework (the SEN Framework) the needs of the majority of children with special educational needs (SEN) will be met without the statutory involvement of the EA. Improved outcomes for many children with SEN will be secured through the effective implementation of a graduated response at Stage 1 or, as appropriate, Stage 2 of special educational provision (see paragraph 3.22) (Stage 1 and Stage 2). In a minority of cases, however, the child's needs will be such that the EA, working with the school, parents and child, seeking and giving regard to the views of the child concerned and any other agencies, will need to consider whether a statutory assessment (an assessment) of the child's educational needs is necessary.<sup>1</sup>

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<sup>1</sup> Under Article 15 (Assessment of educational needs) of the Education (NI) Order 1996.

4.4 The EA has a duty under the Education (Northern Ireland) Order 1996 (the 1996 Order) to identify those children with SEN for whom they are responsible. The EA is responsible for a child if the child has SEN and it is necessary for the EA to determine the special educational provision which any learning difficulty calls for. This applies to a registered pupil at a grant-aided school or a child who has attained age 2 and is not over compulsory school age and has been brought to the attention of the EA as having, or probably having SEN.<sup>2</sup> To help fulfil these duties, the EA should regularly obtain information from its services, as delivered under the EA's plan of arrangements for special educational provision, about those pupils for whom special educational provision has been made available at Stage 2 or about those pupils at Stage 1 for whom EA support has been requested from the school.

4.5 The EA is required to act on the request for statutory assessment and practical guidance as set out in this Code. This includes investigating evidence provided by the school, a child (who is over compulsory school age) or the parent of a child (in any other case), as to the child's learning difficulties.

**Key point: An assessment should be undertaken by the EA only if the child has SEN and the EA believes that it needs, or probably needs, to determine the child's special education provision which the child's learning difficulty calls for.**

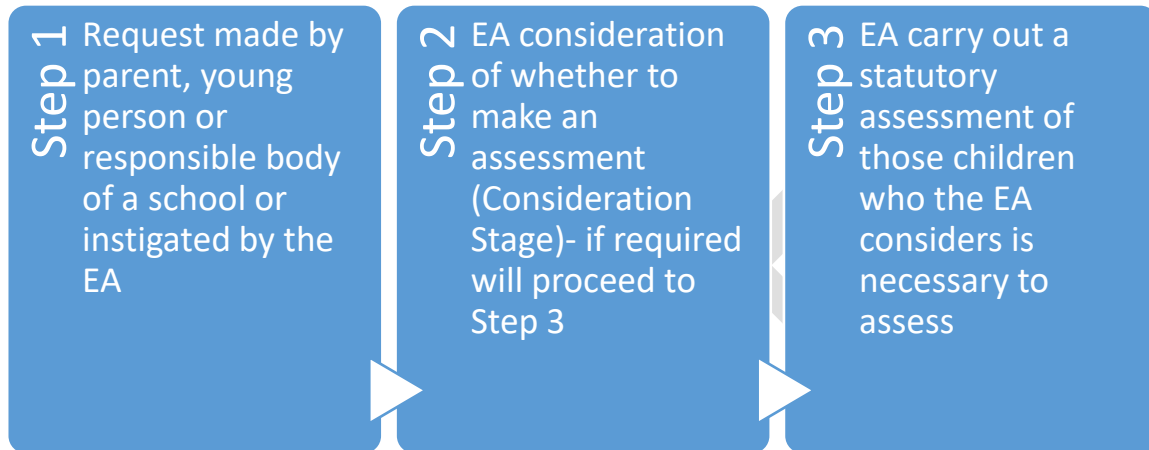
4.6 The EA is required to consider whether it is necessary for it to make an assessment under Article 15 of the 1996 Order. This consideration may, or may not, result in a decision to carry out an assessment. The EA's focus at this point is on what action the school, or the school and the EA, has taken to address the child's learning difficulties. Similarly, if an assessment is carried out, it will not always lead to the EA making a Statement for the child concerned. Information gathered during an assessment, may indicate ways in which the school or the school and EA can further support the child's needs without the need for a Statement. It may be, for example, that the provision of a particular piece of equipment or assistive technology would

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<sup>2</sup> Under Article 13 (General duty of EA towards children for who they are responsible) of the Education (NI) Order 1996.

allow the school (guided as appropriate by EA) to help meet the child's needs and secure improved progress and outcomes.

**Diagram 4.1: Three Steps within the Statutory Assessment Process**



4.7 In normal circumstances the timeframe for the EA to decide whether to an assessment is needed (Step 2) is within 4 weeks. Under certain circumstances concerning the relevant party (statutory exceptions where it is impractical for the EA to meet that timeframe), a new timeframe of up to 6 weeks can apply. If Step 3 is appropriate, i.e. an assessment is to be made, the normal timeframe for the EA to complete the assessment is within 8 weeks. Again subject to statutory exceptions, the timeframe can be extended with an upper timeframe of 14 weeks within which the EA is required to complete the assessment based on the available advice at that point in time. The timeframe for each Step within the statutory assessment process are detailed in this Section. The EA is required to operate within the statutory timeframes and respond to the Department on the EA's performance against the statutory timeframes. **Annex 9** provides a summary of the statutory time limits and exceptions within the SEN Framework. Diagram 4.11 is a Flowchart of the Statutory Assessment Process.

**STEP 1**  
**REQUEST OR REFERRAL FOR STATUTORY ASSESSMENT**

4.8 The first Step is a child being brought to the EA's attention as possibly requiring an assessment by:

- a formal request from a child ( who is over compulsory school age) or the parent of a child (in any other case) under Article 20 of the 1996 Order; or
- a formal request from the responsible body of a mainstream school or the proprietor of an independent school, under Article 20A of the 1996 Order; or
- the EA (of its own volition) under Article 15 of the 1996 Order.

4.9 The EA should, as a matter of good practice, have efficient administrative procedures in place, which are applied consistently across Northern Ireland, to consider and make decisions regarding requests for a statutory assessment as quickly as thorough consideration of the issues allow. These arrangements should include the accurate recording of the receipt of a request for an assessment on the day that it is received making maximum use of the EA's management system. This is of particular importance given the statutory timescale for EA to make a decision on whether to make an assessment. See **Timeframe for EA to make a decision on whether to make an assessment in paragraph 4.34** and Annex 9.

**Key point: The EA must immediately record the request on the day the request for assessment is received. The date of receipt is the start date of the consideration step of whether the EA will comply with the request.**

## **Request from a Child (if over compulsory school age) or a Parent of a Child (in any other case)**

4.10 The EA is required to comply with a request to conduct an assessment, from a child (if over compulsory school age) or parent of a child (in any other case) (**the relevant party**), unless:

- an assessment has already been made within the previous 6 months prior to the date of the request from the relevant party; **and**
- the EA concludes, having examined the available evidence, that an assessment is not necessary.<sup>3</sup>

### **Where the Relevant Party is a “Young Person”**

4.11 Where the relevant party is a young person who has not yet reached age 18, the EA is required to:

- Issue any relevant Notice (issued within the statutory assessment process) directly to the young person concerned subject to the following:
  - the young person has appointed their parent, a representative (over the age of 18) or solicitor, barrister or other legal representative to provide them with assistance and support which includes accepting the service of any Notices (see paragraph 13.12); or
  - the young person has been determined (by the EA) to lack capacity to exercise their rights as in Part II of the 1996 Order and the young person’s parent or alternative person (aged over 18) (see paragraph 13.34).
- Notify the young person’s parent in writing that a Notice has issued to the young person and provide a copy of the Notice to the parent.

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<sup>3</sup> Article 20 (Assessment of educational needs at request of child or parent) of the 1996 Order.



## Guidance for Young People and Parents about Statutory Assessment

4.12 The EA should provide clear, transparent and easily accessible guidance about the statutory assessment process for children and parents. (See Section 11). The relevant party will require clear guidance on the statutory assessment process and how best to contribute to the assessment, and the EA should, through its arrangements for the provision of advice and information, provide guidance on this.

4.13 The EA should, as a matter of good practice, provide **a standard pro-forma for use by a relevant party to make a request for an assessment**. The pro-forma should contain as a minimum:

- a) the relevant party's name and contact information (including mobile number and e-mail address);
- b) reasons for the request and any reports and information available at this point in time to support the request;
- c) any known medical condition of the child concerned which could be impacting their learning ;
- d) the name of the child concerned, school Year Group and the name and address of school the child is attending;
- e) whether the child has a personal learning plan (PLP); and
- f) whether the child concerned is known to a HSC Trust. If so, their Health and Social Care (HSC number) and the name of the HSC Trust concerned.

4.14 The EA should advise the relevant party:

- a) that, whilst not required to do so, they may present any independent advice or opinions which they may have obtained from others with a knowledge of the child and that any such advice will be considered during the assessment;
- b) that they may, if they wish, obtain the guidance and support of a person,

independent of the EA, at any time during the assessment process and afterwards. This person may be a relative, friend, neighbour or someone from a parent support group. It is important that the person should be someone they can trust and rely upon to respond to a request for support when the need arises. If this person is going to attend meetings, the relevant party will be responsible to ensure that the person receives notification in good time. Where the relevant party is a young person, see paragraph 13.14 regarding assistance and support;

- c) about the EA's arrangements for the provision of advice and information and any other relevant sources of independent advice, such as local or national voluntary organisations or appropriate local support groups;
- d) advice about the approaches it will make for educational, psychological, health and social care advice and information; and
- e) of the range of provision available in grant-aided schools, as set out in the EA's plan of arrangements for special educational provision, including the type and range of Learning Support Centres (LS Centres) attached to mainstream schools. This information should be available to help the relevant party state their preference for the child's future placement in the event of a Statement being necessary. At that point, the relevant party may find it helpful to visit particular schools.

## **Information Box 4.1: Advice and Information the EA should provide to Parents, Young People and Children about the Statutory Assessment Process**

### **EA SEN advice and information should include:**

- who has the right to request an assessment;
- when a request for a statutory assessment may be required;
- the information the EA will use to help inform its decision whether it is necessary for it to make an assessment;
- what the steps of the assessment process are;
- the timescales within the statutory assessment process;
- what decisions the EA are required to make within the process;
- the EA's relevant contact information;
- what representations and evidence the parent or young person may wish to provide; and
- information about assistance and support for a young person within the assessment process.

### **Request from the Responsible Body of a Mainstream School**

4.15 Under Article 20A of the 1996 Order the “responsible body” of a school has the right to request a statutory assessment. A responsible body (the school) may conclude that, despite making full use of the range of strategies and supports available to it, as supplemented through the EA's plan of arrangements for special educational provision at Stage 2 (see paragraph 3.45), the child's needs remain so significant that they cannot be met effectively. In these circumstances, the school has a formal right to ask the EA to carry out an assessment or a further assessment of a registered pupil.<sup>4</sup> It is likely that the school's Board of Governors Scheme of Management will mean that the responsibility for making a formal request to the EA for an assessment will be delegated to the school principal.

4.16 In exceptional circumstances, a small minority of children may demonstrate such significant difficulties that the school may consider it advisable to request an assessment without first implementing the graduated responses to addressing the special educational needs of a child at Stage 1 and Stage 2. (See paragraph 3.21).

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<sup>4</sup> Article 20A (Review or assessment of educational needs at request of responsible body) of the 1996 Order.

For example, a major traumatic event such as an accident. In addition, in the event of an unreasonable delay in receiving resources, advice and support via the EA's arrangements for special educational provision at Stage 2, if it is very evident that the child's progress is being significantly hampered without such intervention, a school may consider requesting an assessment. Before doing so, the school should alert the EA of its intention to request an assessment, to allow the EA to prioritise delivery of suitable special educational provision at Stage 2. (See paragraph 2.21).

4.17 When a school determines the need to request an assessment, the child's PLP (see paragraph 3.75) will be the key advice and information source at the EA's consideration stage at Step 2 of this Section. Schools should consult with the relevant party before making a formal request for an assessment. (See paragraph 3.49).

4.18 To avoid bureaucracy the EA should, as matter of good practice, provide a pro-forma, for use by schools for requesting an assessment. In so doing, the EA should only ask for information which is not otherwise available through the child's PLP. The school should use that pro-forma to make a request for assessment. When making a request the school should state clearly the reasons for doing so and provide the PLP history.

**Key point: The EA should record the date of receipt of a request for a statutory assessment from a school on the day the request is received.**

## **Information Box 4.2: Information to be Provided by a School to Support a Request for a Statutory Assessment**

### School supporting information to EA should include:-

- the PLP for the current school year and the previous school year (as appropriate);
- evidence of the involvement of specialists including EA special educational provision at Stage 2;
- the recorded views of the child, the child's parent or the young person within the PLP phases;
- evidence of any known medical conditions/developmental concerns, health checks, for example relevant information on medical advice to the school and supporting evidence, if any, from any relevant health professionals; and
- where appropriate, evidence relating to social care involvement.

4.19 Where a child attends an independent school, a request for a statutory assessment may be the first indication to the EA that the child may have SEN. The procedure to be followed and the factors to be considered in deciding whether to make an assessment should be the same as for a child at a grant-aided school. The EA should inform independent schools in Northern Ireland of their:

- duty to identify children who may require an assessment by the EA;
- the procedures the EA will adopt; and
- the information (including evidence of the reasonable adjustments and strategies and supports) it would expect to be made available by such independent schools.

### **Referral from within the EA or by Other Agencies**

4.20 The EA may, of its own volition, initiate consideration of whether to make an assessment (see paragraph 4.8) without a formal request being made by a relevant party or a school. This may be as a result of direct involvement with a child or knowledge of a child in the delivery of its arrangements for special educational provision or by a child being brought to the EA's attention as possibly requiring an

assessment by a referral from a HSC Trust. A HSC Trust has a duty to draw a child, not yet of compulsory school age, to the attention of the EA if, in their opinion, the child has, or may have, SEN when they become of compulsory school age<sup>5</sup>

### **Children who may Need Immediate Referral to the EA**

4.21 There may be exceptional circumstances when an immediate referral of a child to the EA is required. The EA may initiate an immediate statutory assessment if:

- a) there is agreement between the school, relevant party, and any relevant consultant or adviser about a child's need for further multi-disciplinary assessment or concern that any delay might further damage the child's development;
- b) a child's medical circumstances have changed suddenly, causing a rapid and serious deterioration in health or development;
- c) a child's medical circumstances have changed suddenly as a result of serious injury or accident;
- d) a child has an acceleration of a degenerative condition which impacts the child's learning;
- e) a diagnostic assessment by a HSC Trust is demonstrating a major sensory or other impairment which, without immediate specialist intervention beyond that which the school or the school and the EA can provide, will lead to increased learning difficulties; or
- f) the parents or young person, school, relevant professionals and the EA agree that a sudden and serious deterioration in the child's behaviour make the current placement untenable or unsafe.

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<sup>5</sup> Article 14 (Duties of health and social care boards and health and social care trusts) of the 1996 Order.

## **Emergency Placement in a Special School or Learning Support Centre**

4.22 Exceptionally a child may be placed, by the EA, in a special school or a LS Centre attached to a mainstream school for immediate commencement of an assessment with the agreement of the EA, the school and the relevant party.<sup>6</sup> No child should be placed in a special school or LS Centre except by the EA. This will be either on foot of a Statement or to start the statutory assessment process. If the assessment process leads the EA to conclude that a Statement is not necessary, the EA should take immediate steps, in consultation with parents, to secure a more appropriate placement for the child.

4.23 Emergency placements, by the EA, may be required in the following circumstances:

- a school age child moves to Northern Ireland from another jurisdiction with a Statement or equivalent; or
- a child arrives unexpectedly in Northern Ireland exhibiting such learning difficulties that an assessment is required, on completion of which the EA should consider the need to make a Statement. The EA should consult the relevant party and those immediately concerned, including, where possible, the previous jurisdiction's education authority. The EA should establish the nature of the child's SEN and the most appropriate interim placement. It should seek to place the child as soon as possible where their needs may most appropriately be met. An emergency placement should be made only when the EA, the relevant party, school and any pertinent professionals who will be involved in the assessment are all agreed that the child's needs require such action to be taken immediately.

## **Non-statutory, Private or Voluntary Pre-school Education**

4.24 DE-funded non-statutory, private or voluntary pre-school education settings are

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<sup>6</sup> Article 7A (Duty to educate children with special educational needs in ordinary schools).

expected to follow broadly the same procedures as grant-aided schools for identifying children who have, or may have, SEN. Unlike grant-aided schools, these non-statutory settings cannot make a request for an assessment. They may however, draw a child to the attention of the EA as possibly having SEN. Once the EA becomes aware of a child in these circumstances, the EA, operating under the same principles which underpin supports made available to grant-aided nursery settings, should ensure that consideration is given to providing the resources, advice and support, through the EA's plan of arrangements for services for children under compulsory school age.

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## **STEP 2**

### **EA CONSIDERATION OF WHETHER TO MAKE A STATUTORY ASSESSMENT**

4.25 Following a request for a statutory assessment or the child having otherwise been brought to its attention, the EA is required to determine whether an assessment of the child's educational needs is necessary. The EA should accurately record the date of receipt of the request for an assessment from a relevant party or a school on the day of receipt as under paragraph 4.9.

4.26 This consideration stage is in keeping with the graduated response to the identification, assessment and making the provision which a child's learning difficulty calls for. Following consideration of information about the child's learning difficulty and actions taken to address those needs, the outcome of this Step will be a decision by the EA to, either:

- make a statutory assessment of the child's educational needs; or
- not to make a statutory assessment.

4.27 Within 5 days of the EA forming an opinion that it may be necessary for it to determine the special educational provision which the child's learning difficulty or difficulties calls for, the EA is required to serve an **Article 15(1) Notice** to the relevant party. Where a request for an assessment came from a school, the EA is required to serve an **Article 20A(3) Notice** to the relevant party, within 5 days from the date of receipt of the request.<sup>7</sup> (See paragraph 4.2 and Glossary "serve a Notice" with regard to use of available electronic communications to transmit Notices).

4.28 The required content of the EA's decision Notices, whichever is appropriate, is set out in Information Box 4.3 below. **Annex 10** (EA Statutory Decision Notices and Summary Content) provides a summary of the required content of each of the required Notices in the 1996 Order.

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<sup>7</sup> Draft regulation 14 (1) and (3) (Time limits and prescribed information relating to assessment).

## **Advice and Information to be Sought by the EA at Consideration Stage**

4.29 Where the EA is considering whether to make an assessment, it may seek advice and information from any or all listed below. It need not be in writing but is required to be provided as soon as is reasonably practicable. Those from whom the EA may seek advice and information, at this consideration stage, may include:

- a) the principal or proprietor hereafter referred to principal of any school which the child is currently attending;
- b) any institution in Northern Ireland, other than a grant-aided school or in an institution outside of Northern Ireland, at which the child is receiving special educational provision;<sup>8</sup> and
- c) any person responsible for the educational provision of a child.<sup>9</sup>

4.30 Given the importance and relevance of the child's PLP in setting out the nature of a child's learning difficulties and the action which has been taken by a school, the school, should, as a matter of good practice, share the PLP with the EA, subject to the relevant party's consent. In so doing maximum use should be made of available technology and electronic communication, and in line with arrangements put in place by the EA. The PLP will help inform the EA's consideration of whether an assessment is necessary at Step 2.

4.31 The EA should have suitable arrangements in place to quickly establish if the child is known by any of its services made available through the EA's plan of arrangements for special educational provision (paragraph 2.17). Sharing of the PLP by the school (subject to appropriate consent), will help EA quickly establish if the child is known to the EA. In particular, information about whether the child concerned has received, or is receiving, special educational provision from an EA service or if a school has requested EA support at Stage 2 for the child concerned, which has not yet been made available. (See paragraph 2.21).

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<sup>8</sup> Article 10(1) (Special educational provision otherwise than in a grant-aided school).

<sup>9</sup> Draft regulation 9 (1) (Advice and information to be sought by the EA at consideration stage).

4.32 The EA should be mindful that the assessment process can be stressful and should seek to present information in a manner which encourages participation and open discussion. Direct engagement, along with the information about assessment, can provide an early opportunity for the relevant party to ask any questions and for consent to be sought on a contingency basis to any medical examination and psychological assessment of the child should the EA decide, in applying its criteria as developed under (see paragraph 4.39 to 4.41), that an assessment is necessary.

4.33 If partnership relationships between the school and the relevant party have been working as they should, this will not be the first indication to the relevant party of the possibility of an assessment by the EA. The EA should provide the relevant party with a clear outline of the assessment process. (See Section 11 and paragraphs 4.13 to 4.14).

#### **Statutory Timeframe for EA to Make a Decision on Whether to Make an Assessment**<sup>10</sup>

4.34 Not later than **4 weeks** following the service of the **Article 15(1)** or **Article 20A(3) Notice**, whichever is appropriate, the EA is required to serve the relevant party a Notice of its decision on whether it is necessary for an assessment to be completed<sup>11</sup>. (See paragraph 4.2 and Glossary “serve a Notice” with regard to use of available electronic communications to transmit Notices).

4.35 Where, as a consequences of the circumstances, set out below, it has not been practical for the EA to make a decision and serve the appropriate Notice within the required 4 week timeframe, the new timeframe within which the EA is required to serve the appropriate Notice is **6 weeks**.<sup>12</sup> The new upper 6 week timeframe aims to ensure that the EA makes decisions without avoidable delay and keep the momentum of the process moving, on to the next Step if appropriate. The circumstances (or valid exceptions) referenced above are as follows:

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<sup>10</sup> Draft regulation 14(4) (Time limits and prescribed information relating to assessment).

<sup>11</sup> Draft regulation 14(4) (Time limits and prescribed information relating to assessment).

<sup>12</sup> Draft regulation 15(2) (Exceptions).

- a) **exceptional circumstances** that affect the relevant party during the 4 week period; or
- b) the relevant party was absent from Northern Ireland for a continuous period of not less than 2 weeks during that 4 week period<sup>13</sup>.

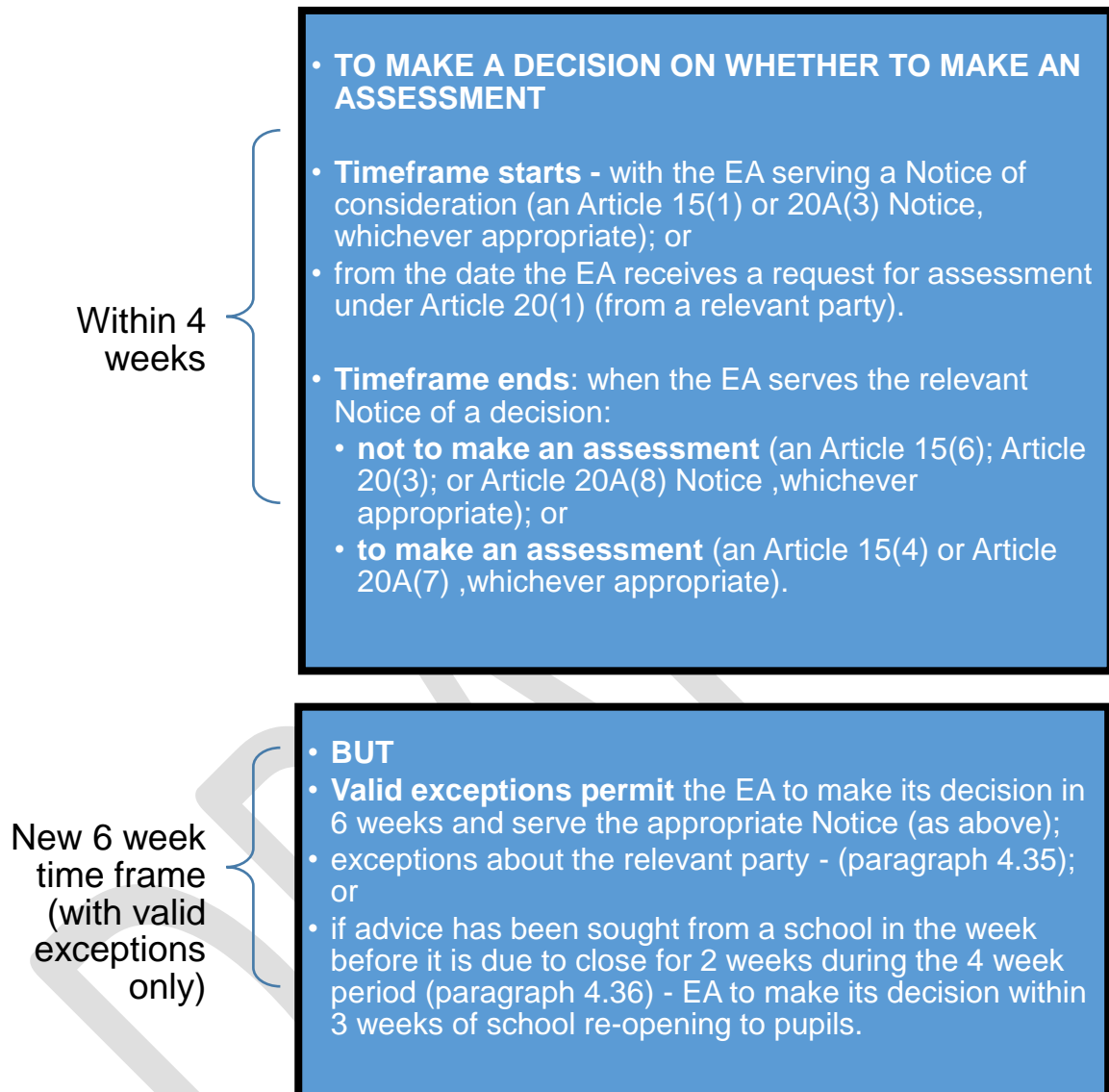
4.36 In the event of the EA, seeking advice and information from a principal of a school, in a week immediately before the school is due to close, for a continuous period of 2 weeks (or more) during the 4 week period, and it has not been practicable for the EA to make its decision, the **new timeframe for the EA to make its decision is within 3 weeks of school re-opening to pupils**.<sup>14</sup> Diagram 4.2 below sets out a summary of the timeframes associated to this consideration stage. In addition, **Annex 9** provides a summary of the Statutory Assessment and Statementing Processes – complete Timeframes, Upper Timeframes and Exceptions.

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<sup>13</sup> Draft regulation 15(3) (Exceptions).

<sup>14</sup> Draft regulation 15(4) and (5) (Exceptions).

**Diagram 4.2: Timeframe and New Timeframe (only with valid exceptions) for EA to Make its Decision on whether to Make an Assessment<sup>15</sup>**



<sup>15</sup> Draft regulation 15(3), (4) and (5) (Time limits and prescribed information relating to assessment).

### Information Box 4.3: Required Content of Article 15(1) and Article 20A(3) Notices

An Article 15(1) or Article 20A(3) Notice is required to include:

- that the EA is considering making an assessment;
- the procedures to be followed when considering making the assessment;
- the name of the EA officer who will be the relevant party's Named Officer during consideration (and also if the decision is taken that an assessment is necessary);
- the right of the relevant party to make representations and submit written evidence to the EA within **22 days of the date of the Notice**;
- the fact that if representations are received earlier than the 22 days, the EA may proceed to make an assessment, if it considers it is necessary, and the relevant party has given consent in writing to the EA to do so;
- information under Article 13 of the General Data Protection Regulations;
- the availability of advice and information from the Authority under Article 21A of the 1996 Order as amended;
- the arrangements with a view to avoiding or resolving disagreements under Article 21B of said Order between:
  - (i) the EA or Board of Governors of grant-aided schools (on one hand) and the relevant party (on the other hand) about their functions in relation to children who have, or may have, SEN; or
  - (ii) the Board of Governors or principal of a relevant school (on one hand) and a young person with SEN attending that school or the parent of a child (on the other), in relation to the special educational provision being made for the child.

### Representations and Written Evidence<sup>16</sup>

4.37 The relevant party has a right to make representations, and submit written evidence to the EA for the purpose of the EA's consideration of whether to make an assessment. Should the relevant party wish to make representations and/or submit evidence they are required to do so within 22 days of the date the Article 15(1) or Article 20A(3) Notice was served (see paragraph 4.27). However, if the relevant party has provided representations and evidence earlier than the 22 days, the EA may proceed to make an assessment if it has obtained written consent from the relevant party to do so - Article 15(3A) refers.

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<sup>16</sup> Article 15 (Assessment of Educational Needs).

4.38 The EA should encourage the relevant party to make such representations and to submit evidence and to make maximum use of available technology and electronic communication to do so, pointing out the importance of their contribution. If, exceptionally, representations are made orally, the EA should agree a written summary with the relevant party.

### **Criteria for Deciding Whether it is Necessary for the EA to Make a Statutory Assessment**

4.39 There are a number of key considerations for the EA to ensure it effectively determines whether it may be necessary for it to make an assessment under Article 15 (or make a Statement of SEN under Article 16). These include:

- a) whether the child's special educational needs are significant and/or complex;
- b) whether there is evidence that the child's school has made full use of the range of the special educational provision (reasonable adjustments, strategies and supports) available to it in relation to the child in question and, evidence detailing the EA support which has supplemented the school provision for the child (through the EA's arrangements for special educational provision at Stage 2) and, that despite all of this, the child is not making adequate progress (see paragraph 3.13); and
- c) whether the child is unable to access the curriculum or be included in the day-to-day activities of the school without special educational provision, which cannot reasonably be provided within the resources normally available to mainstream schools including Stage 2 special educational provision (as at b).

4.40 The EA shall use criteria to determine when to conduct a statutory assessment. This criteria shall effectively reflect both, the Department's guidance on *SEN and Medical Categories* (2019) <https://www.education-ni.gov.uk> and the requirements of the SEN Framework as contained in this Code. In applying the criteria the EA shall make the best use of the resources available to it.

4.41 The principles on which the EA's criteria for deciding whether it is necessary to make an assessment (or, as appropriate, make a Statement) should be based are:

- a) The EA should not apply a blanket policy to particular groups of children or certain types of need, as this would prevent the consideration of a child's individual needs and merits.
- b) The EA should ensure the criteria is consistently applied across Northern Ireland in a timely and efficient manner.
- c) The EA should keep bureaucracy to a minimum and operate within the statutory time limits.
- d) The EA should make best use of the resources available to it and ensure that those engaged in statutory operations fully understand and consistently apply the criteria and have the autonomy to make decisions on whether an assessment is needed (or as the case may be, a Statement is needed).
- e) In keeping with the efficient use of resources, only where there is uncertainty on whether or not to make an assessment (or make a Statement), should referral be made to a wider group or panel to make a decision.

4.42 As under paragraph 4.21, there may be exceptional individual circumstances in a particular child's case, where in the best interests of the child, the EA may have to depart from the criteria. This may include, for example, if a child's medical circumstances have changed suddenly causing a rapid and serious deterioration in health/development or as a result of a serious injury or accident.

4.43 In considering whether it is necessary for the EA to make an assessment, the *EA must act on all information and evidence it has available at the time including*<sup>17</sup>:

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<sup>17</sup> Judicial Review outcome – LC versus NEELB (on a point of general public importance, namely on the Board should approach applications from parents for statutory assessments).



- a) evidence of the school's assessment of the child's learning difficulties;
- b) the category, type and severity of the child's SEN;
- c) evidence of the full range of special educational provision which schools would normally be expected to deliver (reasonable adjustments, strategies, supports – namely approaches already implemented) and, of EA resources, advice, support and training and targeted support to the individual child, as at Stage 2, based on the nature of their learning difficulties;
- d) evidence of the child's academic attainment in school and non-academic factors;
- e) any representations made or evidence submitted, by or at the request of the relevant party concerned;<sup>18</sup>
- f) the views of the child concerned; and
- g) any medical or other difficulties which are impacting on the child's learning.

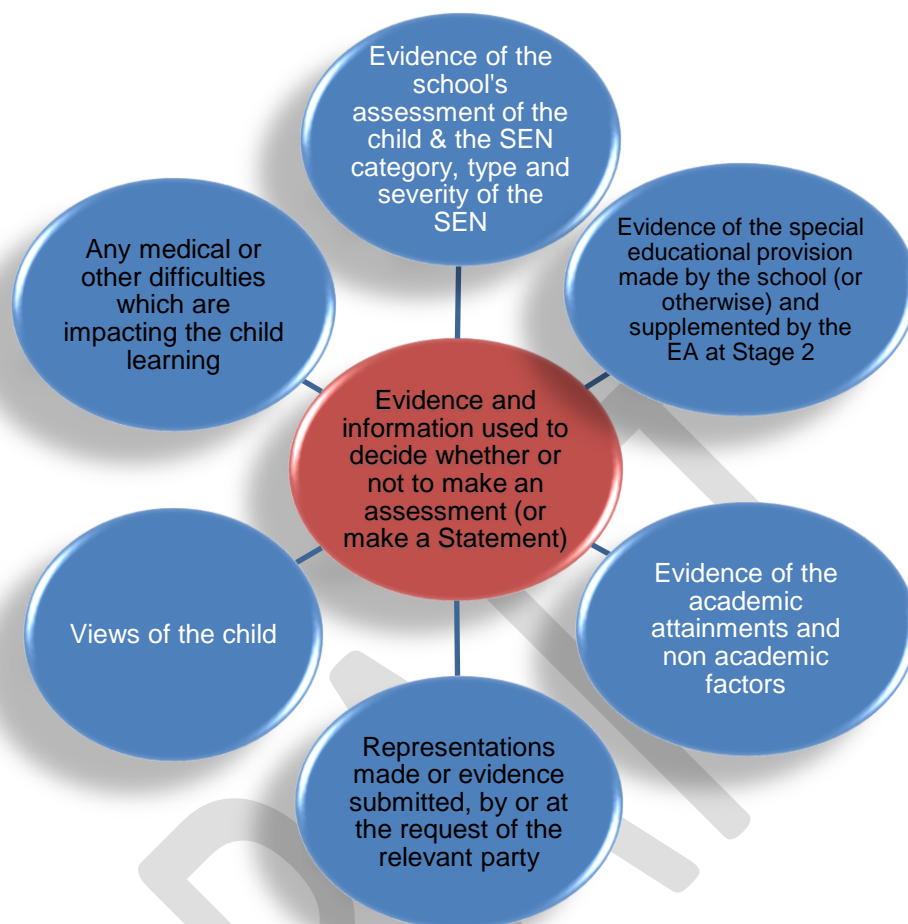
4.44 The child's PLP will be a key source of educational advice and information for the purpose of EA's consideration of whether a statutory assessment is necessary. (See paragraph 4.30 and Diagram 3.9 in Section 3.

**Key point: A prime source of educational advice and information to inform the EA's decision at consideration stage should be the child's current school year PLP.**

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<sup>18</sup> Draft regulation 13 (Matters to be taken into account when making an assessment).

**Diagram 4.3: Evidence and Information to Consider for Deciding whether to Make an Assessment**



### **Academic Attainment**

4.45 The child's academic attainment is one of the indicators which will be used by the EA in deciding whether it is necessary to carry out a statutory assessment of the child's educational needs. School assessments, both formative (continuous/diagnostic) and summative, whether formal or informal, carried out in the context of the curriculum will therefore supply important evidence.

4.46 The EA should have regard to:

- teachers' own recorded assessments of the child's classroom work;
- the child's PLP including the special educational provision made for the child,

the child's response to the provision and progress made; and

- any portfolio of the child's work compiled to illustrate progress.

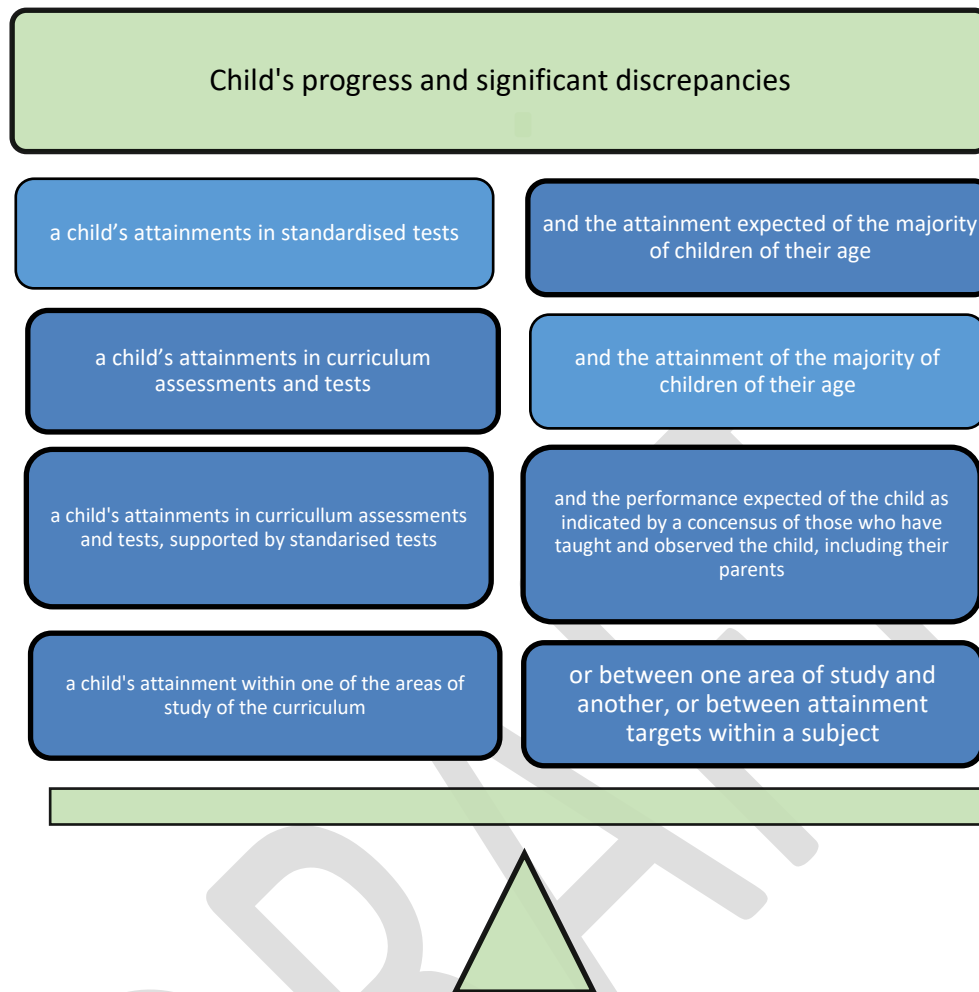
4.47 The above will not be sufficient for the EA to decide whether a statutory assessment is necessary as the facts must always be interpreted in the context of:

- a) the child's cognitive ability;
- b) the attainments of the child's peers;
- c) the child's progress over time; and, where appropriate,
- d) expectations of the child's performance.

4.48 A child's progress (see paragraph 3.13) and apparently weak performance may, for example, be attributable to factors in the quality of the school's special educational provision at Stage 1 or as supplemented by the EA at Stage 2. Careful consideration of evidence of low attainment may reveal good progress from a low base. On the other hand, apparently satisfactory attainment may be found to fall far short of the performance expected of the child as assessed by their teachers, parents and others, including educational psychologists, who have observed the child closely, and, where appropriate, by standardised tests.

4.49 The EA should have effective and responsive arrangements in place to allow schools to alert them to a child's progress where there is significant discrepancies between the child's attainment with others.

**Diagram 4.4: Child's Progress and Significant Discrepancies**



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### **Non-academic Factors**

4.50 At the same time, the EA should always seek evidence of non-academic factors. In all cases, they should ask whether there is any evidence of:

- a) problems with the child's health or a medical condition which may have led to absences from school, or difficulty in concentrating or participating in the full range of curriculum activity;
- b) sensory needs, e.g. hearing loss or visual problems;
- c) speech, language and communication needs;

- d) family circumstances;
- e) problems with, or deterioration in, peer relationships (including bullying) and/or relationships with adults;
- f) any social, behavioural, emotional, or well-being needs; or
- g) children in specific circumstances e.g. children who are newcomer, children who are looked after. (See Section 10).

### **Learning Difficulties**

4.51 The EA will wish to see evidence of the learning difficulties identified as recorded in the child's PLP including actions taken by teachers and the LSC; and the actions formulated, monitored and evaluated in conjunction with EA support at Stage 2. The EA should seek evidence that the school has made use of, and acted upon, information from the relevant party, advice from the EA made available through the EA's plan of arrangements for special educational provision and has involved the relevant party in addressing the child's learning difficulties.

4.52 In cases where the relevant party, expresses a concern to the school, the EA should seek evidence that the school has investigated that concern thoroughly, in the same way as it would have done if it had come from the child's teacher. (See paragraph 3.28).

### **STEP 2: Outcome of EA's Consideration of Whether to Make an Assessment**

4.53 The EA, on examining the available advice and information, as under paragraph 4.43 and applying its criteria for determining whether a statutory assessment is necessary, the EA is required to determine the outcome of STEP 2 within the timeframe(s) as set out in paragraphs 4.34 to 4.36.

## Outcome: EA decision that a Statutory Assessment is Not Necessary

4.54 Where the EA's decision is that it is not necessary for it to make an assessment, the EA is required to serve on the relevant party, within the required statutory timeframes, an:

- **Article 15(6) Notice**, where the EA had initiated the consideration of whether an assessment was necessary and determined an assessment is not necessary;
- **Article 20(3) Notice**, where a relevant party had asked the EA to arrange an assessment and the EA has decided not to comply with the request;<sup>19</sup> or
- **Article 20A(8) Notice**, where a school requested an assessment and the EA has decided not to comply with the request.

4.55 In applying the principles regarding advice and information, set out in Section 11, any Notice issued should, as a matter of good practice, be clear, easy to understand and jargon free. See paragraph 5.2 and Glossary "serve a Notice" with regard to use of available electronic communications to transmit Notices. Where the relevant party is a young person who has not yet reached age 18, the EA must inform the parent that a notice of the EA's decision not to make an assessment has been served and provide them with a copy of the Article 20(3) Notice. (Also see paragraph 4.11).

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<sup>19</sup> Draft regulation 14(2) (Time limits and prescribed information relating to assessment).

## Information Box 4.4: Required Content of Article 15(6), Article 20(3) and Article 20A(8) Notices

Article 15(6), Article 20(3) and Article 20A(8) Notices are required to include:

- the decision not to comply with the request for the assessment;
- the reasons for the EA's decision;
- the availability of advice and information from the EA under Article 21A of the 1996 Order as amended;
- the arrangements under Article 21B of said Order with a view to avoiding or resolving disagreements between:
  - (i) the EA or Board of Governors of grant-aided schools (on the one hand) and the relevant party (on the other hand) as functions in relation to children who have, or may have, SEN;
  - (ii) the Board of Governors or principal of a relevant school (on one hand) and a young person with SEN attending that school or the parent of a child (on the other) in relation to the special educational provision being made for the child;
- the school arrangements for making special educational provision at Stage 1 and EA provision along with the school at Stage 2 and the schools arrangements for monitoring and review;
- information about mediation arrangements for a person who intends to appeal to SENDIST;
- the right to appeal the decision to SENDIST (Articles 20(3) and 20A(8) only); and
- the requirement under Article 21C of said Order to obtain a mediation certificate before any appeal can be made to SENDIST.

### Outcome: EA Decision is a Statutory Assessment is Necessary

4.56 If, the EA forms the opinion that it is necessary to make a statutory assessment, within the statutory timeframe in paragraphs 4.34 to 4.36, the EA is required to serve on the relevant party (see paragraph 5.2 and Glossary “serve a Notice” with regard to use of available electronic communications to transmit Notices), an:

- **Article 15(4) Notice** (if the EA initiated the request or if the request came from a relevant party); or
- **Article 20A(7)** (if the request came from the child’s school) advising of its decision.

#### Information Box 4.5: Required Content of Article 15(4) and Article 20A(7) Notices

Article 15(4) and Article 20A(7) Notices are required to include:

- the decision to make an assessment;
- the reasons for making the decision;
- the availability of advice and information from the EA under Article 21A of the 1996 Order as amended;
- the arrangements under Article 21B of said Order with the view to avoiding or resolving disagreements between
  - (i) the EA and the Board of Governors or grant-aided schools (on one hand) and the relevant party (on the other) about their functions;
  - (ii) Board of Governors or principal of a relevant school (on the one hand) and the relevant party (on the other hand) under Article 21B of the 1996 Order as amended; and
- information under Article 13 of the General Data Protection Regulations.

4.57 Where the relevant party is a young person who has not yet reached age 18, the EA is required to inform the parent that a Notice of the decision to make an assessment has been served and provide the parent with a copy of the Article 15(4) and Article 20A(7) Notice. Where electronic communication is available to the parent, and with their agreement, the copy of the Notice may be transmitted using this method. (See Section 13 regarding assistance and support or if the young person lacks capacity to exercise their rights).



**STEP 3**  
**MAKING A STATUTORY ASSESSMENT**

4.58 This is the third Step of the assessment process. It is in the interests of all concerned that the assessment is conducted, and if appropriate, a Statement completed, as quickly as thorough consideration of the issues relating to the individual child allows. The outcome of this Step, based on the advice and information provided for the purpose of statutory assessment, will be a decision by the EA to, either:

- make a Statement;
- not to make a Statement.

4.59 This Step involves a detailed assessment of a child's educational needs by the EA. In so doing the EA is required to seek advice and information on:

- a) the special educational needs of the child;
- b) what provision that may be required to meet the child's special educational needs; and
- c) the outcomes that are intended to be achieved by the child in receiving that provision.<sup>20</sup>

4.60 The EA is required to seek the above information, using available technology and electronic communication, where possible, from any or all, of the following:

- a) information from the relevant party (see paragraph 4.78);
- b) educational advice and information (see paragraph 4.81);
- c) psychologist advice and information from an educational psychologist (see paragraph 4.85);

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<sup>20</sup> Draft regulation 10(2) (Advice to be sought by the EA).

- d) health advice and information from a registered health care professional identified as appropriate by the relevant HSC Trust (see paragraph 4.88);
- e) advice and information in relation to social care from a social worker (if appropriate), as identified by the relevant HSC Trust (see paragraph 4.95); and
- f) any other advice and information which the EA considers appropriate or which the relevant party reasonably requests that the EA should seek. (See paragraph 4.96).<sup>21</sup>

4.61 The EA is required to seek the advice and information, at the same time as the issue of the Article 15(4) or Article 20A(7) Notice. (See paragraph 4.56).<sup>22</sup> All requests for advice and information should specify a date by which it must be submitted to the EA. The timeframe within which any advice and information is to be submitted to the EA is included in paragraph 4.65.

4.62 The EA must consider all representations and evidence submitted by the relevant party in completing the assessment. During the gathering of advice and information for the purpose of the assessment, if the EA considers it necessary, it may provide the person from whom the advice and information is being sought, copies of any or all of the representations made and evidence submitted during the consideration stage (of whether an assessment was necessary (Step 2 refers). The EA should only share such representations and evidence if the young person or the parent of any other child has provided the EA with consent to do so.<sup>23</sup> The EA is required to apply the requirements of GDPR at all times.

**Key point: The EA should only share parental or young person representations and evidence to a person from whom advice and information is being sought if the young person or the parent of any other child has provided the EA with consent to do so.**

<sup>21</sup> Draft regulation 10(1) (Advice to be sought by the EA).

<sup>22</sup> Draft regulation 10(3) (Advice to be sought by the EA).

<sup>23</sup> Draft regulation 10(6) (Advice to be sought by the EA).

4.63 The EA is not required to seek any of the advice above if it has previously been provided for any purpose and the EA, relevant party and advice givers are all satisfied that the advice and information previously provided is sufficient to make a satisfactory assessment.<sup>24</sup> The EA should put arrangements in place to determine if the relevant party and advice givers are satisfied e.g. should a request for a re-assessment be made.

4.64 With the relevant party's permission (Article 12A(2)(a)), and within the context of co-operation between the EA and HSC Trust authorities (in the identification, assessment and provision of services which a child's SEN calls for), a copy of the **current educational psychology report** and/or the **current PLP for the child** concerned, may be provided to the HSC Trust, to help their understanding of the child's SEN and inform their advice and information using electronic communication.

**Key point: The EA can only share copies of representations and/or evidence to those from whom advice has been sought for the purpose of statutory assessment, if the relevant party has provided their written consent to do so.**

#### **Timeframe for Submitting Advice and Information to the EA (other than from a HSC Trust)**

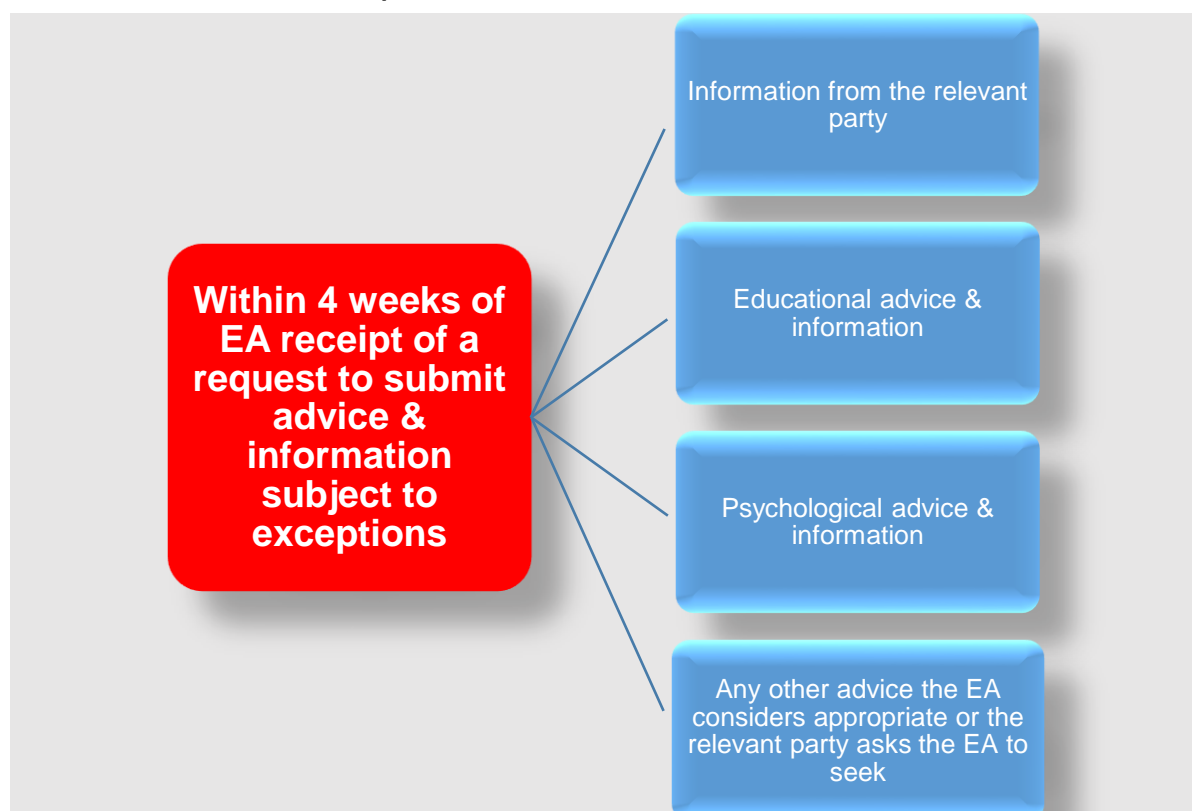
4.65 The time within which advice and information is required to be submitted to the EA (excluding advice and information from a HSC Trust) is **4 weeks**.<sup>25</sup> The start date of this 4 weeks is the date the person or body receives the EA's request for advice and information.

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<sup>24</sup> Draft regulation 10(7) (Advice to be sought by the EA).

<sup>25</sup> Draft regulation 10(4) (Advice to be sought by the EA).

**Diagram 4.5: Time for Submitting to the EA Advice and Information (other than advice from a HSC Trust)**



4.66 Where the EA has requested advice and information from a school or an educational psychologist in a week which is a week immediately before the school is due to close for a continuous period of not less than 2 weeks, the new timeframe to provide the advice and assistance shall be **3 weeks** from the date the school reopens to pupils.

#### **Timeframe for HSC Trust to Submit Advice and Information**

4.67 Where it appears to the EA that a HSC Trust could help it to make an assessment, the EA is required to request that help through seeking health and/or social care advice and information. The normal timeframe within which **health and social care advice and information** is required to be submitted from a HSC Trust is within **6 weeks**.<sup>26</sup> Where the EA has requested advice from a HSC Trust, and the Trust advises the EA in writing, that it is not practicable for it to meet the 6 week

<sup>26</sup> Draft regulation 10(4) (Advice to be sought by the Authority).

timeframe, for the reasons set out below, it may write to the EA to seek an extension to it, noting that the EA may only give an extension once.<sup>27</sup> The reasons include:

- a) exceptional circumstances affect the relevant party during that 6 week period;
- b) the relevant party was absent from Northern Ireland for a continuous period of not less than 4 weeks during the 6 week period;
- c) the relevant party fails to keep an appointment for an examination or test during the 6 week period; or
- d) the relevant HSC Trust has not, before the date on which it received the request for advice or information, produced or maintained any information or records relevant to an assessment of the child under Article 15.<sup>28</sup>

4.68 The EA may agree that the 6 week timeframe for a HSC Trust to be extended for a further period of up to 6 weeks.<sup>29</sup>

4.69 Within the context of co-operation (see Section 9) the EA and the HSC Trusts, should, as a matter of good practice, implement agreed protocols and use an agreed pro-forma for requesting any extension to submitting advice and information and for EA responding to the request.

4.70 It is important that health and social care advice and information from a HSC Trust should not pre-empt any decision by the EA as to any matter which is required to be specified in a Statement (under Article 16) should the EA determine that a Statement is required<sup>30</sup>.

**Key point: HSC Trust advice and information timeframe for receipt is 6 weeks subject to request for an extension of time and certain exceptions.**

<sup>27</sup> Draft regulation 15(20) (Exceptions).

<sup>28</sup> Draft regulation 15(10) and (11) (Exceptions).

<sup>29</sup> Draft regulation 15(10) (Exceptions).

<sup>30</sup> Draft regulation 10 (3) (Advice to be sought by the EA).

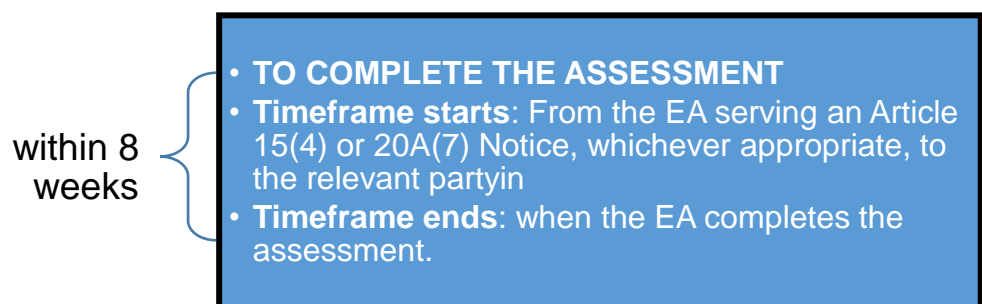
**Diagram: 4.6: Timeframe for Receipt of Advice and Information from a Relevant HSC Trust**



### Statutory Timeframe for EA to Complete an Assessment

4.71 Annex 9 provides an overall summary of the Statutory Assessment and Statementing Processes – Statutory Timeframes, Upper Timeframes and Exceptions. In normal circumstances, the EA is required to complete the assessment within **8 weeks** of serving an Article 15(4) or Article 20A(7) Notice (of the EA’s decision to make an assessment), whichever is appropriate. This 8 week timeframe is subject to certain exceptions.<sup>31</sup>

**Diagram 4.7: Timeframe for EA to Complete an Assessment**



<sup>31</sup> Draft regulation 14(8) (Time limits and prescribed information relating to assessment).

4.72 Where the EA has sought advice and information from anyone other than a HSC Trust, and, where as a consequence of certain circumstances, it has not been practicable for the EA to complete the assessment within the 8 week timeframe, the new timeframe may be **extended up to a period of 12 weeks**.<sup>32</sup> The circumstances are:

- a) exceptional circumstances affect the relevant party during that 8 week period;
- b) the relevant party was absent from Northern Ireland for a continuous period of not less than 4 weeks during the 8 week period;
- c) the relevant party fails to keep an appointment for an examination or test during that 8 week period; or
- d) in exceptional circumstances, after receiving advice it is necessary for the EA to seek further advice.<sup>33</sup>

4.73 Where the EA has requested advice from the principal of a school or the educational psychologist, in a week immediately before the school is due to close, for a continuous period of not less than 2 weeks, and it has not been practicable for the EA to complete the assessment within the 8 week timeframe, the new timeframe for the EA to make its decision is within 3 weeks of school re-opening to pupils.<sup>34</sup>

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<sup>32</sup> Draft regulation 15(6) (Exceptions).

<sup>33</sup> Draft regulation 15(7) (Exceptions).

<sup>34</sup> Draft regulation 15(8) and (9) (Exceptions).

**Diagram 4.8: New Timeframe for EA to Complete Assessment – EA Exceptions  
(other than when HSC Trust exceptions apply)**

**Within 12 weeks - new timeframe (with exceptions - other than HSC Trust exceptions)**

- **Valid exceptions (not relating to HSC Trust advice) permit** the EA to complete the assessment within 12 weeks. These include:
- exceptions about the relevant party - paragraph 4.72; or
- if advice has been sought from a school in week before it is due to be closed for 2 weeks during the 8 week period - paragraph 4.73 - EA to complete the assessment within 3 weeks of school re-opening to pupils.

4.74 Where the EA has sought advice and information, and, under paragraph 4.68, the EA has agreed to a request from a HSC Trust to extend the timeframe for submitting advice and, as a consequence, it has not been practicable for the EA to complete the assessment within the 12 week timeframe, a new (upper) timeframe within which the EA is required to complete the assessment is **14 weeks**.<sup>35</sup> (See Annex 9).

**Diagram 4.9: New Timeframe for EA to Complete Assessment – HSC advice and information Exceptions**

**Within 14 weeks - new timeframe (HSC Trust exception applies)**

- **Valid exceptions relating to HSC Trust advice permit** the EA to complete the assessment in 14 weeks - paragraphs 4.68 and 4.75
- **The EA must complete the assessment, with or without advice and information from a relevant HSC Trust in 14 weeks** from the serving of the Article 15(4) or Article 20A(7) Notice, whichever appropriate.

<sup>35</sup> Draft regulation 15(12) (Exceptions).



4.75 Where:

- a) the relevant HSC Trust has sought and been granted an extension by the EA (under paragraph 4.68); and
- b) due to the failure of the relevant party to co-operate e.g. failure to attend appointments, it has still not been possible for the HSC Trust to provide the EA with the advice (with 12 weeks),

the EA is required to complete the assessment within **a maximum timeframe of 14 weeks**. In these circumstances, the EA is required to complete the assessment despite the absence of advice and information from the HSC Trust. Where HSC Trust advice has not been received, the EA, should as a matter of good practice advise the relevant HSC Trust that it is moving to make its decision. The EA must make their decision based on all other representations made, previous advice, information and evidence available to it at that point in time.<sup>36</sup>

**Key point: The EA is required to complete the assessment within a maximum timeframe of 14 weeks – with or without advice and information from the HSC Trust. The upper timeframe aims to ensure that the completion of an assessment is time bound, so to facilitate speedy decision making and to allow the relevant party to exercise their rights.**

4.76 The upper time limits set out the end to end period within which an assessment is to be completed by the EA. It aims to improve clarity for parents and ensure that the EA makes decisions without delay to allow the process to move to the next stage, if appropriate.

4.77 In keeping with the principles set out in Section 11 (Advice and Information), the EA should ensure that parents and young people are made aware of the importance of co-operating with the HSC Trust in order to fully inform the outcome of the completed statutory assessment.

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<sup>36</sup> Draft regulation 15(12) (Exceptions).

## Information from the Relevant Party and the Child

4.78 The representations, evidence and any further information provided under paragraph 4.62, will inform discussions between advice givers (EA or otherwise) and the relevant party about the child's needs. This should include views from the child concerned given the legal duty on the EA under Article 5A of the 1996 Order. Such discussions, and the eventual written advice and information, may include consideration of the type of school in which the child's needs might be best met. This will be determined by the EA at a later stage if the outcome from the assessment is that a Statement should be made. It is most important that any discussions between advisers and the relevant party should not appear either to commit the EA or to pre-empt the right of the relevant party to state a preference or make representations to the EA. (See Section 5 for naming of school).

4.79 The relevant party may also find it helpful to talk to the named EA Officer with responsibility for the assessment. Contact information about the named officer should previously have been provided to the relevant party. This role will be particularly important if they have difficulty in writing or preparing a report or if their first language is not English. In such circumstances, the named EA Officer should prepare an agreed note of their views for inclusion with the advice relating to the assessment. Where the relevant party has been receiving guidance and support from someone independent of the EA, they should be encouraged to seek that person's help in preparing their views and to invite them to attend any meetings. (See Section 13 where the relevant party is a young person).

4.80 Parents should be informed of their right to be present with their child at any interview, test, medical or other assessment which may be necessary to help inform deliberations during the assessment process. In the case of a young person, a parent may be present at an examination if the young person agrees to their attendance. Either way, the relevant party should be told of the time and place of appointments. Where appropriate, it should be explained to the relevant party that some procedures are more effectively carried out without others being present for example, where a classroom observation forms part of an assessment, the child will behave differently if the parent is present.

## Educational Advice <sup>37</sup>

4.81 For the purpose of making an assessment, the EA is required to seek educational advice and information (which should not be sought from any person who is not a teacher).<sup>38</sup> The educational advice is required to be sought from:

- a) the principal of each school the child is currently attending or which they have attended at any time in the preceding 12 months;
- b) **if the child is not attending a school**, from a person whom the EA is satisfied has experience of teaching children with SEN or knowledge of the differing provision which may be called for to meet those needs. If such a person is not available, then the advice should be sought from a person responsible for the education of the child; or
- c) if any of the child's parents is a serving member of Her Majesty's armed forces the educational advice should be sought from the relevant Directorate of the Ministry of Defence.<sup>39</sup>

4.82 Where advice has been sought from a school principal as above, and the principal has not personally taught the child within the preceding 12 months, the advice and information must be given after consultation with a teacher who has taught the child. The educational advice is required to include any current PLP and the steps taken by the school to identify, assess and meet the special educational needs of the child.<sup>40</sup> (See paragraphs 3.75 to 3.89).

4.83 In light of the evidence received from the school, the EA should consider whether it should seek separate advice from a teacher or professional from any EA service involved with the child over the preceding year. This would usually be the specialist working with the child and the school at Stage 2. The services provided

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<sup>37</sup> Draft regulation 11 (Educational advice) of the draft SEN Regulations.

<sup>38</sup> Draft regulation 11(1) (Educational advice) of the draft SEN Regulations.

<sup>39</sup> Draft regulation 11(1) (Educational advice).

<sup>40</sup> Draft regulation 11(3) (Educational advice).

through these arrangements may have a knowledge of, or is providing special educational provision to, a child of school age or a child who is not yet of school age (who has been drawn to the EA's attention as possibly having SEN). The EA should ensure suitable arrangements are in place to secure such advice and information.

4.84 If it appears to the EA, as a consequence of health advice and information from a registered health care professional or other advice giver, that the child has a hearing impairment, a visual impairment, or both a hearing and a visual impairment, the EA is required to seek advice from a person suitably placed to give advice in relation to those matters.<sup>41</sup>

### **Psychological Advice**

4.85 The EA is required to seek psychology advice and information from an educational psychologist.<sup>42</sup> The educational psychologist from whom the EA seeks advice and information is required to be a psychologist regularly employed by the EA as an educational psychologist or engaged by the Authority as an educational psychologist in the case in question.<sup>43</sup>

4.86 The educational psychology advice should follow an agreed format and ensure compliance with the requirements for continued registration with the Health and Care Professions Council (HCPC). A wide range of factors which might affect the child's functioning should be addressed. These may include: cognitive functioning; communicative skills; perceptual skills; adaptive and personal and social skills; the child's approaches and attitudes to learning, including capacity to concentrate; educational attainments; and the child's self-image, interests and behaviour. Educational psychologists may need to liaise with occupational therapists and physiotherapists for advice when investigating motor skills and their relationship to perceptual skills.

4.87 In most cases, the EA educational psychology service will have had a long-

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<sup>41</sup> Draft regulation 11(4) (Educational Advice).

<sup>42</sup> Draft regulation 10(1) (Advice to be sought by the EA).

<sup>43</sup> Draft regulation 12 (Psychological advice).

term relationship with a particular child and will be able to contribute a considerable body of information and opinion about the child's progress. In other cases, in addition to examining the child, it may be necessary for the educational psychologist to engage with the EA services provided through the EA's plan of arrangements for special educational provision and/or to observe the child over a period of time in order to formulate a clear picture of their needs. As part of these observations, and depending on the age of the child, the educational psychologist may wish to visit the child and parents at home. The EA will have previously sought agreement of the relevant party to an educational psychologist assessment during Step 2. (See paragraph 4.32).

### **Health Advice and Information**

4.88 Where the EA seeks advice and information from a HSC Trust it is for the HSC Trust to identify the appropriate registered health care professional(s) to provide the health advice and information.<sup>44</sup> It may, for example, include advice and information from:

- Paediatricians – community and/or hospital. This may include advice from specialist services e.g. orthopaedics, neurology, oncology etc.
- Allied Health Professionals – e.g. speech and language therapists, occupational therapists or physiotherapists.
- Relevant nursing staff e.g. health visitors in children under age 4; community children's nurses, specialist nurses.

### **Agreed Education and Health Protocols for the Provision of Advice and Information**

4.89 The health advice and information should be provided in line with the agreed principles, protocols and arrangements (including use of available technology and standard templates for seeking and providing advice and information) and GDPR requirements. Such protocols, between EA and HSC Trusts, should sit within the joint

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<sup>44</sup> Draft regulation 10(1)(d) (Advice to be sought by the EA).

plan for the identification, assessment and providing services to children with special educational needs.<sup>45</sup> (See Section 9).

4.90 In keeping with the advice and information to be sought under paragraph 4.59 that is, the child's SEN, the provision that may be required to meet such needs and the outcomes that are intended to be achieved by the child in receiving that provision, the HSC Trust advice may include advice on: how best to manage the child's medical condition in the school context; special aids or equipment; the management of incontinence; feeding; independence and risk taking; participation and supervision in the playground, while swimming and bathing, and taking part in out-of-school activities; and any non-educational provision which may be needed.

4.91 For some children with complex needs or specific disabilities or medical conditions, a health perspective will be crucial both in the initial assessment and any subsequent reviews. The health advice and information may include any relevant treatment or service which the HSC Trust has assessed as likely to be of benefit in addressing the educational needs of the child. The HSC Trust will not only provide the advice and information on the child's special needs, but may also contribute to the setting of objectives and the review process.

4.92 In keeping with GDPR, medical information about a child should not be disclosed without the consent of the relevant party and, where they have sufficient understanding, the child. Where a child has a serious or life-threatening condition, medical advice should be sought. It is important that the relevant party, is sensitively informed of the probable outcomes. It should never be the case that the relevant party first receives information about the child's condition (with possible reference to terminal illness) when they see the proposed Statement. In these circumstances the HSC Trust should follow its own protocols in relaying such information to the relevant party.

4.93 Where a HSC Trust has not, before the receipt of a request from the EA for advice and information about the child concerned, produced or maintained any

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<sup>45</sup> Article 12A (Cooperation to identify, assess and provide services to children with special educational needs) of the 1996 Order.

information or records relevant to an assessment of the child, every effort should nevertheless be made by the HSC Trust to respond promptly. Such circumstances, may, however, prompt the relevant HSC Trust to seek an extension to the 6 week timeframe for providing advice and information. (See paragraph 4.67). Alternatively, the HSC Trust may have some knowledge of the child as a result of the school seeking medical advice or, in the case of a child who is under compulsory school age, may have informed the EA of their opinion that the child may have a SEN.

### **Reports from Private Professionals**

4.94 Where the relevant party submits reports made by private professionals as part of their evidence about the child, the EA should consider these along with the advice provided by the HSC Trust. With the relevant party's consent, the EA may share the private professional reports with the HSC Trust.

### **Social Care Advice and Information**

4.95 Should the EA identify the need for social care advice, the EA must request it. It is for the HSC Trust to identify the appropriate registered social worker to provide the social care advice and information. In particular:

- a) if the family is not known to social care, and if there is no reason to suppose (from evidence provided by the school or the EA) that the HSC Trust should seek further information, the HSC Trust should say so and need provide no further written advice. However, HSC Trust may combine assessment of children in need under the Children (Northern Ireland) Order 1995 with statutory assessment under education legislation, and the HSC Trust may therefore wish to check whether any information or services might usefully be provided for the child or family;

if the child is receiving social care provision such as day care or is living in a residential or foster home, the HSC Trust should make available to the EA any relevant observations, information and reports arising from such placements;

- b) full details of any Child Care Plan should be provided;
- c) if the child is in the care of a HSC Trust, it should ensure that any relevant information is provided and that social care staff attend assessments and medical examinations as appropriate; and
- d) if the child is, or may become, subject to child protection procedures, the HSC Trust should give appropriate advice and information (Section 10 provides information on approach with regard to looked after children and in particular the creation of the PLP).

### **Other Advice** <sup>46</sup>

4.96 The EA is required to seek any other advice and information which it considers appropriate. This may include, for example, other agencies or individuals who might be able to provide relevant advice and information. In addition, the EA should approach any other body which it considers might be able to contribute to the assessment.

### **Views of the Child**<sup>47</sup>.

4.97 The EA should seek and have regard to the views of the child. The EA's Advice and Information Service should be easily accessible and presented in a child friendly manner in order to help children form their own opinions and views. Given the child's school has the day-to-day contact with the child it is expected that they will be a key source for obtaining the views of the child within the ongoing monitoring and review of the child's PLP (see paragraph 3.85). Where views of the child are available, they should be set out separately from representations and evidence from the relevant party or advice from the professionals. A child friendly template may be provided for pupils themselves to submit their views, if necessary with appropriate help from adults close to the child.

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<sup>46</sup> Draft regulation 10(1)(f) (Advice to be sought by the EA).

<sup>47</sup> Article 5A (Duty of Authority to have regard to the views of the child) of the 1996 Order as amended.



## **Criteria for Deciding Whether it is Necessary for the EA to Make and Maintain a Statement**

4.98 The EA's criteria for making a Statement are the same as those to make a statutory assessment (see paragraph 4.39 for criteria and underlying principles). The EA must decide whether the degree of the child's learning difficulty or disability, and the nature of the special educational provision necessary to meet the child's SEN, requires it to determine the child's special educational provision through making a Statement. The main consideration for the EA will be whether or not all the special educational provision necessary to meet the child's needs can reasonably be provided:

- within the resources normally available to mainstream schools; and
- any specialist provision which the EA would routinely make available to schools, for example specialist teaching or advisory support as provided through the EA's arrangements for special educational provision at Stage 2.

4.99 In deciding whether to make a Statement the EA should consider all the advice and information provided by the assessment. The EA may therefore wish to ask the following questions:

### **The child's learning difficulties**

- Is the information from the statutory assessment broadly in accord with the evidence presented by the school?
- If not, are there aspects of the child's learning difficulties which the school may have overlooked and which, with the benefit of advice, equipment or other provision, the school could effectively address within its own resources?

## **The child's special educational provision**

- Do the proposals for the child's special educational provision emerging from the statutory assessment indicate that the provision being made by the school, including teaching strategies or other approaches and resources, advice and support as supplemented through the EA's arrangements for special education provision at Stage 2, is appropriate to the child's learning difficulties?
- If not, are there other approaches which, with the benefit of advice, equipment or other provision, the school or the EA as supplemented as above, could effectively adopt within its own resources?

4.100 If assessment confirms that the provision made by the school as supplemented by the EA, is appropriate, but the child is not progressing sufficiently or at all (see paragraph 4.39) the EA should consider what further provision may be needed and whether it can be made within the school's resources or supplemented through the EA arrangements at Stage 2. Where, for example, the child's learning difficulties require only occasional advice or provision from an external specialist or a non-teaching assistant, or access to a particular item of portable equipment (for example a keyboard), the school might reasonably be expected to make the provision from within its own resources.

4.101 However, the following indicators, would suggest that it might be appropriate for the EA to make a formal Statement identifying the child's needs, the full range of provision to be made and the review arrangements to apply, depending on the precise circumstances of each case:-

- a) where the child requires regular direct teaching by a specialist teacher, daily individual support from a non-teaching assistant, or a major piece of equipment which would put an unreasonable demand on the school's resources;
- b) where a new placement is appropriate, even if such a change involves moving from a mainstream school to a LS Centre at the same school or from one mainstream school to another;

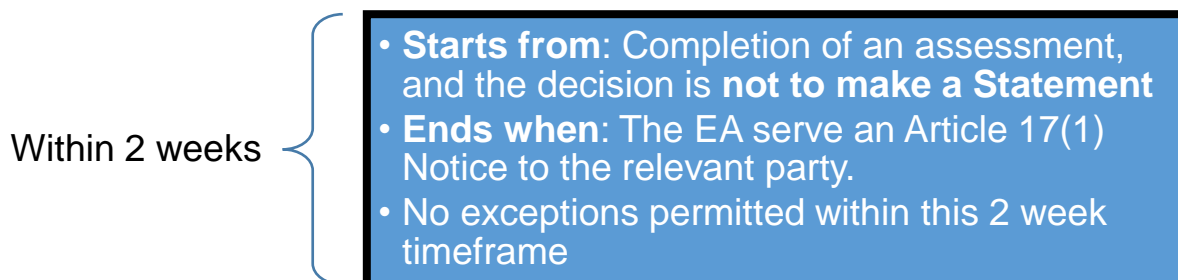
- c) where the child’s parent is a serving member of HM armed forces, and their frequent moves might significantly disrupt effective education provision for the child; or
- d) where a day or residential special school placement might be necessary.

**STEP 3: Outcome of Statutory Assessment**

**Outcome: Decision is Not to Make a Statement**

4.102 Where, having examined the available advice and information provided and drawing on its criteria for making a Statement, the assessment process may lead the EA to conclude that the child’s SEN can be met from within the school’s own resources, supplemented through EA arrangements for special education provision at Stage 2. In these circumstances, the EA will determine that it is not necessary for it to make a Statement. Where no Statement is maintained, the EA is required to issue an **Article 17(1) Notice (i.e. the notice of decision not to make a statement)** to the relevant party within 2 weeks of making that decision giving reasons for that decision.<sup>48</sup> (See paragraph 4.2 and Glossary “serve a Notice” with regard to use of available electronic communications to transmit Notices). Information box 4.6 (below) sets out the required content of an Article 17(1) Notice. Annex 9 provides a summary of the Statutory Assessment and Statemending process – Statutory Timeframes, Upper Timeframes and Exceptions.

**Diagram 4.10: Timeframe for Issuing an Article 17(1) Notice (a decision not to make a Statement)**



<sup>48</sup> Draft regulation 14(9) (Time limits and prescribed information relating to assessment).

4.103 The decision not to issue a Statement may be disappointing to the relevant party and care should be taken to accompany the decision with a full and clear explanation so that they do not see it as a denial of additional resources for the child, or indeed a denial that the child has SEN. The EA should explain to the relevant party that resources are available within schools or with resources, advice and support through the EA's arrangements for special education provision at Stage 2, to meet the majority of special needs of pupils. Through the EA's arrangements for the provision of advice and information, the EA should provide clear information and guidance to ensure that the relevant party understands the special educational provision Stages 1 and 2 and the monitoring and review arrangements which will ensure that their child's needs are met by the school, with external provision if necessary, in an appropriate way.

4.104 In some circumstances a **child may have been admitted to a special school** (including a LS Centre) **for the purpose of assessment**.<sup>49</sup> In these circumstances, following the assessment the child may remain there:

- a) where a Statement is to be made, under Article 16(1), until the Statement is made for the child; or
- b) where Article 17(1) (a decision not to make a Statement) applies:
  - i. until the expiry of 10 days during which the school is open to pupils after the EA serves an Article 17(1) Notice that it does not propose to make a Statement; or
  - ii. until the conclusion of any appeal brought under Article 17(2)(b) or mediation process and set out in Section 12.<sup>50</sup>

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<sup>49</sup> Article 7A (Education otherwise than in ordinary school) of the 1996 Order.

<sup>50</sup> Draft regulation 16 (Children admitted to special schools for the purpose of assessment).

4.105 Where the relevant party is a young person who has not yet reached age 18, the EA must inform the young person's parent that an Article 17(1) Notice (decision not to make a Statement) has issued and provide them with a copy of the Notice to the parent. Where electronic communication is available to the parent, and with their agreement, the copy of the Notice should be transmitted to them using this method.

#### **Information Box 4.6: Information required in an Article 17(1) Notice**

##### An Article 17(1) Notice is required to include:

- the decision not to make a statement;
- the reasons for the decision;
- the right to receive, on request, a copy of the advice given to the EA on which the decision was based, however, whilst the law does not require it under Article 17(2), as a matter of good practice the EA may choose to provide the advice on which the decision was based;
- the advice and information available from the Authority under Article 21A of the 1996 Order as amended;
- the arrangements under Article 21B of said Order with a view to avoiding or resolving disagreements between:
  - (i) the EA or Board of Governors of grant-aided schools (on the one hand) and the relevant party (on the other hand) as to their functions in relation to children who have, or may have, SEN;
  - (ii) the Board of Governors or principal of a relevant school (on one hand) and a young person with SEN attending that school or the parent of a child (on the other) in relation to the special educational provision being made for the child;
- information about mediation arrangements for a person who intends to appeal to the Tribunal;
- the right to appeal the decision to SENDIST; and
- the requirement under Article 21C of said Order to obtain a mediation certificate before any appeal can be made to the Tribunal;

#### **Record of Evidence of the Statutory Assessment**

4.106 The statutory assessment will have contributed significantly to the knowledge of the child's SEN, from an EA, the relevant party's and the schools perspective. As a matter of good practice and to maximise the information for addressing the child's special educational needs, the EA should produce a clear record of evidence of the Statutory Assessment at the same time serving the Article 17(1) Notice.

**Key point: The Record of Assessment should be clearly notated that it is not a Statement**

4.107 In practice, a Record of Assessment will have required as much thought and time to draft as a proposed Statement itself. It may well be that the decision as to whether to make a Statement or issue a Record of Assessment will not have become clear until all the relevant information has been collated as part of the assessment and the child's needs and required provision have been set out. That being the case the decision as to whether to write a Statement or a Record of Assessment will often involve preparing a draft which can then take either form, according to the result of the EA's deliberations in applying the criteria as it relates to the individual child concerned. The production of the information from the assessment will therefore be available to those working with the child in school to help them supplement or change their strategies for meeting the child's SEN, including any required EA provision at Stage 2. The EA may wish to arrange a meeting with the relevant party and the school to discuss the decision and the Record of Assessment.

4.108 The Record of Assessment should set out the reasons for the EA's decision and should, as a matter of good practice, broadly follow the statutory format of the Statement:

- The first part might describe the child's SEN, with supporting evidence attached in the form of information from the relevant party, educational, psychological, health and social care advice and information and any other advice gathered during the assessment, including the views of the child. If the EA has provided copies of the advice along with the Article 17 Notice, the EA does not need to reissue the advices.
- The second part might set out the reasons for the EA's decision not to make a Statement and offer guidance as to the special educational provision which might appropriately be made for the child, with specialist advice if necessary, but without being determined by the EA.

- The third part might reflect the advice received and any agreement between the EA, health and social care and any other agencies concerned, as to the child's non-educational needs and any appropriate provision including a description. With the relevant party's consent, the Record of Assessment should also be sent to the child's school and to any professionals who have given advice during the assessment process.

4.109 Where the Record of Assessment is issued to a young person who is not yet 18, the EA may at the same time inform the young person's parent that a Record of Assessment has been issued, using electronic communication with the parents agreement.

**Outcome: Decision to Make a Statement**

4.110 Where, in light of an assessment made under Article 15, the EA decides that it is necessary for it to determine the special educational provision necessary to meet a child's SEN, it must make and maintain a formal Statement of those needs under Article 16.

4.111 Section 5 sets out the required process and timeframe serving a proposed Statement and for the completion of a Statement. Diagram 4.11 below provides a Flowchart for the Statutory Assessment Process.

Diagram 4.11

Statutory Assessment Process Flowchart

**STEP 1**

Request from Relevant Party, School or EA form an opinion

Within 5 days EA to serve

An Article 15(1) Notice if EA opinion (reg. 14(1))

An Article 20A(3) Notice if School Request (reg. 14(3))

Acknowledgement letter to relevant party seeking representations / further representations

**STEP 2**

Consideration Stage

**Information**  
May be sought from a school, an institution other than a school or any other person responsible for child's education **as soon as practicably reasonable.** (reg. (9)(1) and (2))

**EA Statutory Timeframe to make decision & serve appropriate Notice**  
**From** service of Article 15 (1) Notice or date of receipt of request from a school or relevant party  
> **Normal circumstances** apply = **4 weeks** (see para. 4.34) (reg. 14(4))  
> **if exceptions apply to relevant party** = **6 weeks** (see para. 4.35) (reg. 15(2))  
> 3 weeks from the date a school re-opens (see para. 4.36) (reg. 15(4))

YES

Consideration Stage Decision

NO

Serve an Article 15(4) Notice - (reg. 14(5)(c)) or Article 20A(7) Notice - (reg. 14(5)(d))  
Decision to assess

Serve an Article 15(6) Notice (reg. 14(5)(a)) or Article 20(3) Notice (reg. 14(2)(a)) or Article 20A(8) Notice (reg. 14(5)(b))  
Decision NOT to assess

**STEP 3**

Making an Assessment

**Advice & Information**  
Advice & information to be submitted to EA  
> from a school, relevant party, Educational Psychologist or any other person responsible for child's education - **within 4 weeks of receipt of request** (reg. 10(4)(b)); or  
> from a HSC Trust **within 6 weeks** of date of receipt of request but may be extended up to **12 weeks** with EA agreement (reg 15(10))

**EA Statutory Timeframe to complete statutory assessment**  
**From** service of Article 15(4) Notice or Article 20A(7) Notice  
> Normal circumstances apply = **8 weeks** (see para.4.71) (reg. 14(8))  
> if exceptions apply to relevant party = **12 weeks** (see para. 4.72) (reg. 15(6))  
> if exceptions apply re a HSC Trust = **14 weeks** (see para. 4.75) (reg. 15(12))  
> 3 weeks from the date a school re-opens\*(see para. 4.73) (reg. 15(8))

YES

Completed Assessment Decision

NO

Serve an Article 17(1) Notice within **2 weeks** of making that decision including right of appeal information (reg. 14(9))  
Decision Not to make a Statement



See Section 5

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