

## Section 2: Statutory requirements

This section of the toolkit is about the law, the regulations and the statutory guidance relating to young disabled children, young children with SEN and young children with medical conditions in early years settings.

This is important because all early years providers have to work within the statutory framework. Those who are responsible for early years provision, proprietors, management groups, governing bodies, need to ensure that staff are aware of and understand these duties.

Please note: settings that are schools and, in particular, settings that are maintained schools must meet additional requirements. These are explained in notes at the end of this section of the toolkit.

### The United Nations Convention on the Rights of the Child

The UK ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991. The rights set out in the UNCRC apply to all children. Particularly relevant for young disabled children and young children with SEN are:

- Article 2: All the rights in the Convention apply to children without discrimination
- Article 3 : The best interests of children should always be a top priority
- Article 12 : Every child has the right to express his or her views and these views must be taken seriously
- Article 18: Parents are the most important people in children's lives and must always do what is best for them. Governments must do all they can to help parents look after children well
- Article 23: Disabled children should enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community
- Article 31: Every child has the right to rest, play, and to do things they enjoy

### The United Nations Convention on the Rights of People with Disabilities

The UK ratified the United Nations Convention on the Rights of People with Disabilities (UNCRPD) in 2009. The UNCRPD includes the following:

- Article 3 sets out the general principles of the Convention, including: full and effective participation and inclusion in society; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
- Article 7: Children with Disabilities: includes all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

The UN conventions are reflected in UK legislation, in particular, for disabled children and children with SEN, into the Equality Act 2010 and the Children and Families Act 2014.

## The Statutory Framework for the Early Years Foundation Stage (2014)

The Early Years Foundation Stage (EYFS) provides a framework that brings together two sets of requirements:

- the learning and development requirements; and
- the safeguarding and welfare requirements.

These requirements have their legal basis in section 39(1) of the Childcare Act 2006 and apply to all early years providers.



### Key points

EYFS is based on a set of guiding principles and seeks to provide:

equality of opportunity and anti-discriminatory practices, ensuring that every child is included and supported

DfE (2014) *Statutory Framework for Early Years Foundation Stage*

EYFS:

- sets out an inclusive approach designed to be responsive to individual needs;
- requires settings to have arrangements in place to identify and support children with SEN or disabilities;
- requires all providers to make information available to parents about how the setting supports disabled children and children with SEN;
- requires practitioners to review children's progress and share a summary with parents;
- requires all settings to promote the good health of children attending the setting and to have and implement a policy, and procedures, for administering medicines<sup>i</sup>;
- expects all settings to appoint a Special Educational Needs Co-ordinator (SENCO)<sup>ii</sup>;
- focuses on delivering improved outcomes and closing the achievement gap between disadvantaged children and others.

This includes involving parents in identifying needs, deciding outcomes, planning provision and seeking expertise at whatever point it is needed. For more detailed information:

[www.foundationyears.org.uk/eyfs-statutory-framework](http://www.foundationyears.org.uk/eyfs-statutory-framework)

<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>



## The Equality Act 2010

### Key points

Definition: A person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

The definition of disability is wider than many might presume and so covers a greater number of children than many realise.

Early years settings must promote equality of opportunity and must not discriminate against, harass or victimise disabled children. Settings must not discriminate:

- directly;
- indirectly;
- for a reason arising in consequence of a disability; or
- by failing to make a reasonable adjustment. Settings must make reasonable adjustments to ensure that disabled children are not at a substantial disadvantage compared with their peers. This includes adjustments to any provision, criterion or practice, making physical alterations<sup>iii</sup> and providing auxiliary aids and services. This duty is anticipatory: settings must look ahead and anticipate what disabled children might need and what adjustments might need to be made to prevent any disadvantage.

Essential reading and more detailed information can be found at:

<http://www.councilfordisabledchildren.org.uk/resources/disabled-children-and-the-equality-act-2010-for-early-years>

<https://shop.pre-school.org.uk/A134/guide-to-the-equality-act-and-good-practice>



## The Children and Families Act 2014 (Part 3)

### Key points

**Definition of SEN:** a child has a special educational need if they have a learning difficulty or disability that calls for special educational provision.

A learning difficulty is a significantly greater difficulty in learning than the majority of children of the same age.

A disability is a disability that prevents or hinders a child from taking advantage of the facilities generally available.

Special educational provision is provision that is additional to or different from that which is normally available in mainstream settings. For a child under the age of 2, special educational provision means provision of any kind.

A child under school age has SEN if he or she is likely to have SEN when they reach school age, or would do so if special educational provision were not made for them.

The Act sets out principles that underpin Part 3 of the Children and Families Act. These principles:

- recognise the importance of the wishes, views and feelings of children, young people and their parents;
- promote their participation in decision-making;
- recognise the importance of information and support; and
- focus on the best possible outcomes for children and young people with SEND.

The Act:

- requires a joint approach across education, health and social care to commission services and co-operate at a local level to meet children and young people's needs;
- requires local authorities to publicise these services as a local offer so that parents and young people are clear what support is available locally;

- establishes a framework from birth to 25 years, with Education Health and Care Plans replacing statements of SEN;
- sets out a new framework for SEN<sup>1</sup> and a new SEN and Disability Code of Practice.

All early years providers must:

- have regard to the SEN and disability Code of Practice. This means that they must take it into account whenever they make decisions about young children;
- co-operate with the local authority in meeting its duties to children with SEN<sup>iv</sup>.



## Special Educational Needs and Disability Code of Practice: 0-25 years (2015)

This is statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities.

The leaders of early years settings, schools and colleges should establish and maintain a culture of high expectations that expects those working with children and young people with SEN or disabilities to include them in all the opportunities available to other children and young people so they can achieve well

DfE and DH (2015) *SEN and disability code of practice: 0-25 years*, para 1.31

### The Code requires:

- early identification and an early response to SEND
- identification of SEND with parents
- a graduated approach to responding to SEND
- a cycle of assess, plan, do, review
- the involvement of specialists where a child continues to make less than expected progress

For more detailed information, see:

### Finding your way around the SEND Code

Chapter 1: Principles

Chapter 2: Impartial information, advice and support

Chapter 3: Working together across education, health and care for joint outcomes

Chapter 4: The Local Offer

Chapter 5: Early years providers

Chapter 6: Schools

Chapter 7: Further education

Chapter 8: Preparing for adulthood from the earliest years

Chapter 9: Education, Health and Care needs assessments and plans (EHCP)

Chapter 10: Children and young people in specific circumstances

Chapter 11: Resolving disagreements

<https://www.gov.uk/government/publications/send-guide-for-early-years-settings>

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

<sup>1</sup> <http://www.councilfordisabledchildren.org.uk/resources/summary-of-the-children-and-families-act>

## Reflecting on your setting

All providers need to know and understand the statutory framework and what it means for their responsibilities to children, staff, parents/carers and visitors. Consider:

- How do managers ensure that all staff are aware of their responsibilities to disabled children and children with SEN?
- How do managers know how well the setting is meeting its responsibilities to disabled children and children with SEN?
- How do managers ensure that they seek the views and hear the voice of the child?

The other sections of this toolkit will help you to think about this in more detail.

### Endnotes: Additional and different requirements for maintained schools

<sup>i</sup> Under section 100 of the Children and Families Act, maintained schools must make arrangements for supporting pupils at the school with medical conditions must have regard to guidance issued by the Secretary of State.

<sup>ii</sup> Early years settings that are maintained schools, including maintained nursery schools, must appoint a suitably qualified and experienced SENCO

<sup>iii</sup> Early years settings that are schools, including maintained nursery schools, do not have to make reasonable adjustments to physical features, but must publish an accessibility plan to show how the school will make more accessible:

- the physical environment;
- the curriculum; and
- information for disabled children.

Accessibility plans must be published every three years and reviewed and revised as necessary.

<sup>iv</sup> In addition to the duties listed at the foot of page 3, maintained schools, including maintained nursery schools, must:

- use their *best endeavours* to ensure that special educational provision is made for children with special educational needs;
- appoint a suitably qualified and experienced SENCO;
- publish information on how they meet the needs of children with SEN, the SEN Information Report;
- inform parents if they are making special educational provision for a child;
- include children with SEN in the activities of the school with other children.