

supporting children's learning code of practice (summary)

Introduction

Purpose of the Act

The Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act") provides the legal framework which underpins the system for identifying and addressing the additional support needs of children and young people who face a barrier, or barriers, to learning. The Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out parents' rights within the system. The Act has been subsequently amended by the Education (Additional Support for Learning) (Scotland) Act 2009 ("the 2009 Act").

Purpose of the code

This code replaces the original code of practice published in 2005 in order to take account of the 2009 Act. It explains the duties on education authorities and other agencies to support children's and young people's learning. It provides guidance on the Act's provisions as well as on the supporting framework of secondary legislation. The code uses the term "the Act" to include, where appropriate, the secondary legislative provisions and includes features of good practice on how these can be applied. It also sets out arrangements for avoiding and resolving differences between families and education authorities.

Status of the code

Education authorities and appropriate agencies, such as NHS Boards, are under a duty to have regard to the code when carrying out their functions under the Act. The code is designed to help them make decisions effectively but it cannot be prescriptive about what is required in individual circumstances. Education authorities and appropriate agencies must ensure that their policies, practices and information and advice services take full account of the legal requirements of the Act. The code includes brief case studies and examples of good practice to illustrate some of the processes involved in applying the Act's main provisions. These do not offer definitive interpretations of the legislation since these are ultimately a matter for the courts.

The code is intended to explain the principles of the legislation and to illustrate how the law might apply in certain situations. It is important to an appropriate understanding of this framework that this code of practice is read as a whole. Individual chapters should not be taken out of the context of the whole code or read in isolation from each other and the Act and the related secondary legislation. There are some issues which the code cannot resolve and which must await the authoritative interpretation of the courts. The code is not intended to be a substitute for taking appropriate advice on the legal implications of particular situations.

Other legislation and policy

The guidance in this code should be read alongside other legislation and policy where appropriate. For example, *Curriculum for Excellence*, *Getting it right for every child* (GIRFEC) and *Hall 4* have implications for education authorities' and other agencies' support for learning strategies. In particular, *Curriculum for Excellence* is a curriculum for all and this includes explicitly children and young people with additional support needs. The Act, with its focus on ensuring that children and young people receive the help they need to benefit from education, supports this inclusive ethos.

While the guidance in the code outlines links with other legislation and policy, the main purpose of the code is to explain the principles of the Act and how the law may apply in certain situations. While *Curriculum for Excellence* and *Getting it right for every child* are major policy drivers in Scottish education they are not statutory provisions. They are referred to at points in the code to describe the overall context within which the Act applies but they do not themselves impact directly on the legislative provisions of the Act. In particular, it is beyond the scope of the code to provide a full account of these other policies and their impact on the lives of children and families.

Chapter 1

SUMMARY OF THE ADDITIONAL SUPPORT FOR LEARNING ACT

This chapter summarises the main provisions of the Act. This summary takes account of amendments to the Act introduced by the 2009 Act but does not cover all of the Act's provisions. It is provided for ease of reference as a brief overview of the Act, as amended. It is not an authoritative interpretation of the legislation which only the courts can provide.

The Act provides the legal framework underpinning the system for supporting children and young people in their school education, and their families. This framework is based on the idea of additional support needs. This broad and inclusive term applies to children or young people who, for whatever reason, require additional support, long or short term, in order to help them make the most of their school education and to be included fully in their learning.

[The] 2009 Act automatically deems that all looked after children and young people have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education. In addition, education authorities must consider whether each looked after child or young person for whose school education they are responsible requires a co-ordinated support plan. In discharging their responsibilities towards looked after children and young people authorities are obliged to take steps to consider the educational progress of these children and young people. These steps should include establishing whether looked after children and young people require additional support to enable them to benefit from school education and which of those with additional support needs meet the requirements for having a co-ordinated support plan (see chapter 5).

Chapter 2

ADDITIONAL SUPPORT NEEDS

This chapter of the code considers the meaning of the terms “additional support needs” and “additional support” and considers the factors that may give rise to the need for additional support.

The Act’s reference to school education links both the 1980 Act and the Standards in Scotland’s Schools etc. Act 2000 (referred to as “the 2000 Act”). The 1980 Act states that school education “means progressive education appropriate to the requirements of pupils, regard being had to the age, ability and aptitude of such pupils”.

The 2000 Act requires the education authority to secure that school education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. School education includes education provided by education authorities in exercising their duty to provide school education for eligible pre-school children, such as may be provided, for example, in nursery classes.

[All] children and young people benefit from school education when they can access a curriculum which supports their learning and personal development; where teaching and support from others meet their needs; where they can learn with, and from, their peers and when their learning is supported by the parents in the home and their wider community. A difficulty or particular need in one, or more, of these areas may lead to a requirement for additional support to be put in place to enable a child or young person to benefit from school education.

Looked after children and young people

The Act automatically deems that all looked after children and young people ... have additional support needs unless the education authority determine that they do not require additional support in order to benefit from school education.

The reason for deeming that looked after children have additional support needs, unless it can be shown that they do not require additional support to benefit from school education, is that there is considerable evidence that looked after children and young people face significant cultural and institutional barriers which impede their success in school education.

What is meant by additional support?

The definition of additional support provided in the Act is a wide, inclusive one and it is not possible to provide an exhaustive list of all possible forms of additional support. Additional support falls into three overlapping, broad headings: approaches to learning and teaching, support from personnel and provision of resources. ... What is central to all these forms of support is that they have been identified as additional provision required to help individual children and young people benefit from school education, taking account of their particular needs and circumstances.

Factors giving rise to additional support needs

There is a wide range of factors which may lead to some children and young people having a need for additional support. These fall broadly into the four overlapping themes ... learning environment, family circumstances, disability or health need, and social and emotional factors.

Chapter 3

MEETING ADDITIONAL SUPPORT NEEDS

This chapter of the Code sets out guidance on the Act's provisions for identifying and assessing additional support needs and making provision for them. Most children and young people are educated in schools under the management of the education authority for the area to which they belong, the authority in which they reside with their parents, referred to here as the home education authority. However, in certain circumstances a child or young person may not be educated in a school under the management of the home education authority.

The guidance here is considered against a background of authorities' and agencies' evolving approaches to assessment and provision. In particular, it reflects the values and principles to be found in *Curriculum for Excellence* and the development of the national programme *Getting it right for every child* involving those working with children and young people across all agencies. It also draws on the definition of assessment to be found in the national programme and considers the role of agencies outwith education, such as NHS Boards and social work services, in supporting children and young people with additional support needs.

Inter-agency co-operation

Those with additional support needs comprise a broad group of children and young people whose needs require to be identified, understood and addressed to ensure that they benefit from school education. Education authorities need to play their part in ensuring that there is effective communication, collaboration and integrated assessment, planning, action and review when other agencies are involved. ... In all circumstances there should be a clear plan of action accessible to all who need to see it and, where there is multi-agency involvement, a lead professional responsible for co-ordinating the action set out in the plan and for monitoring its effectiveness. The role of the lead professional is set out [in the chapter].

Chapter 4

SCHOOL ATTENDANCE: RIGHTS, RESPONSIBILITIES AND PLACING REQUESTS

For the purpose of arranging for children to attend schools, local authorities usually divide cities, towns and country areas into school catchment areas and children living in the same catchment area usually attend the same school. Most children and young people with additional support needs are educated in their local schools under the management of the education authority responsible for the area to which the

child or young person belongs. ... Some children with additional support needs may attend schools in the local authority outwith their catchment areas as a result of arrangements made by the authority with the agreement of the parents.

Young people can make placing requests on their own behalf unless the education authority are satisfied that they lack the capacity to do so in which case the parents can act on their behalf.

[The] focus in this chapter will be on where the responsibility for providing the school education rests when a child or young person is educated at home or in a school outwith his or her catchment area and what procedures are available for the parents or young people to pursue when they have concerns or disputes about the provision available. In particular, the Act provides parents and young people with access to mediation, dispute resolution and Tribunal in certain circumstances.

Placing requests

The Act enables parents to make a placing request for their child to attend a school managed by an education authority, other than the authority for the area in which the child lives. ... Young people with additional support needs have the right to make placing requests on their own behalf. Placing requests may be made whether or not children or young people have co-ordinated support plans. It should be noted that the placing request can be made to the host education authority for the child or young person to attend a primary school (including a nursery school), secondary school or special school (including a special class or unit) managed by the host education authority.

Where a child or young person is being educated outwith his/her home authority as a result of a successful placing request then responsibility for the child's or young person's school education transfers to the host authority who are then responsible for all relevant duties under the Act. For example, where a child or young person requires provision of a psychological service then it would be the service from the host authority that would be involved.

Decisions about additional support needs following a successful placing request are made by considering the provision, whether or not educational, which is additional to, or otherwise different from, the educational provision made generally for children or young people of the same age in schools (not special schools) under the management of the host authority which are responsible for the child's or young person's education.

Tribunal

Parental appeals against refused placing requests regarding special schools can be referred to the Tribunal. Young people can appeal in their own right. Paragraphs 21-39 ... describe the circumstances under which a reference can be made to the Tribunal regarding the refusal of a placing request to the host education authority. Paragraphs 40-50 describe the circumstances under which a reference can be made

to the Tribunal regarding the refusal of a placing request to the home education authority.

In summary, the Act enables the Tribunal to hear references from parents and young people on matters relating to co-ordinated support plans, school to post-school transitions and appeals involving refusals of placing requests to special schools. References to the Tribunal are considered in more detail in paragraphs 32-39 below and in chapter 8.

Recovery of costs

The Act also provides that ... where an education authority have provided school education, with or without other services, for any child or young person, belonging to the area of some other authority, the **host** education authority, may, if a claim is made recover from that other **home** authority such contributions in respect of such provision as may be agreed between the authorities or as the Scottish Ministers may determine. There are two exceptions, however, relating to mediation and dispute resolution.

Where the provision relates to additional support needs then it follows ... that these needs are assessed against the educational provision generally made in schools (other than special schools) for children or young people of the same age in the host authority. It should be noted that following a successful placing request to a local authority there is no obligation on the host authority to provide transport between the child's home address and the school in question.

[See annex A for flow chart regarding school attendance and placing requests.]

Chapter 5

CO-ORDINATED SUPPORT PLAN

Previous chapters have considered the general provision for additional support needs that the Act requires education authorities to make. However, a number of children and young people have additional support needs arising from complex or multiple factors which require a high degree of co-ordination of support from education authorities and other agencies in order that their needs can be met. This support is co-ordinated through the provision of a co-ordinated support plan under the Act. This chapter explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered.

The co-ordinated support plan is a statutory document which is subject to regular monitoring and review for those children and young people who have one. Education authorities must have arrangements in place to identify from among those children and young people for whose school education they are responsible, those children and young people with additional support needs who require a co-ordinated support plan and the particular additional support needs of the children so identified. Also, the Act, as amended, assumes that all looked after children and young people have additional support needs unless the authority are able to demonstrate that an

individual looked after child or young person does not require additional support in order to benefit from school education. In addition, the Act, as amended, requires education authorities to consider whether each individual looked after child or young person requires a co-ordinated support plan.

The Act states that a factor is a complex factor if it has, or is likely to have, a significant adverse effect on the school education of the child or young person. The Act does not define the length of time over which a complex factor has an effect (although the additional support needs arising from one or more complex factors have to be likely to last for more than a year for a child or young person to require a co-ordinated support plan), nor does the Act define the term “significant adverse effect”. However, since a complex factor is one that has a significant adverse effect on the school education of the child or young person, it is likely that it will affect most aspects of learning. Some examples of complex factors grouped according to the above themes could be the following: learning environment; family circumstances; disability of health; social and emotional factors.

Multiple factors are factors which are not by themselves complex factors but, when taken together, have or are likely to have, a significant adverse effect on the school education of the child or young person.

Significant additional support

The Act does not define what “significant additional support” means but the issue has been considered in the Tribunal and courts. In particular, the opinion delivered by Lord Nimmo Smith in the Inner House of the Court of Session in the case of *JT* is particularly relevant and is binding here. The use of the term “significant” signals that the scale of the support provided, whether it is in terms of approaches to learning and teaching (e.g. adaptation or elaboration of the curriculum) or personnel (eg provision of learning support assistant) or resources (eg specialist aid to communication or a special hoist), or a combination of these, stands out from the continuum of possible additional support. Significant additional support may be provided to a child or young person with additional support needs on an individual basis, in a group setting with others or through personnel working under the direction and guidance of those from the appropriate agency. The issue of significance thus refers to the extent of the provision.

Where a child has several professionals involved from the one appropriate agency, such as from an NHS Board, then the cumulative effect of these professionals’ involvement may amount to significant additional support from that agency even although the input from each professional individually is not significant.

The co-ordinated support plan is an educational plan which involves, and notes the commitments by, other agencies in providing significant additional support to enable the child or young person to benefit from education. It needs to be included along with the child’s plan (or be readily extractable from the child’s plan) as a stand alone document. The date of the co-ordinated support plan is based on the date it is sent to parents and young person where appropriate. Education authorities must be able to produce this stand alone document to demonstrate adherence to legally specified

processes and timescales and also because copies have to be made available to a range of people including parents, children, young people, HM Inspectors of Education, the Tribunal and those whom the authority think should see the plan.

[See annex B for diagrams relating to whether a CSP is required and how to prepare a CSP.]

Chapter 6

TRANSITIONS

School education is organised in such a way that all children and young people experience transitions as they move through the various stages of schooling. These transitions include entry to pre-school provision, transfer to primary school and through the different stages of primary and secondary school and, in particular, to post-school provision. Some may experience changes in their school education at other times with a transfer to another school or a break in their school education. Early or timely planning is required to ensure continuity and progression between stages or breaks in education. This chapter considers the requirements on education authorities and others under the Act in relation to transitions.

Some changes in school education may involve irregular transition experiences through, for example, exclusions and permanent school closures. Where these involve a child or young person with additional support needs, the education authority and other agencies should take account of the way these changes affect the provision of the additional support required by the child or young person.

Planning for changes in school education

Education authorities should have appropriate arrangements in place to ensure that changes in school education for all children and young people can be as smooth as possible. Effective planning helps to promote shared understanding and close communication among all relevant persons and above all helps to ensure that any required action is co-ordinated appropriately. An education authority's routine arrangements should enable schools to provide sufficient support for the majority of children and young people faced with changes in school education. In some circumstances, education authorities will require to involve other agencies to ensure that the transition process is effective for certain children and young people with additional support needs (see 3.11-29).

Chapter 7

WORKING WITH CHILDREN AND FAMILIES

This chapter of the code describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions regarding supporters and advocacy.

All children and young people should have the opportunity to make their views known about decisions which affect them. They should have the opportunity to

express their opinions and have these opinions taken seriously. They should be encouraged to contribute to decision-making processes, the setting of educational objectives, the preparation of learning plans, reviews and transition planning. They need to know that what they have to say will be respected, listened to and, where appropriate, acted on.

Parents must also be encouraged and have the opportunity to be involved fully in discussions and decisions about their child's learning. Most parents want what is best for their children and have unique knowledge and experience to contribute to understanding and meeting their child's additional support needs. They, therefore, have a key role to play in their child's education and account must be taken of their views and the perspective they bring.

Professionals need to involve parents and take account of their views on their child's development and education at the earliest opportunity. Partnership with parents is, therefore, central to ensuring that children and young people with additional support needs benefit fully from school education. The Act serves to strengthen further the involvement of children, young people and their parents in working with authorities to reach decisions which are best for children's and young people's learning.

Young people who may lack capacity

The Act, as amended, specifies that where the education authority are satisfied that the young person lacks the capacity to understand the information which is published under the Act, that information should be sent instead to the young person's parent. The test to be used by education authorities in establishing whether a young person lacks capacity relates to the young person's ability to understand the information published.

Supporters and advocacy

Supporters and advocates can help by making sure that a parent's or young person's view is understood, put across and taken account of in discussions where parents or young people feel unable or less confident to do so themselves.

The Act provides young people and parents with the right to have a supporter or advocate present at any discussions or meetings with an education authority in regard to the authority's functions under the Act. Education authorities should, as a matter of good practice, make parents and young people aware of this right and how they can find out how to access such services.

Chapter 8

RESOLVING DISAGREEMENTS

Use of the good practice guidance in chapter 7 can help to avoid disagreements or prevent them from escalating into more serious disputes. This chapter considers provisions under the Act for resolving disputes where these do arise. The Act makes provision both for mediation services and arrangements for external independent adjudication (dispute resolution) to resolve disputes. It also provides parents and

young people with rights to refer particular matters to the Additional Support Needs Tribunals for Scotland (“the Tribunal”).

Resolving disagreements through the school and local authority

Under the Scottish Schools (Parental Involvement) Act 2006 all education authorities are required to have a strategy setting out their policies for parental involvement. They should consider how that strategy links with policies relating to meeting children’s and young people’s additional support needs. They must have a complaints procedure in place to deal with complaints relating to how the education authority carry out their functions under the 2006 Act. As the guidance to the 2006 Act makes clear it is expected that most complaints will be handled at a local level without recourse to formal procedures. The same position holds for disagreements about how the education authority are discharging their functions under the Act, as amended. It is expected that most disagreements will be resolved at school and education authority level with only a small number going to formal review procedures. Education authorities and schools should have clear in-house procedures in place for resolving disagreements under the Act and with named contacts at each stage.

The chapter considers each of the three approaches: mediation, dispute resolution and the Tribunal.

[See annex C below for a framework for resolving disagreements.]

Chapter 9

GENERAL PROVISIONS

This chapter considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the code.

Placing Requests

The system relating to placing requests where the child has additional support needs is set out in schedule 2 to the Act. Whilst the scheme set out in schedule 2 broadly replicates that which operates where the child does not have additional support needs (which is contained in sections 28A to G of the Education (Scotland) Act 1980) there are some notable differences. ... Young people with additional support needs have the same placing request rights as parents of children with additional support needs unless the education authority are satisfied that they lack the capacity in which case the parents can act on their behalf.

Publishing information

The Act, as amended, requires an education authority to publish information about a range of specified matters relating to additional support needs.

The authority should also publish information about its arrangements for resolving disagreements between the authority and parents of children belonging to the area of the authority, or young people belonging to the area of the authority, in respect of any of the authority's functions under the Act. This information should set these arrangements in the overall context of the arrangements which a particular authority has for preventing disagreements arising, and resolving them when they do arise. All of this information should be provided in a range of easily accessible formats.

Collection of data on additional support needs

The Act, as amended, requires the Scottish Ministers to collect from education authorities, and to publish annually, specified information about additional support needs. That includes information about:

- the number of children and young people with additional support needs for whose school education the authority are responsible
- the principal factors giving rise to the additional support needs of these children and young people
- the types of support they are provided with
- the cost of providing that support.

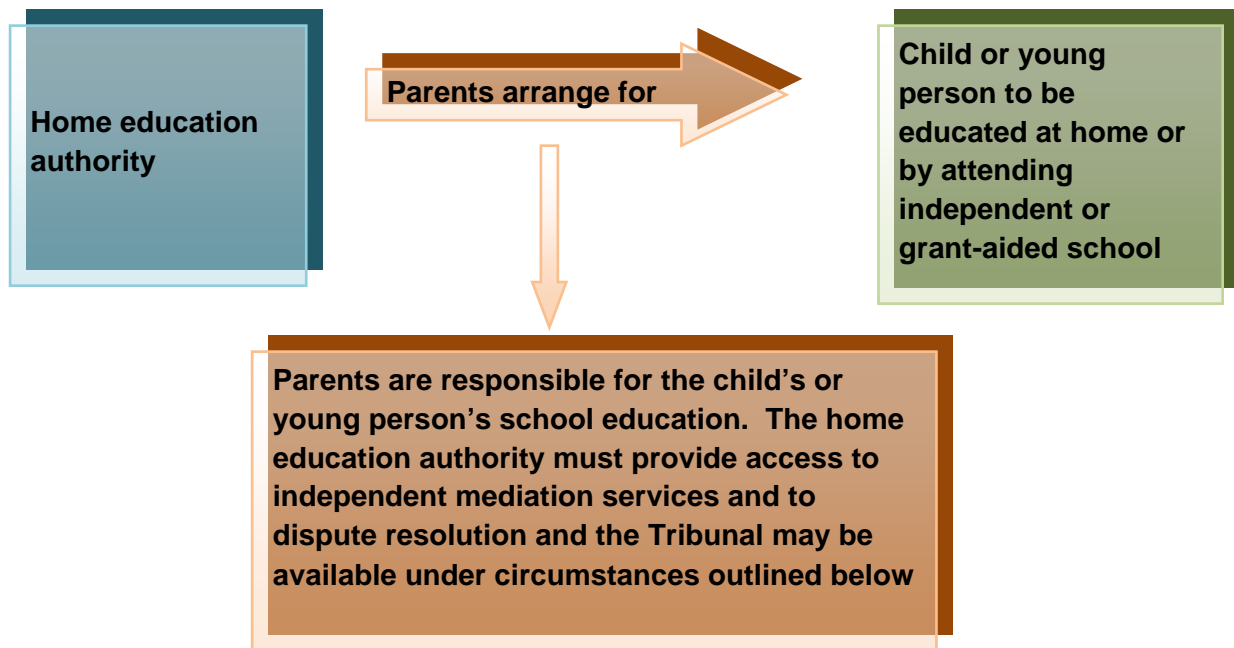
Further details about the arrangements for collecting this data, and any secondary legislation required, will be made available in due course.

Information about additional support needs

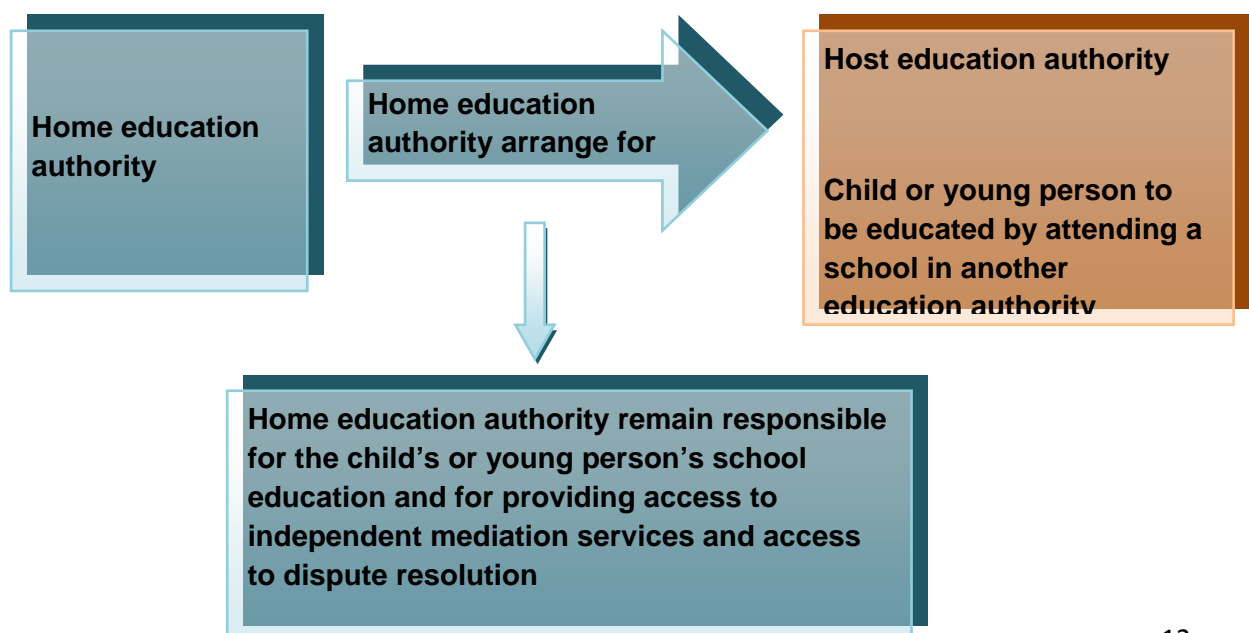
The Act, as amended, requires that for the first five years after commencement of the Act, the Scottish Ministers must report to the Scottish Parliament on what progress has been made in ensuring that sufficient information relating to children and young people with additional support needs is available to monitor the implementation of the Act.

School attendance: rights, responsibilities and placing requests

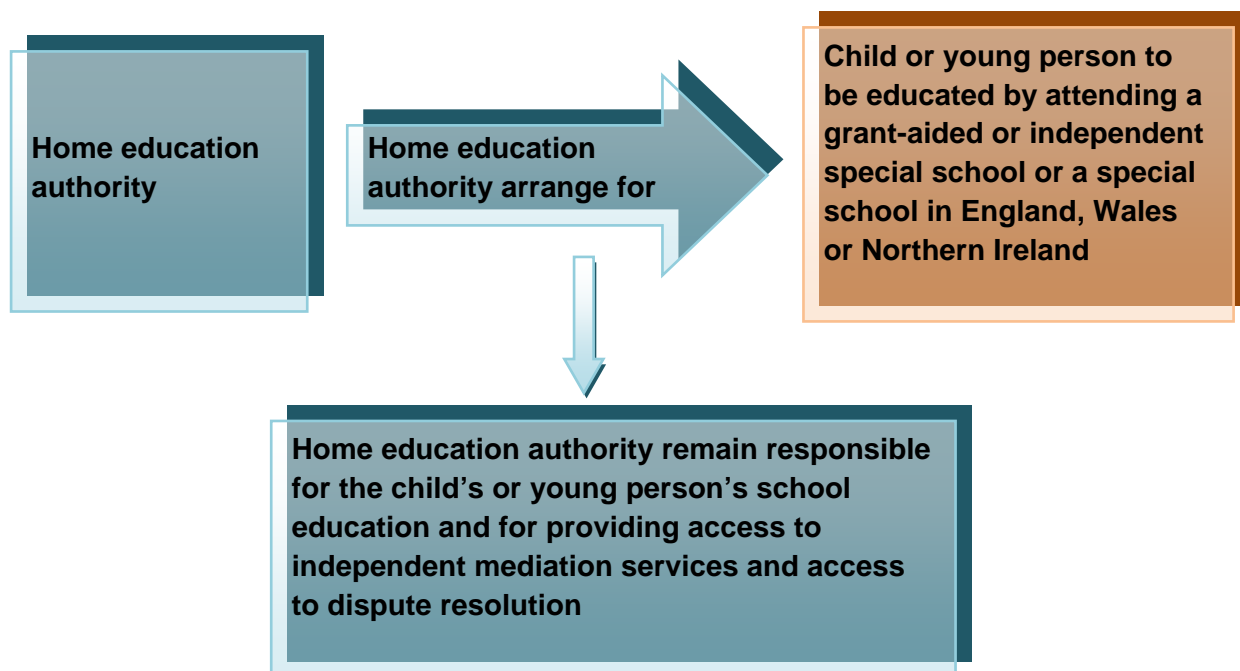
Parents providing education at home or through making arrangements for attendance at an independent or grant-aided school



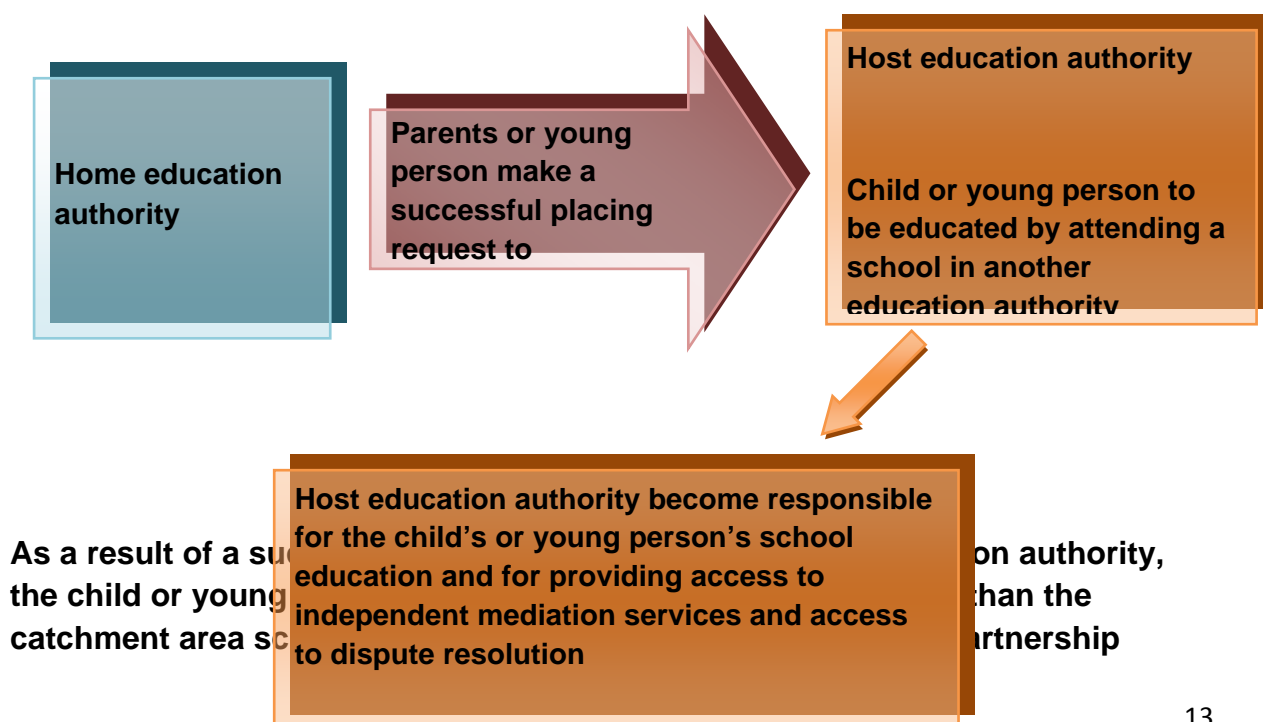
The home education authority have entered into arrangements with another education authority to have the child or young person educated in a school under the management of that education authority



The home education authority have arranged for the child or young person to be educated in a grant-aided or independent special school, or a special school in England, Wales or Northern Ireland



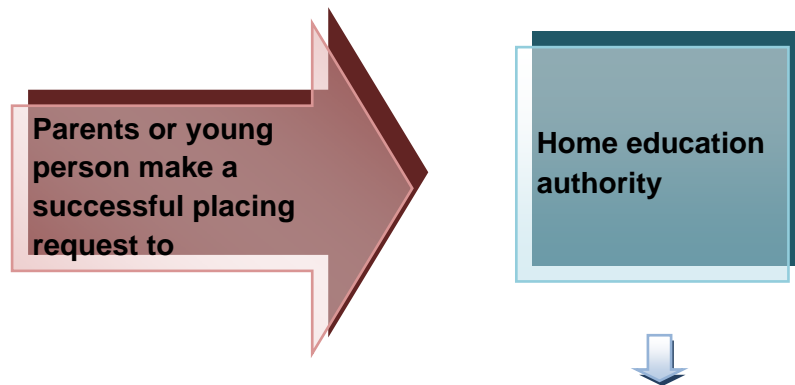
The child or young person is being educated in a school under the management of another education authority as a result of a successful placing request made to that authority by the parents or young person.



As a result of a successful placing request made to the catchment area school authority,

the child or young person is educated in a school in the catchment area of the host education authority, which is a partnership with the home education authority.

nursery or in an independent or grant-aided special school in Scotland or a school in England, Wales or Northern Ireland

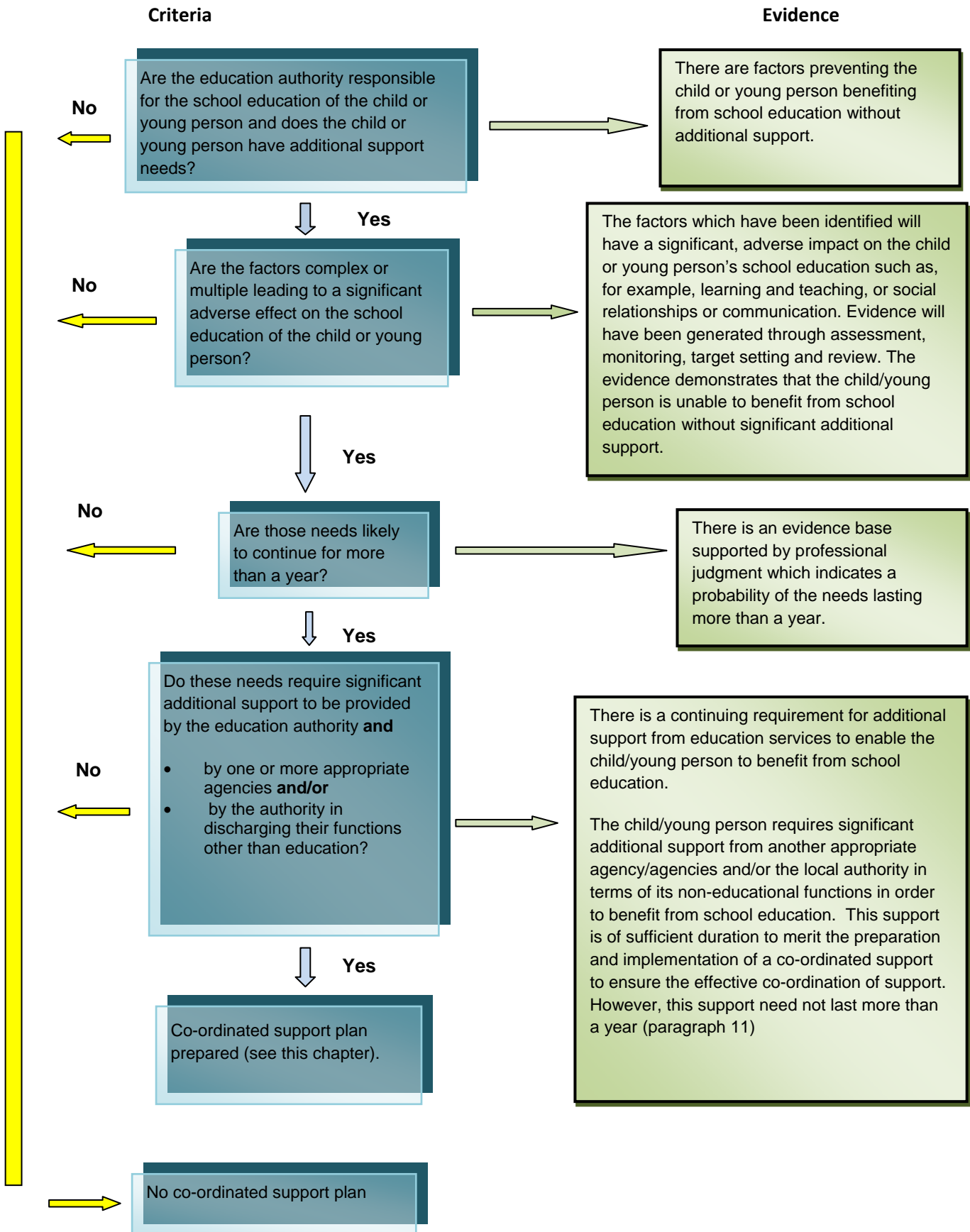


Home education authority are responsible for the school education of the child or young person placed

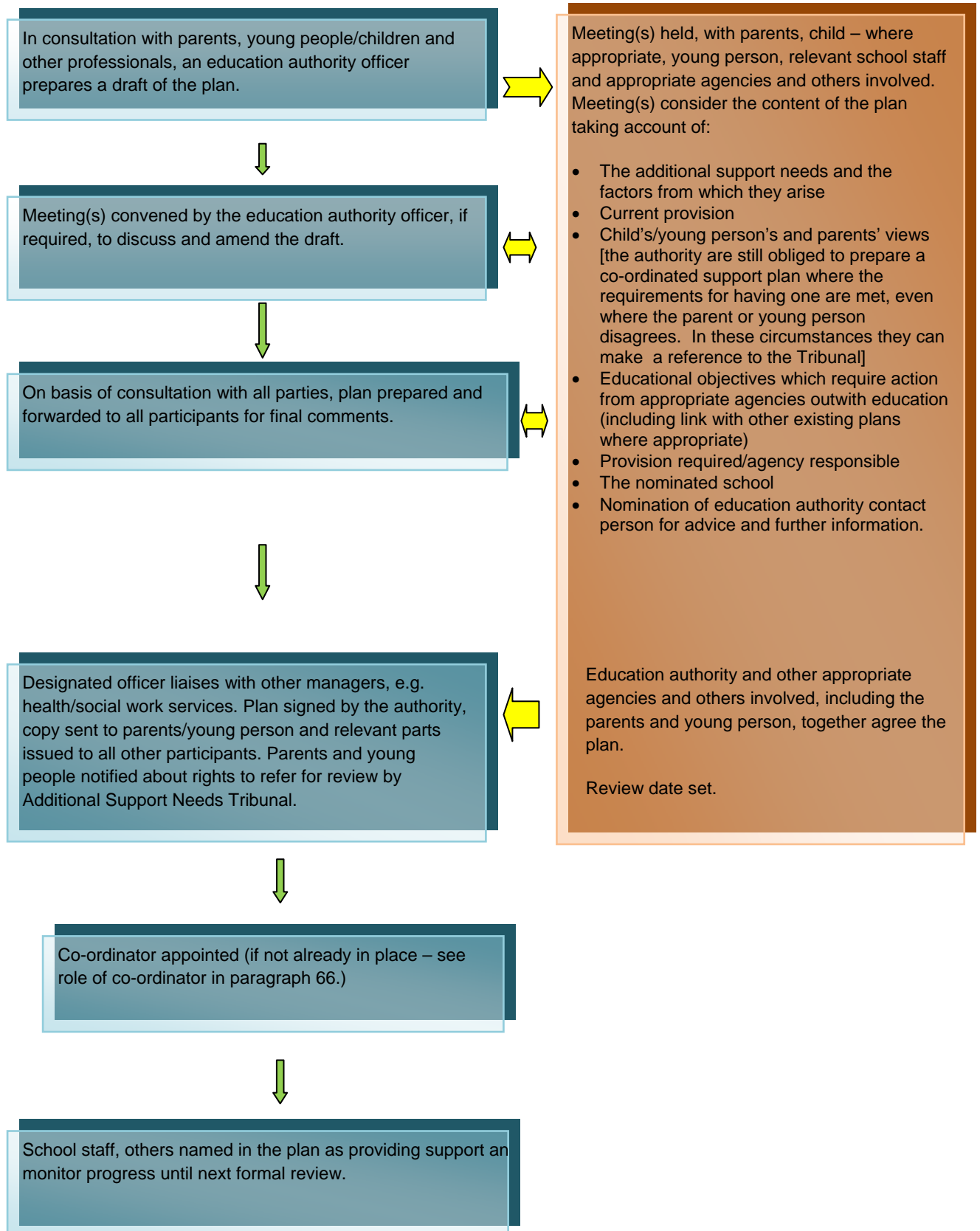
- in a school under the management of the home education authority
- in a partnership nursery in another education authority
- an independent or grant-aided special school, the managers of which are willing to accept the child or young person
- a school in England, Wales or Northern Ireland providing wholly or mainly for children or young people with additional support needs, the managers of which are willing to accept the child or young person

Co-ordinated Support Plan

Is a co-ordinated support plan required?

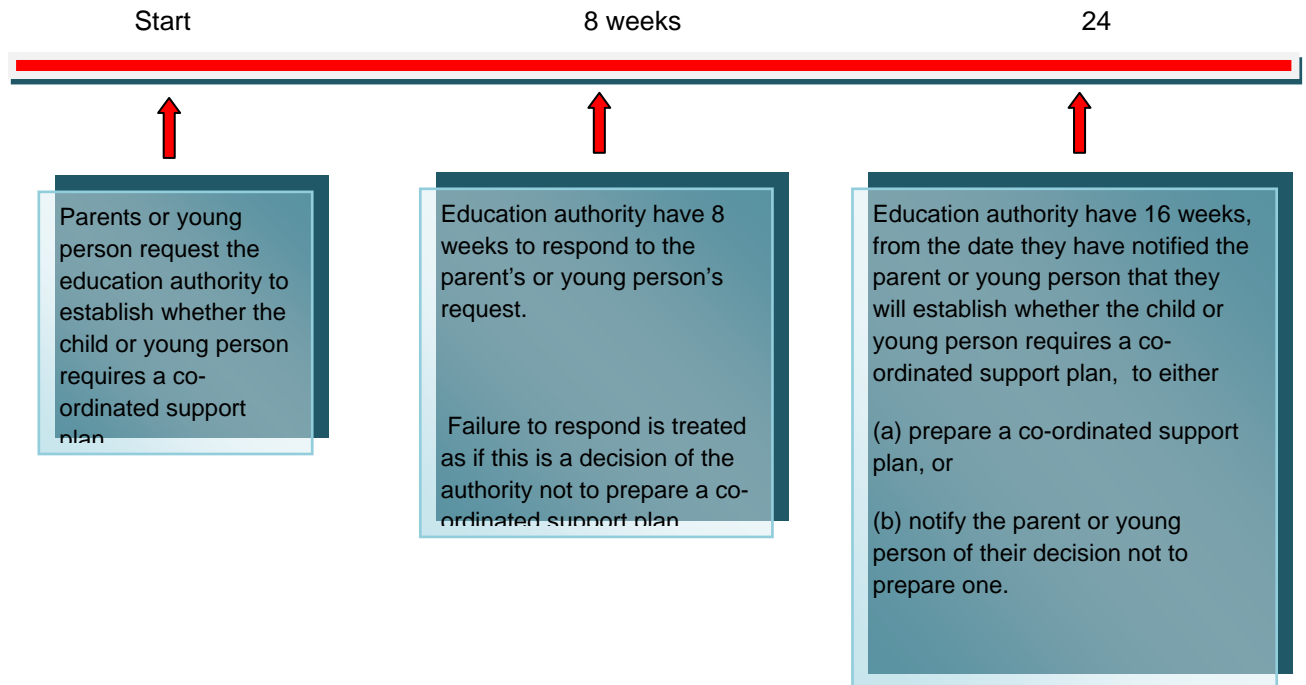


Preparing a co-ordinated support plan



Timescale for responding to requests and drawing up the plan where one is required

Timeline



FRAMEWORK FOR RESOLVING DISAGREEMENTS

