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GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Tenth Sitting

Tuesday 19 March 2013

(Afternoon)

CONTENTS

CLAUSES 19 to 26 agreed to, some with amendments.
Adjourned till Thursday 21 March at half-past Eleven o'clock.

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The Committee consisted of the following Members:

Chairs: MR CHRISTOPHER CHOPE, † MR DAI HAVARD

- | | |
|---|---|
| † Barwell, Gavin (<i>Croydon Central</i>) (Con) | † Nokes, Caroline (<i>Romsey and Southampton North</i>) (Con) |
| † Brooke, Annette (<i>Mid Dorset and North Poole</i>) (LD) | † Powell, Lucy (<i>Manchester Central</i>) (Lab/Co-op) |
| † Buckland, Mr Robert (<i>South Swindon</i>) (Con) | † Reed, Steve (<i>Croydon North</i>) (Lab) |
| † Elphicke, Charlie (<i>Dover</i>) (Con) | † Sawford, Andy (<i>Corby</i>) (Lab/Co-op) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | Simpson, David (<i>Upper Barn</i>) (DUP) |
| † Glass, Pat (<i>North West Durham</i>) (Lab) | † Skidmore, Chris (<i>Kingswood</i>) (Con) |
| † Hodgson, Mrs Sharon (<i>Washington and Sunderland West</i>) (Lab) | † Swinson, Jo (<i>Parliamentary Under-Secretary of State for Business, Innovation and Skills</i>) |
| † Jones, Graham (<i>Hyndburn</i>) (Lab) | † Timpson, Mr Edward (<i>Parliamentary Under-Secretary of State for Education</i>) |
| † Leadsom, Andrea (<i>South Northamptonshire</i>) (Con) | † Whittaker, Craig (<i>Calder Valley</i>) (Con) |
| † Lee, Jessica (<i>Erewash</i>) (Con) | |
| † Milton, Anne (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Steven Mark, John-Paul Flaherty, <i>Committee Clerks</i> |
| † Nandy, Lisa (<i>Wigan</i>) (Lab) | † attended the Committee |

Public Bill Committee

Tuesday 19 March 2013

(Afternoon)

[MR DAI HAVARD *in the Chair*]

Children and Families Bill

Clause 19

LOCAL AUTHORITY FUNCTIONS: GENERAL PRINCIPLES

Amendment proposed (this day): 69, in clause 19, page 17, line 30, at end add—

‘(e) the well-being of the child or young person’.—
(*Mrs Hodgson.*)

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 73, in clause 25, page 19, line 28, leave out subsection (2).

Amendment 177, in clause 65, page 45, line 3, leave out subsection (8).

Amendment 184, in clause 72, page 48, line 23, at end insert—

“‘well-being’ means well-being so far as relating to the matters specified in section 10(2) (a) to (e) of the Children Act 2004.’

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): Before we broke for lunch I was talking about how our reforms generally could not reflect more strongly the principles of the Every Child Matters framework. Before I emphasise the point in more detail, I could not let float by the suggestion we heard earlier that gave a skewed and unfair characterisation of the Government’s commitment to children’s services.

The Bill shows that our commitment to vulnerable children is a priority, but I remind the Committee also of the Munro review, the social work reform that is taking place, the change in statutory guidance to serious case reviews, the action plan to tackle child sexual exploitation, the urgent action we took last July on children’s residential care homes, our commitment to reform the children’s residential care sector, the work we have done with Reg Bailey on the commercialisation and sexualisation of childhood, the £6 million a year we have provided for additional support for foster carers and vulnerable families and children in care, and what we heard just this morning about child care, which will come on to later in the debate. I just wanted to put on the record the many pieces of work the Department is doing as our commitment to children’s services continues to gather pace.

Be that as it may, although the references to well-being in the Bill are important, the provisions represent a practical and specific application of those principles to support pupils with special educational needs. We have committed to updating processes and guidance that have remained unchanged since before Every Child

Matters was published and the Children Act 2004 passed. Specifically, the reforms place the child at the centre of the process and help to shift the emphasis from qualifying for support to getting that support provided according to need, which is a core principle of Every Child Matters. The provisions explicitly join together planning and provision for special educational needs, mirroring the Every Child Matters multi-agency approach; and they apply the principles of joined-up commissioning of services to support for children with special educational needs to ensure that support is available when needed, which again is a key aspect of Every Child Matters.

Our aim is explicitly to shift the focus from identifying blocks of provision to reviewing whether outcomes are being achieved, which is something the Opposition urged us to do. We know that outcomes are interrelated: to support a child or young person to achieve in education, we have to help them to deal with the other issues in their lives, or progress is either not made or not sustained. These reforms are not about getting words in legislation; they are about taking real, practical steps to make sure that the valuable principles of Every Child Matters are made a reality for a group of children and young people who can most benefit from them.

I hope that reassures the hon. Member for Washington and Sunderland West that children and young people’s well-being is at the heart of our reforms. I welcome her continued commitment to that agenda. Our definition adds real value to and builds upon the definition set out in the Children Act 2004. I therefore urge her to withdraw her amendment.

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): I thank the Minister for his response, although I think he perhaps misunderstood the point of my amendments. The intention is to make the well-being of children an explicit priority of local authorities by putting it in clause 19, the general principles clause; but beyond that, I want to link it back to the established definition of well-being, which everyone except the Department for Education believes works well. To say that the definition of well-being in the Bill is the same as the definition in the draft Care and Support Bill, and that it therefore demonstrates consistency, is to miss the point. All it demonstrates is that two Bills, not one, will be inconsistent with the established statute—if nothing else, the Government will be consistently inconsistent. More important, it does not explain why the Government want them to be inconsistent.

I am pleased the Minister eventually uttered the words “Every Child Matters” in his response—I think he said it twice in closing—but I think he did so more because I mentioned it than because he intended to mention it if I had not. He said that his new definition is better than the existing one. I contend that the additions are adequately covered by the five principles in section 10 of the Children Act 2004, which are well understood and well supported. I am disappointed that the Minister has not accepted the offer of help we extended to him with the amendments, but, conscious of the Committee’s desire to press ahead, I will live to fight another day and beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 19 ordered to stand part of the Bill.

Clause 20

WHEN A CHILD OR YOUNG PERSON HAS SPECIAL EDUCATIONAL NEEDS

Mrs Hodgson: I beg to move amendment 71, in clause 20, page 17, leave out lines 40 to 42 and insert—

‘(b) is a disabled person as defined by section 6 of the Equality Act 2010.’

The Chair: With this it will be convenient to discuss the following:

Amendment 72, in clause 20, page 17, line 42, at end insert—

‘(c) has a chronic illness or long-term health condition which impacts on his or her ability to access the same learning opportunities as their peers without additional or extra provision.’

Amendment 75, in clause 26, page 20, line 17, at end insert—

‘(h) compliance with the disability provisions of the Equalities Act.’

Amendment 76, in clause 26, page 20, line 23, at end insert—

‘(d) ensuring reasonable adjustments required are made.’

Amendment 48, in clause 27, page 20, line 40, after ‘needs’, insert

‘and disabled children and young people.’

Amendment 49, in clause 27, page 20, line 43, after ‘needs’, insert

‘and disabled children and young people.’

Amendment 41, in clause 36, page 28, line 9, at end insert—

‘(c) the child or young person may be a disabled child under section 17 of the Children Act 1989 or section 28 of the Chronically Sick and Disabled Person’s Act 1970.’

Amendment 42, in clause 36, page 28, line 9, at end insert—

‘(c) they are a disabled child or young person under section 6 of the Equality Act 2010 who may need healthcare provision in order to manage their impairment.’

New clause 19—*Children and young people in mainstream schools with specified health conditions, without special educational needs*—

(1) The governing body of a mainstream school has a duty to produce and implement a medical conditions policy that defines how it plans to support the needs of children with specified health conditions.

(2) The medical conditions policy must include provision about—

(a) the means by which records of the specified health conditions of children at the school are to be recorded and maintained; and

(b) the preparation of an individual healthcare plan for each child with a specified health condition which sets out the needs of that child arising from that condition.

(3) The medical conditions policy must include requirements relating to the provision of appropriate training for school staff to support the implementation of individual healthcare plans.

(4) In preparing an individual healthcare plan the governing body must—

(a) consult the parents of the child concerned and, where appropriate, the child about the contents of the plan; and

(b) there shall be a duty on NHS bodies to co-operate with the governing body in its preparation and implementation of individual healthcare plans.

(5) Local authorities and clinical commissioning groups must co-operate with governing bodies in fulfilling their functions under this Act.

(6) The Secretary of State may by regulations define ‘specified health conditions’ for the purposes of this section.

(7) For the purposes of this section ‘NHS bodies’ has the same meaning as in the Health and Social Care Act 2012.’

New clause 29—*Maintaining a register of sight impaired and severely sight impaired children and young people*—

‘A local authority in England must establish and maintain a register of sight impaired and severely sight impaired children and young people who are ordinarily resident in its area.’

The amendments are about the provision for children with disabilities and chronic health conditions. Before I call Sharon Hodgson, I have a housekeeping announcement that it now appears that we will not be interrupted by two Divisions in the House, but we may be by one at about 5 o’clock. We will deal with that as we go.

Mrs Hodgson: Thank you, Mr Havard. This is a diverse group of amendments and new clauses tabled by both Opposition and Government Members, but, but as you said, there is a common theme.

As the Minister knows, bringing children with disabilities under the umbrella of the Bill has been a key ask from the sector at all stages—an ask that the Education Committee agreed with. Many of the witnesses we heard from talked about this issue, but I do not think that anyone put it better than Srabani Sen from Every Disabled Child Matters, who pointed out that

“one of the guiding principles of the Green Paper, which was published a couple of years ago with the ‘Next Steps’ document, was how to make the system simpler for parents, and for the children and young people going through it. This is just adding to the complication, because if you are a parent, you will have to work out whether you are covered by one bit of legislation or another. That also complicates matters for the professionals trying to support them.”—[*Official Report, Children and Families Public Bill Committee*, 5 March 2013; c. 40, Q86.]

It is important to say that nobody is necessarily calling for anything extra in terms of support for these children. What we are calling for—when I say we, I believe that I am safe in including the hon. Member for South Swindon, to whom I pay tribute for his fantastic work on this issue—is a once in a generation piece of legislation to bring together all the different types of support that children need. I see no great additional cost to doing that. As the Minister said, local authorities and the NHS currently have statutory requirements in relation to children with disabilities and social care needs, which they should already be meeting thanks to the Children Act 1989, the Chronically Sick and Disabled Persons Act 1970 and the NHS constitution. Any costs of integrating those requirements should relate only to the co-ordination of the plan, not the provision itself. Indeed, if we bring things together, there is the potential for cost savings if that is done effectively.

That is why amendments 75 and 76 would explicitly bring reasonable adjustments that already must be made under the terms of the Equality Act 2010 within the

scope of joint commissioning agreements, to try to ensure that health authorities and local authorities are acting in a joined-up way and hopefully therefore achieving economies of scale. That may be the Minister's intention anyway without it needing to be on the face of the Bill, so I look forward to hearing his response.

If education, health and care plans are truly to live up to their name—I am sure that the Minister does not want to fall foul of the Trade Descriptions Act, as Jane McConnell from IPSEA suggested he might when she gave evidence—there seems to be no good reason why they should not codify and bring together current entitlements for disabled children and young people, regardless of what combination of education, health or social provision they require. That co-ordination of assessment and provision would represent a significant step in terms of reducing the pressure on families with disabled children and helping disabled young people to navigate the different systems of support we have now.

This is not just a Westminster bubble or third sector concern: if the Minister read the comments submitted to the public reading website—I am sure he read every word—he would have seen that the general public support these proposals too. The amendment tabled by the hon. Member for South Swindon focuses solely on children and young people who are permanently disabled, whereas amendment 72, which is in my name and that of my hon. Friend the Member for Wigan, would include children with chronic illnesses as well, so that their needs are recognised and their progress tracked.

I commend the work done by CLIC Sargent. Although children with chronic illnesses are a pretty small cohort, they are clearly at risk of falling behind because of their illnesses, whether through missing school to attend appointments or just not being able to concentrate while they are at school because of their symptoms or the side-effects of their treatment. Just like a child who is disabled, they might not have a learning difficulty in itself, but they clearly have difficulty accessing the curriculum unless they have special educational support. If clause 20 does not reflect that, we risk letting those children fall through the net and letting their illness continue to limit their life chances long after they have recovered from it medically. The Minister has already taken massive steps forward in his thinking about the Bill by tabling the amendments he has so far, but he would earn himself legendary status if he went a bit further and accepted some or even all of the amendments to clause 20, or better still, committed to tabling his own amendments at a later stage.

I want to take a moment to talk about children who have medical conditions. Some 29,000 children in our schools have diabetes, 1.1 million suffer from asthma and 60,000 from epilepsy, and many more have heart conditions or suffer from regular migraines. Such children and their parents deserve to know that their school can effectively manage those conditions while they are there—that the child will be given their medication or inhaler when they need it; that staff will know when the child is being affected by whatever condition they have; and that allowances will be made where appropriate.

Craig Whittaker (Calder Valley) (Con): Will the hon. Lady explain how using an inhaler or having to take medication becomes a special educational need?

Mrs Hodgson: It not just the fact of using an inhaler, but the wider ramifications of whatever the condition is. The ramifications of illnesses such as cancer and epilepsy affect children's ability to learn and access the curriculum. A child who needs to be taken out of class to use an inhaler, especially if they have a severe asthma attack, will perhaps miss the rest of that lesson or the rest of that day, if the child is so upset that they have to be taken home. That affects their education, because they will have missed lessons, whereas if the inhaler had been administered sooner—if the teacher had had more training or more awareness of the condition—the asthma attack might not have been severe and might have been managed better. It is therefore relevant to special educational needs, which are deemed to be anything that means that a child needs to be supported to access the curriculum in the same way as their peers.

At the moment, we do not have a consistent approach to managing medical conditions in schools. I agree with the Health Conditions in Schools Alliance that the Bill provides an excellent opportunity for the Government at least to look at how schools support such children and how schools are supported to provide that support; I hope that that answers the point raised by the hon. Member for Calder Valley. We cannot simply expect teachers and school staff to know how to do that effectively as a matter of course. They need help from the national health service, whose staff are, after all, the experts. I hope that the Minister will say something about support, which is the subject of new clause 19. More important, I hope that he will respond positively to the cross-party attempt to ensure that the positive reforms in the Bill will apply to all children who need extra support.

2.15 pm

Mr Robert Buckland (South Swindon) (Con): It is a pleasure to serve under your chairmanship, Mr Havard. I pay tribute to the hon. Member for Washington and Sunderland West. Having graduated from Durham university, I know her part of the world very well. It is a pleasure to work with her on a cross-party basis to advance the cause of children and young people with special educational needs, chronic illnesses and disabilities. I welcome the spirit in which she has moved her amendments today. I will speak to amendments 48 and 49 to clause 20, and also to amendments 41 and 42, which relate to clause 36 but are quite rightly grouped with the others to make the debate more thematic.

I tabled amendments 48 and 49 in essence to explore whether education, health and care plan assessments could be triggered when a disabled child may have social care or health care needs but not significant special educational needs. We have already heard quite an interesting argument about the trigger for assessments. My hon. Friend the Member for Calder Valley made an interesting intervention about whether someone with a chronic illness such as asthma would need an assessment. My understanding of the process is that an expectation has built up quite naturally among parents, providers and everybody who has an interest in and passion for this subject that the new education, health and care plans would bring a more thematic approach to assessment, and that education would not always be the trigger. The principles of health and social care rightly being brought into the mix generated an expectation that sometimes

the trigger would be health based. That surely follows from the Government's well stated intention to bring together these needs into one thematic plan, so that rather than wait for a child to attain school age, if there is a health need or a chronic illness at an earlier stage, an assessment could be made at that stage. Similarly, if a care issue became acute at a later stage in a child or young person's development, an assessment could be triggered then. That is a legitimate expectation and one that I believe we should do our best to meet.

It has already been said but it is important to say again that I do not believe that my amendments would result in an increase in expenditure. In fact, I take the contrary view: taking an approach such as the one advanced by my amendments would save money, because some of the needs of children who are disabled or have chronic illnesses can be dealt with at an early stage, and managed and supported so that their need does not become acute and so require more funding, resources and time. The principle of getting it right at the earliest stage surely must flow through every page of the Bill.

Very often children with cerebral palsy, for example, have significant health and social care needs, but not necessarily a special educational need. There is a large cohort of children and young people out there who live with a lifelong condition such as cerebral palsy, manage it and actually thrive in a school environment, but they need, for instance, continuing occupational therapy and other support to ensure that they can access the curriculum and be part of the mainstream. Why should they, unlike somebody with a special educational need, be in a position where they are denied an assessment and inclusion in the Bill's provisions? I have raised and answered my own point by stating my belief that a young person or child with that sort of condition being supported in the mainstream will not only thrive educationally, but save the system a lot of money, because without that sort of support, access to the mainstream is difficult if not impossible, and the young person may need a more acute intervention, which is not only bad for them, but more costly for the system.

The theme that runs through this group of amendments is simply this: why are we sticking with an education-only trigger when the assessments are supposed to be about education, health and care? Why are we not looking at other triggers that could bring children and young people within the ambit of the assessments and potentially the plans? High expectations should be met, because, as the hon. Member for Washington and Sunderland West said, this is an historic opportunity to make a real change and to move on from the Education Act 1981 which, in its own time and with its successors, did so much to advance the position of children and young people with special educational needs.

Amendments 48 and 49 are worded such that they do not cover chronic illnesses, but amendments 41 and 42—particularly amendment 42, on assessments—make a specific reference to the Chronically Sick and Disabled Persons Act 1970, so we have done our best to cover the point that the hon. Lady mentioned. I accept that her amendments comprehensively cover the whole range of children and young people who, while they might not be disabled in the sense that they have an organic disability, may have acquired a condition that would be regarded as chronic.

I do not believe for one minute that it is the intention of the Government—and certainly not the Minister—to create a division between children with SEN and disabled children who do not have SEN. I do not believe that he would want such an artificial division to undermine the excellent proposals that the EHC plans embody. In a nutshell, my observations in supporting the amendments are simply this: let us take the chance now to fully extend the ambit of assessment; not to use education as the only trigger but to make sure that all young people who have genuine needs can be supported within the system. In the long run, it will not only help them to achieve great fulfilment in their lives, but save the system money.

Pat Glass (North West Durham) (Lab): I understand that the purpose of the amendments is to ensure that children with recognised disabilities and those suffering from chronic or long-term illnesses that may not constitute a learning difficulty but that present additional challenges for the child or young person in their learning can be brought within the scope of the Bill.

The definition of special educational needs in clause 20 is that:

“A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her”.

That is not changing. Under the current definition, if a child or young person has a special educational need which calls for special health provision to be made for them, they will not qualify for an education, health and care plan. I am thinking particularly of a child with an acute allergy that can cause acute anaphylactic shock. There are many of these children in our schools—I imagine that there is one in every school across the country—and they need special educational provision to be made for them. They need a proper plan in place and they need staff who are trained—who know where the diazepam is and who is going to administer it and who has had the training. There are concerns among parents and groups representing them that in future those children, because they are not specifically mentioned in the Bill, may be omitted from support provision.

Children with cancers and similar chronic illnesses do not meet the statutory definition of children with SEN, but they have needs that require extra resources over and above those that would be allocated to a disabled child. However, there is not the same degree of strategic or even local co-ordination or commissioning between agencies to meet their needs. This is crucial for parents. If their child has a recognised special educational need, there is a route to get a statement and proper co-ordination of health, education and social care agencies around the needs of that child. They might argue that what is provided is not enough, but at least there is a proper structure for it to happen. If their child has a chronic illness or disability, however, that kind of proper co-ordination does not happen. We risk losing the opportunity to make that happen for a wide range of children across the country.

Some, but not all, children and young people with chronic health problems would benefit from their teachers discussing their progress and any problems they are having as a result of gaps in their education with an educational psychologist. That is the kind of thing we are looking for when we extend the scope of the definition.

Children and young people with chronic health problems would sometimes benefit from being known to, and having their progress tracked across subjects by, the school assessment co-ordinator. Lessons missed or weeks off school due to operations, hospital appointments and clinic visits can lead to gaps in learning. Sometimes chunks of learning are missed, and the child is prevented from studying those subjects at a higher level. The child, the parents and the school would benefit from knowing that the school assessment co-ordinator will recognise where those chunks of learning are missing, and will take remedial action so that the child is not prevented from studying later.

I do not disagree with the decision to get rid of School Action Plus because, in my experience, 50% of children on School Action Plus registers are simply summer-born. When I have asked teachers who put children on the School Action Plus register, what difference it made to the child, and what was done over and above what the child would normally get from being registered with School Action, they have looked at me blankly. I agree with what the Government are trying to do; the problem is that many schools included children who have chronic illnesses and disabilities in the School Action category, just so that somebody recognised that those children need a different approach and their needs should not be overlooked. If we not to have School Action in the future, it is important that all disabled children are contained within the scope of the definition, so that education, health and care planning and commissioning specifically include those children.

Annette Brooke (Mid Dorset and North Poole) (LD): It is a pleasure to serve under your chairmanship, Mr Havard. I would like to put on the record that I have a great deal of sympathy with the previous speakers—the hon. Members for Washington and Sunderland West, and for North West Durham, and my hon. Friend the Member for South Swindon. I will not repeat what has been said, but I will draw out two key points. We are looking at a full, comprehensive package, even though the child might not have been identified primarily with special educational needs. That is very important across the board. It is pretty obvious that children with sight impairment might have complex disability needs, and in mainstream education they might need School Action Plus support to make sure they have the right equipment, access to special computers and so on. We are talking about a wide a spectrum, so it is important that children anywhere on the spectrum have access to fully integrated services, but obviously the extent of the packages will be different for different needs.

I will touch briefly on children with long-term medical conditions. I surveyed my local schools to find out how they cope with children with diabetes, and I discovered that there was varied practice. I would like the Minister to recognise, even if he does not want to do something specifically in the Bill, that there is an issue there. We must make sure that we look after children in the best possible way and keep them going to school regularly so that they do not fall behind with their studies. We should ensure that contact is maintained when they are off at home. There really is a lot more that can be done for that important sector. Over the years, I have met children with all sorts of long-term conditions. They all have the same story to tell about lack of support—about

losing contact with their classmates, for example, when they are off sick long-term. So much can be done with conferencing these days to ensure that there is an inclusive package all year round. I would like to think that, whether through the Bill or another measure, we can do better than we have in the past.

2.30 pm

My new clause 29 would require the registering of blind and partially sighted children. The Minister will say, “That requirement exists already”, but I want to flag up the concern that, without such a clause in the Bill, that provision could disappear. We are talking about 25,000 children, around 50% of whom have additional disabilities or special educational needs. Usually, a local authority, or local authorities together, provide a visual impairment service. There is a certification process for children and adults through the NHS, which enables local authorities to keep a register.

The issue arises at this stage because there will be a duty to establish and keep registers for blind and partially sighted adults in the draft Care and Support Bill. There is an argument for equality of treatment; the concern is that without a parallel duty in this Bill, the duty for children could disappear, and that duty is important when thinking about planning the services required for sight-impaired children. It would also help with benefits and specialist referral to extra services that children may need.

I would like the Minister to consider how people feel about the issue. Adults will be clearly identified, and registers for them are provided for in the draft Bill; why should registers for vision-impaired children not have a statutory basis?

Andy Sawford (Corby) (Lab/Co-op): I support what previous speakers have said. I want to ask the Minister some questions before he replies on the case for including disabled children much more clearly in the scope of the Bill.

The submission to the Committee from Every Disabled Child Matters, which the Minister will have read, highlights a lack of understanding about the number of children affected. EDCM rightly makes the point that many SEN children have disabilities, and that many disabled children qualify as having SEN, but it estimates that there are tens if not hundreds of thousands of disabled children who do not currently have SEN. It cites research from the university of Bath that suggests that “25% of disabled children would not have identified SEN”.

What figure is the Minister working to?

I understand that the Minister has previously said that the continued availability of Children Act assessments is sufficient to provide for disabled children’s needs in the education, health and care system. The fundamental question is this: given his good intentions, which, as he knows, are widely supported across the Committee, what is his rationale for not seeking to include disabled children and give them the benefit of aspects of the Bill? An example is the absolutely correct intention to offer more connected support for children with particular needs; there is a requirement on clinical commissioning groups to provide for the needs of children with SEN. Why would we not seek to extend the aim of joining up clinical commissioning groups and other parts of the

health care system with the education system, so that the aim covers disabled children who do not have special educational needs? The Bill would seem to be an excellent vehicle for doing that. Why would we not extend the idea of the local offer to disabled children? Why would we not extend to disabled children the aims relating to hearing children's and parents' voice with regard to the care that is provided? I would like to hear the Minister's response, because I cannot see why we would not use this opportunity.

Mr Timpson: As we have heard, a number of amendments and new clauses have been tabled relating to the scope of the SEN provisions and the definition of special educational needs. They relate to: clause 20, which sets out when a child or young person has special educational needs and, therefore, the children and young people to whom the provisions apply; clauses 26 and 27, which are about joint commissioning and keeping provision under review; and clause 36, which is about eligibility for an EHC needs assessment.

I appreciate that we have a lot of ground to cover, but before turning to the amendments, I want to be clear about the rationale for these reforms, the importance of the educational trigger for an EHC needs assessment and plan, and the duties in other legislation that offer disabled children safeguards, because a number of Members raised those issues. I fully understand the wishes of Members and other interested parties to ensure that all children's needs are fully met. However, we have to be clear that the purpose of the new approach set out in the Bill is to bring about a much needed improvement in how we meet the needs of children with special educational needs, whose outcomes are so markedly lower than those of their contemporaries.

The rationale was first set out in the Green Paper, and it has been followed through. The Green Paper made it clear that EHCPs—education, health and care plans, for the benefit of those who have not taken to my acronyms, which now trip off the tongue—would be for the same children and young people who currently get statements, including learning difficulty statements. The current system is much more focused on professional processes than the needs of children and young people with SEN and their families. Those vulnerable families find the current arrangements bewildering, frustrating and adversarial, and for children with the most complex support needs, that can significantly affect their quality of life, so it is right that the provisions focus on the requirements of the children with the most complex needs.

We have discussed the definition of SEN used in the clause. It is already broad, and it mirrors the current definitions of special educational needs and learning difficulties, as set out in section 312 of the Education Act 1996. It provides a single definition that applies to children and young people from birth to 25 years old. It provides that a young person has a special educational need if he or she has a learning difficulty or disability that calls for special educational provision to be made for him or her. It also defines a learning difficulty or disability as a significantly greater difficulty in learning than the majority of others of the same age, or a disability that prevents or hinders a child or young person from making use of facilities of a kind generally provided for others of the same age by schools, colleges and training providers.

Those are important points, and I want to take a moment to reflect on them. It is impossible to make blanket statements about complex conditions such as epilepsy, diabetes and asthma and how they will affect children in different settings. However, where a child has a disability or health condition that requires special educational provision to be made, it is right that they be deemed to have special educational needs under the Bill. The families of children with such needs could legitimately seek an education, health and care plan assessment. To build on the point made by the hon. Member for Corby about the statistical analysis of those children who have both a disability and a special educational need, it is estimated that 75% of disabled children will also have special educational needs and so will be covered by the reforms.

This is not the first piece of legislation touching on disabled children who have a special educational need. What we are proposing is very much along the lines of previous legislation that has tried to make a difference for such children. As the hon. Member for Washington and Sunderland West has noted, there are provisions elsewhere in legislation that provide important protections for disabled children and young people who do not have special educational needs. We have heard about section 17 of the Children Act 1989, which imposes a general duty on local authorities to safeguard and promote the welfare of children in need in their area. All disabled children and young people up to the age of 17 are eligible for a child in need assessment, and disabled children aged 18 and over will of course have their needs considered by adult social care.

That is just the Act relevant to social care; there are also Acts relevant to health care provision. I want to be clear that the Government are committed to improving health outcomes for all children and young people. That is why, in February, we launched a system-wide “Pledge for Better Health Outcomes for Children and Young People”, which set out our shared ambitions for children and young people's health in the wider new health system and beyond. Children and young people will be at the heart of the new health and social care system—not as an add-on or an afterthought, but as a deliberate focus—as it develops, so that their health does not get left behind.

Integrated support, which should be happening across agencies, is crucial and central to achieving the improved health outcomes set out in detail in the pledge. All local services and social care, including schools, have a vital contribution to make, particularly for children with a disability or a long-term health condition.

It is also worth noting that the SEN reforms are enabling, and there is nothing to stop local areas applying the principles of integrated assessment and a co-ordinated plan to a wider group of children, as some pathfinders are already doing. In Calderdale, for example, the pathfinder is working with families and groups to build a community around disabled children, with a focus on what each child can do and how to make that happen. In Southampton, pathfinder activity is being co-ordinated through a multi-agency children and young people development service, which is bringing together a wide range of professionals from education, health and social care to deliver integrated assessments.

Amendments 71 and 72 tabled by the hon. Member for Washington and Sunderland West propose that the definition of special educational need be broadened to

reflect the wider definition of disability in section 6 of the Equality Act 2010, and specifically include a reference to long-term health conditions that impact

“on his or her ability to access the same learning opportunities as their peers without additional or extra provision.”

One of my proposed amendments to clause 26 makes it clear that joint commissioning arrangements must include arrangements for considering and agreeing the needs that are reasonably required to be met where there are learning difficulties and disabilities that result in the children and young people concerned having special educational needs. Clause 20 already refers to a child or young person having a disability that

“prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in ... schools”.

Important duties are already placed on schools in relation disabled pupils through the Equality Act. For instance, schools must not discriminate or harass disabled children, and they must make reasonable adjustments for individual pupils, and disabled pupils more generally, to help alleviate any disadvantage they suffer. They must also have regard to the need to eliminate discrimination, promote equality of opportunity for disabled pupils, and foster good relations between disabled and non-disabled pupils. Every three years, they must publish accessibility plans. Likewise, local authorities’ accessibility strategies, setting out how they propose to increase the access of disabled pupils to premises, the curriculum and information, must be published. Schools must also publish specified information about their provisions, policies and practices in relation to disabled pupils.

It is likely that a pupil with a long-term health condition such as diabetes, asthma or epilepsy would be covered by the definition of disability in the Equality Act, which consolidates provisions that were previously in disability discrimination legislation.

I am, as ever, grateful to the hon. Member for Washington and Sunderland West for raising the points addressed by amendments 75 and 76. I am pleased to reassure her that local authorities and health commissioning bodies must pay proper regard to and comply with the provisions of the Equality Act, including their new joint commissioning functions. They must not discriminate against disabled people in the provision of services, or in the exercise of public functions, and must make reasonable adjustments for disabled people in accordance with section 29 of the Act.

It is our intention that the revised SEN code of practice should reflect existing duties, such as Equality Act duties, that should be taken into account by commissioning bodies while carrying out their functions under part 3 of the Children and Families Bill. That is an important element of our reforms, because it is starting to bind the existing duties on health and social care as part of the code of practice, so that that generates and fosters better joint working right across the three agencies, regardless of their activity.

Amendments 48 and 49 are the first that my hon. Friend the Member for South Swindon has decided to inflict on us, and he did so in his usual calm and considered way. They seek to widen the scope of the duty to keep under review the education and social care provision for children for whom the local authority is responsible, to ensure that it is sufficient to meet the needs of disabled children and young people, as well as those of children with special educational needs.

I recognise that disabled children and young people without SEN are not explicitly covered by clause 27. However, that does not mean they will be overlooked. All local authorities have a statutory duty under section 14 of the Education Act 1996 to ensure that sufficient schools are available for their area in number, character and equipment to provide all pupils, including disabled children and young people, with the opportunity of appropriate education. They also have a general duty under the Education Act 1996 to ensure that enough suitable education and training is provided to meet the reasonable needs of young people in their area who are over compulsory school age but under 19, and young people in their area who are aged 19 or over but under 25 and are subject to a learning difficulty assessment, which will be the new education, health and care assessment.

2.45 pm

All local authorities and their partner clinical commissioning groups have a duty to carry out joint strategic needs assessments of the health and social care needs of their populations. Those reviews will include social care for disabled children and young disabled adults. As the joint strategic needs assessment informs the local health and well-being strategy and commissioning provision, it will inevitably involve reviewing provision and its sufficiency. In addition, section 17 of the Children Act 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children in their area who are in need, which explicitly includes disabled children, and to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs. Although there is no specific obligation on local authorities to review services provided under section 17, it is expected that local authorities will periodically review whether those services need to continue to be provided or need to change.

My hon. Friend the Member for South Swindon raised the issue of the cost of widening the scope of the Bill. I understand his push for widening the scope, based on potential efficiency savings. The adverse effect that is anticipated would be the response to any widening is that the greater level of assessment would create more burdens on the system. The logistics for assessing children who have medical needs but no special educational needs would be an additional burden—and it would not provide what is already available through the legislation on health and social care that I have mentioned to the Committee. It does not add anything to existing legislation, in terms of the assessing provision and the challenge when any service is not provided.

Amendments 41 and 42 tabled by my hon. Friend the Member for South Swindon seek to amend clause 36 so that disabled children, under section 17 of the Children Act 1989, and section 28 of the Chronically Sick and Disabled Persons Act 1970, can receive an education, health and care needs assessment. We believe that the current legislative framework for social care support for children and families provided by section 17 of the Children’s Act 1989 already provides significant legal protection for all children. A disabled child is a child in need for the purposes of section 17 and is eligible for assessment for services under the 1989 Act. Once a local authority is satisfied that it is necessary to provide

assistance to a disabled child under section 2 of the Chronically Sick and Disabled Person's Act 1970, it is under a duty to provide that assistance.

Clinical commissioning groups are under a duty under section 3 of the National Health Service Act 2006 to arrange health care provision to meet the reasonable needs of their population. Children and young people will be at the heart of the new health system, a key focus as the new system develops. Section 3 of the 2006 Act places a statutory duty on CCGs to provide health services to meet the reasonable needs of children with complex health needs, which adds to what the hon. Member for Croydon North said on section 17 of the Children Act 1989. It adds a further dimension to the support available to children who have a recognised health need—a clinical need for health services.

Craig Whittaker: For absolute clarity, will the Minister explain whether the family of a child with severe sight loss, for example, could request an education, health and social care plan, or will they be rejected by the local authority because that is not covered by the Bill?

Mr Timpson: Under the definition of special educational need, which means that the child requires special education provision, the local authority would have to consider the request. If it does not take that request forward, the parents and the young person have the opportunity to appeal against that decision.

To build on that point, I am sure that my hon. Friend the Member for South Swindon, who raised this issue, is acutely aware that children with cerebral palsy normally fall under the definition of having a special educational need, and that their disability usually means that they require special educational provision, so they will be able to access occupational therapy through their EHC plan, or through a general practitioner or paediatrician referral if no plan is in place. I have already mentioned the other duties on CCGs that will assist them to access the required services.

Furthermore, the assessments in clause 36 must consider the education, health and care needs of a child or young person, and indicative regulations provide more details about how agencies should work together. For example, the regulations set out that, where appropriate, local authorities must seek educational advice and medical, psychological and social care advice relating to the child when considering whether an EHC plan is needed. Should that advice show that a more detailed assessment is needed with regard to any of those aspects, the local authority or health authority will need to consider whether to carry out an assessment under existing legislation.

We have touched on the role of schools in supporting children with medical needs, and I now want to speak about new clause 19. I very much understand the importance of schools developing policies to ensure that appropriate medical support is provided for children with specific medical needs. I am sure that many Members have been involved in campaigns by various groups to try to raise awareness of, and improve the way that schools deal with, a number of medical conditions, and I thank the hon. Member for Washington and Sunderland West for tabling the new clause.

Children with additional and complex medical needs are entitled to a full education, and schools are expected to work with the child, parents and health service

professionals in the interests of the child to provide it. We need schools to understand and support the educational, health and medical needs of all pupils with both short and long-term medical issues, and we encourage them to draw up for pupils health care plans that clearly identify the required level of support and clarify all the help that will be provided.

It is for schools to decide how such records and plans are kept, although we know that some local health services have developed forms that schools can access and use, and we encourage others to do the same. We also expect training to be provided, based on the support needed for the individual child. For example, school staff should be comfortable administering prescription medicines and undertaking health care procedures, knowing that they have been appropriately trained.

The Government have been clear that they want to give schools the maximum freedom to use their professional judgment and to decide their priorities based on local circumstances, so it is only right for them to have the responsibility for working alongside parents to determine how best to address the specific medical needs of each and every child, rather than having to take a given approach that might be inappropriate. To help achieve that, the Department worked alongside the Department of Health to produce the guidance called "Managing Medicines in Schools and Early Years Settings", which is designed to help schools and employers develop appropriate policies and put in place management systems that support children with particular medical needs. The guidance is subject to regular review, and is currently being updated.

Schools may choose what is appropriate, depending on local circumstances, against the background of that guidance, so we judge that the introduction of new legislation to create a statutory duty on schools would be an unnecessary response. The Government remain committed, however, to taking every opportunity to extend greater autonomy. It remains best for schools to continue to have flexibility to establish the exact way in which to meet the needs of their pupils.

Finally, through new clause 29, the hon. Member for Mid Dorset and North Poole seeks to ensure that local authorities identify, and think strategically about, the needs of blind and partially sighted children and young people. That is absolutely the intent at the heart of the SEN clauses in the Bill. The new clause seeks to replicate clause 49 of the draft Care and Support Bill, which establishes registers for visually impaired adults. The Royal National Institute of Blind People has raised concerns about corresponding measures being missing from this Bill, and only yesterday I discussed the issue with Lord Low, who takes a keen interest in it.

The hon. Lady suspected I would say this, but local authorities are already under a duty to maintain a register of disabled children and young people, including blind children and young people, under section 17 of the Children Act 1989. The changes proposed in the draft Care and Support Bill will not remove that duty. She well described RNIB's concern that local authorities sometimes neglect their duty to maintain such registers, but the same risk would apply in relation to the new clause. The Children Act already provides for that, so we think the new clause is unnecessary.

The priority is to ensure that local authorities are meeting the needs of blind or partially sighted children effectively. The Bill requires them to identify children and young people in their areas who have or may have SEN under clause 22; to make joint commissioning arrangements that include consideration of the education, health and care provision reasonably required by local children and young people with SEN under clause 26; and to review the special education and care provision that is available locally under clause 27.

Taken together, the provisions provide a clear framework that requires local authorities to plan for and meet the needs of children with SEN, including blind or visually impaired children and young people. To plan for those services, local authorities will need to use a range of information, including the school census data and their registers of disabled children and young people. A further requirement also to maintain a specific register for visually impaired children would not add to that approach. Be that as it may, I am happy to take the issue away, continue to talk with the hon. Member for Mid Dorset and North Poole about her suggestion and take the opportunity to reflect on it further.

On that basis, and having set out the rationale behind the Government's position and accepting that there is a shared consensus on trying to improve the lives of all children who have some form of special educational need and disability, which we will continue to work towards, I urge the hon. Member for Washington and Sunderland West to withdraw the amendment.

Mrs Hodgson: I have listened to the Minister and the contributions from other hon. Members with great interest. I want to refer at the outset to the Green Paper and clarify something that I think that the Minister said earlier. My recollection of the Green Paper was that it was about the aspiration for children with special educational needs "and disability", so disability was there right from the start, in the Green Paper. That has probably led the sector, as well as hon. Members here today, to believe that this may be a new area—that it would not just be special educational needs that opened the doors to additional support, but that children with disabilities but without a special educational need would not be excluded. I think that that is how, right from the outset, from the time of the Green Paper, we were lulled into thinking that that was the path that we were going down.

As I said, I have listened with great interest to the debate. Like the hon. Member for South Swindon, I do not think that there would be any real additional burden or costs to bringing those with disabilities but no SEN within the scope of the Bill—in fact, I still believe that there might be savings. However, I take on board the Minister's assurance that the code of practice will—he says it does already—bind together in one place all the existing duties for these children. I still believe that it would be desirable to have that in statute, in the Bill, but if the code of practice is what is on offer, we will happily accept that for now.

With regard to children with chronic illnesses or long-term health conditions, I heard what the Minister said and I hope that his comments make their way into strengthened guidance in due course, as he has committed to the Committee today.

With those commitments and assurances, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 20 ordered to stand part of the Bill.

Clause 21

SPECIAL EDUCATIONAL PROVISION, HEALTH CARE PROVISION AND SOCIAL CARE PROVISION

Mr Buckland: I beg to move amendment 189, in clause 21, page 18, line 16, at end insert

'including the private, voluntary and independent early years sector and home-based early years provision.'

The Chair: With this it will be convenient to discuss the following:

Amendment 200, in clause 28, page 21, line 37, leave out 'maintained nursery school' and insert

'the providers of relevant early years education in its area'.

Amendment 201, in clause 29, page 22, line 45, leave out 'maintained nursery schools' and insert

'the providers of relevant early years education in its area'.

Amendment 197, in clause 33, page 25, line 18, leave out 'maintained' and insert 'mainstream'.

Amendment 203, in clause 35, page 27, line 3, leave out 'maintained nursery school' and insert, 'relevant early years setting'.

Amendment 213, in clause 38, page 29, line 27, at end insert—

'(g) an institution at which early years education is provided.'

New clause 21—*Early years area SEN co-ordinators*—

'(1) Local authorities must appoint sufficient full-time equivalent members of staff (to be known as Early Years Area SEN Co-ordinators) to have responsibility for co-ordinating provision for children in Ofsted-registered early years settings other than maintained nursery schools.

(2) In assessing sufficiency of staffing levels under subsection (1) the local authority must have regard to—

(a) the number of children with special educational needs in its area registered with early years settings to which subsection (1) applies;

(b) the number and geographical location of early years settings to which subsection (1) applies.

(3) Regulations may provide for—

(a) further considerations to be made by local authorities in exercising their duties under subsection (1);

(b) the specific responsibilities of Early Years Area SEN Co-ordinators.

(4) The Secretary of State shall publish guidance to local authorities to assist in exercising their functions under subsection (1).

(5) Local authorities must publish information on the provision of Early Years Area SEN Co-ordinators as part of exercising their duties under section 30 of this Act (local offer for children and young people with special educational needs).'

These amendments are about pre-school and early years provision.

3 pm

Mr Buckland: I rise to speak to amendments 189 and 213 and I shall do so, I hope, with admirable brevity. Amendment 189 is primarily targeted and aimed at ensuring that children with a visual impairment who have special educational needs are included in an education,

health and care plan, where appropriate to their assessed needs. These children are entitled to receive vital specialist support from birth.

My concern is that the duty to make educational provision for under-twos who access home-based provision only is not as clear as it should be. There is a worry that there may be a loophole whereby services, such as those for visual impairment, would not be provided until a child is two or even of school age. I cannot believe that that would be the intention of the Government or the Minister. As well as encouraging a culture of inclusion, we must avoid arguments being mounted based on any potential lacuna or loophole in the legislation. The amendment is probing and is designed to tease out from the Minister the Government's thinking. That will hopefully provide reassurance in relation to those very young children who are often in a high degree of need and who should not be left out.

Amendment 213, which relates to clause 38, is similar to a number of other amendments tabled by other hon. Members and is designed to explore the range of early years providers that can be named in education, health and care plans. We know that the early years sector is extremely diverse, with a wide range of different providers, but under the Bill only maintained nursery schools can be named. Although we know that maintained nursery schools provide an excellent service, there are plenty of other providers—often small providers—that are doing great work and need to be part of the mix.

Andrea Leadsom (South Northamptonshire) (Con): As my hon. Friend knows, it is often the childminders with some specialism who can work to meet a child's attachment needs, and that helps greatly and profoundly where there are issues of disability or other educational needs.

Mr Buckland: I am extremely grateful to my hon. Friend, who does admirable work in this field. She does not just talk about it; she takes action, such as her involvement with the Oxford parent-infant project, which will be increasing its range and coverage. I pay tribute to her for that. Like me, she wants to ensure that there is a meaningful choice in provision for parents and children in their early years. As she says, the expertise that can be offered by fairly small organisations should not be ignored. I will be grateful if the Minister confirms that he has considered including that broader range, so that we can ensure that the full gamut of choice is available, pursuant to education, health and care plans.

Annette Brooke: I shall speak briefly to the amendments in my name, which are 200, 201, 197 and 203. I concur with my hon. Friend the Member for South Swindon, but we come at the issue from slightly different angles. I will not repeat what he said, but I agree with him. We have in common the belief that we should include all the different types of settings for early years mentioned in various clauses. Many children will attend a setting other than a maintained nursery school, and there is a concern about the Bill in that respect.

I will focus on early identification. As well as having a specific setting named on the plan, we think that early identification is key to improving the educational outcomes for children. Research shows that the earlier all sorts of

special educational needs—one of my causes is speech and language issues—are identified, the more can be done about them across all educational phases, and that is cost-effective.

We would certainly need co-operation with, for example, the local authority, and amendment 200 to clause 28 is about co-operation with the local authority and all the local partners. For once, I feel that the list of partners is exhaustive. I remember wanting to add this, that and the other to previous Bills, but all I want for this Bill is for it to be absolutely clear that we are talking about all recognised early years providers. That is important, because a child will often just go to the nearest playgroup, and if the parent does not have the force or knowledge needed to get around the system, early speech problems may not be picked up.

Amendment 201 applies to the governing bodies of early years settings—perhaps a management body. Amendment 197 applies particularly to education, health and care plans, and leaving out “maintained” and inserting “mainstream” ensures that we cover all the settings. I am concerned that clause 35, the heading of which refers to maintained nurseries and mainstream schools, does not consider all the important providers.

Mrs Hodgson: I support the amendments tabled by the hon. Members for South Swindon and for Mid Dorset and North Poole. I served with the hon. Lady on the Children, Schools and Families Committee in the previous Parliament. We are also colleagues on a number of all-party groups and have worked well together over the past eight or so years, so I was pleased to see her on this Committee. She is an assiduous campaigner on children and family issues, and the work of the Committee will be all the better for her inclusion.

The amendments are similar to ones that I have tabled to other clauses. The need for them might be the result of a mere oversight by the Government. A key headline of the reforms that is unanimously welcomed is that the SEN system will go from nought to 25. Identifying and supporting children with special educational needs as early as possible is the most important factor in improving their outcomes, and it saves money in the long term. A good-quality early years provider can make a huge contribution to tackling speech and communication problems, developmental delay, behavioural issues and literacy problems, and ensure that children start school in a much better position than they would otherwise have, with less money needing to be spent on them to enable them to reach their potential—in the worst cases, they would not have been able to reach their potential at all.

I am confident that leaving private, voluntary and independent child care providers out of key parts of the Bill must have been an oversight, because I am sure that the Minister would agree that they have just as important a role to play in identifying and providing for children with special educational needs as any other institution that is named. As the professionals who work for such providers are often the first educators to come into contact with children, it could be argued that they have the most important role to play, a role that will become even more important over the next few years as two-year-olds from the most deprived households become eligible for 15 hours a week of free early education. Unfortunately, such children are by far the most likely to be behind in

communication and literacy skills when they start school, and they rarely catch up with their peers, even after intervention.

The early years work force is, however, typically the least qualified in the education sector, and under the Government's plans to increase ratios it could end up even more stretched. Severe cuts to local authority budgets have meant that councils have cut their funding for training early years staff and provision of pooled support resources by 40% since the election. As part of that, many are having to cut back on the early years area special educational needs co-ordinators that they previously employed to provide advice and training on this subject to early years settings.

Our new clause is designed to arrest that decline and would put early years area SENCOs on a statutory basis, just like school SENCOs. It would also ensure that councils employ enough of them to be able to provide early years providers in their local area with the support they need to make a difference to the development of the children with the greatest difficulties. I note that the draft code of practice contains a hole under the heading "The role of the SENCO in early years provision". A hole, a gap—whatever we call it, there is nothing there. I do not know whether that is because the Minister is still thinking about it, but if he is, I hope he will consider the merits of new clause 21.

The amendments are very straightforward and necessary, and I can tell Government Members that if they wish to push theirs to a vote, we will support them, although I hope that the Minister can provide sufficient assurances to us all that the Government will bring forward their own amendments in due course.

I look forward to the Minister's response. If he asks me to withdraw new clause 21, I hope he will at least tell us how early years providers will be supported to play the crucial role in identifying and meeting the needs of children with special educational needs that we want and need them to play.

Mr Timpson: I think we all recognise the overwhelming importance of early identification and early intervention for children with learning difficulties and disabilities, but we must also understand the limitations of applying the full weight of legislative duties to small private and voluntary sector providers, and independent providers such as childminders. In responding to the amendments, I will seek to provide the reassurance that hon. Members have requested and demonstrate how the Government are balancing these important factors to achieve the best possible arrangements for young children with special educational needs.

Amendment 189, tabled by my hon. Friend the Member for South Swindon, would include in the definition of special educational provision such provision that is additional to or different from that made by private, voluntary and independent early years settings as well as home-based early years provision. I understand my hon. Friend's intentions, but assure him that, to the extent that these bodies are providing the free entitlement, that is already taken into consideration in relation to special educational provision.

I would also like to reassure my hon. Friend about the role of the health service in to early years and pre-school provision. He mentioned in particular those

young children who may have some form of visual impairment. Under clause 24, there is a duty on health bodies to bring pre-school children to the attention of the local authority if they have or probably have a special educational need. Young children would normally be expected to be in touch with the health services in some form, whether through the support of one of the 4,200 health visitors that we are helping to fund between now and 2015, or perhaps through a family nurse partnership, which we are rolling out across the country. Indeed, only last Friday we did just that in my own constituency of Crewe and Nantwich, and it was a delight to visit them and see the great work that they are already undertaking. That contact would support the early identification of such conditions, and clause 24 puts the duty on health bodies to bring that to the attention of local authorities, so that they can start to do the early assessment work that is so important.

My hon. Friend also wanted reassurance about the range of nurseries that can be called upon to help to provide the right setting and support for pre-school children. It is important to note that it is not only maintained nurseries that can be named, but only maintained nurseries that can be requested by parents with a conditional duty on local authorities named in the plan. However, early years providers can be named in the plan if they agree and the local authority thinks that the placement is appropriate. Of course, if there is a plan in place, the subsequent redress mechanisms are available to parents if they are unhappy or disagree with the local authority.

3.15 pm

Under amendments 200 and 201, tabled by my hon. Friend the Member for Mid Dorset and North Poole, early years free entitlement providers would be required to co-operate with local authorities in the exercise of the local authority's functions and in the exercise of their own functions under the Bill, and vice versa. As I said, it is a co-operation duty that flows both ways. It is important that local authorities are able to work with early years providers to best meet the needs of young children with SEN—that goes without saying. However, the early years sector is very large and many free entitlement providers are in the private and voluntary sectors. The extra burden that such a requirement could place on some providers would be difficult for them to manage, as they may be extremely small and not have the level of resources needed. For example, the duty would extend to voluntary providers such as those providing church hall sessional provision and childminders.

In addition, clause 28(2)(h) includes early years providers, including those listed in the amendment, if they are providing special educational provision for a child or young person for whom the authority is responsible. The extension of the list of partners proposed in amendment 200 is therefore already catered for and the amendment is not necessary. Many early years providers have expertise in supporting children with SEN, and we would of course expect them to co-operate with the local authority. However, a blanket provision would not serve the interests of young children with SEN.

Amendment 197, which would change the reference to a "maintained nursery school" in clause 33 to a "mainstream nursery school", is designed, with the best of intentions, to ensure that pre-school children are not

placed in special nursery schools. However, there are no maintained special nursery schools, nor is there any legal provision enabling the establishment of such schools. Therefore, all maintained nursery schools are mainstream, so the amendment is unnecessary.

I agree with my hon. Friend that it is important to ensure that children with special educational needs in early years settings engage in the activities of the setting together with children who do not have special educational needs, as far as possible. I had an opportunity to visit the SE7 pathfinder, where I saw exactly that taking place. There were toddlers, some with special educational needs and some without, who were interacting together and engaging. That was an extremely important exercise for them to develop their own personal skills in a natural environment.

Andrea Leadsom: My hon. Friend will be aware that for some very young children, their special educational needs are developmental issues, particularly in the area of speech and language. Very often, children have limited speech as a result of not having a serious, profound and secure bonding in their earliest relationship—normally with their mum, but it could be another family member. This sort of measure in a sense deals with the problem of speech and language, but not with the problem of how to prevent it from happening in the first place. Does he think that measures in the Bill will ensure the provision of services to prevent special educational needs from occurring?

Mr Timpson: My hon. Friend has given me several issues to reflect on. Elsewhere in the Bill, we have preserved the current case law which, for the purposes of any plan, would deem speech and language therapy to be an educational element of the plan, so that would help to ensure that such provision is made available. The plans now run from nought to 25, so children who are on a plan and for whom speech and language therapy has been identified as a need would, we hope, be able to benefit from that at the earliest opportunity.

As we have said, the legislation will be an important framework for trying to recalibrate the relationships on the ground, so that professionals make an earlier identification. That is reflected in the code of practice, the emphasis on early assessment and identification, and the exchange and sharing of information. Clause 24 lays a duty on health bodies to provide information to local authorities about any identified special educational needs that have been revealed in their own assessments.

We are looking to roll out the two-year-old health development assessment on a universal basis, but we must always look for further ways to identify issues at the earliest possible opportunity. We have heard about the family nurse partnerships, the Oxford parent infant project, OXPIP, and the Northamptonshire parent infant partnership, NORPIP, which are all good examples of how we spread good practice more widely. Those types of well evidenced and, importantly, extremely early identification of problems mean that support is put in place sooner rather than later, which helps to ensure the problems do not become more acute further down the line. We already know that there are too many children who, because that work has not been done early enough, fall into the category of special educational needs—the hon. Member for North West Durham talked about that—whereas if there had been the right level and right

targeting of support around them, they might not have reached that point of being labelled as School Action or School Action Plus, as the old categories would have placed them. My hon. Friend raises some important issues, which we are trying to tackle through the Bill, through the pathfinders and therefore through the culture change that is required, which we have heard so much about.

Amendment 203 is designed to place a duty to ensure that the providers of early education do as the amendment suggests. I have already said that many of those providers are in the private or voluntary sectors, and they may be very small and lacking the resources to make adjustments to their facilities that the duty could entail.

Amendment 213 would change clause 38(3) to enable a child's parent to request that a provider of early years education be named in their child's education, health and care plan. I understand the extremely pertinent arguments of my hon. Friend the Member for South Swindon. It is crucial that young people with SEN receive the support they need as early as possible, but I do not think that the amendment would be in the best interests of parents or children, as it would require local authorities to name a requested early years free entitlement provider in the plan, but that provider would not be under a duty to admit the child. The amendment might therefore put local authorities in an impossible position, where they would not be able to meet the requests of parents. Without amending clause 43, amendment 213 could well mean that the local authority was placed under a legal duty to secure the provision set out in a plan, but without the ability to fulfil that duty if the institution refused to admit the child. Furthermore, I do not think that it is feasible to require that any provider of the early years free-entitlement be under a duty to admit. The provider may be extremely small, and popular providers may not have the spaces to admit every child whose parents want them to go to that provider.

I can reassure my hon. Friend that, regardless of whether a specific early years provider can be requested to be named in an education, health and care plan or placed under a duty to admit, local authorities and their health partners will need to ensure that appropriate providers are identified to meet the needs of young children with education, health and care plans. Furthermore, just because a parent cannot request that a particular provider be named in a child's education, health and care plan, that does not mean that the child will not be able to attend that provider if the local authority deems it appropriate and the provider agrees to take the child.

New clause 21 seeks to put the appointment of early years area SEN co-ordinators on to a statutory footing. I am aware that area SENCOs can play an important supporting role in non-maintained early years settings, and I would expect local authorities to take decisions on appointments in the context of the range of duties in identifying and supporting SEN in the early years. These duties include the duties set out in this Bill, but also the duty under the Childcare Act 2006 to secure sufficient child care for children aged nought to 14, and up to the age of 18 for children with SEN. Our most recent statutory guidance, issued in September last year, sets out that authorities should report annually on how they are carrying out their duties in respect of securing sufficient child care, and that this should cover provision for those with SEN and disabilities. Also, as

the hon. Member for Washington and Sunderland West will know, we recently consulted on eligibility for the two-year-old entitlement to funded early education, including on whether those with a current statement of SEN, or in due course an EHC plan, or those who attract disability living allowance, should qualify by right from September 2014.

It is right that local authorities should continue, as now, to take decisions on employing early years area SENCOs in the context of these wider duties and in the knowledge of the benefits that they can bring—I think that they are all acknowledged. Of course, the role does not feature in the current SEN code of practice, which focuses on SENCOs in maintained settings. We have further work to do, as I think the hon. Lady was trying to suggest, on the early years aspects of the new code of practice. One of the things we will consider is whether, and if so how, some of the good practice on the area SENCO role can be reflected in the code of practice. No doubt this debate will help to inform that further consideration.

To reassure the hon. Lady more widely on the role of SENCOs, I am sure that she looked carefully at the emphasis placed on them in the draft code. We are also funding 9,000 SENCOs to complete mandatory qualifications—that was up to 2011-12—and we are now funding, through the current financial year, a further 1,500 to help to support the work they do in our schools and early years settings. I hope that that provides reassurance.

Mrs Hodgson: Is the funding for additional SENCOs extra money from central Government, not from local authority budgets?

Mr Timpson: Inspiration will arrive at any moment, Mr Havard. My understanding is that the funding has come directly from the Department, but I will clarify that in perfect fashion at the earliest possible moment, so that the hon. Lady has the information that she rightly requires—*[Interruption]*—and so that there can be no doubt that I was right. *[Laughter.]* I hope that I have reassured the hon. Lady, and that my hon. Friend the Member for South Swindon will feel able to withdraw the amendment.

Mr Buckland: I am grateful to my hon. Friend the Minister for the good-humoured and reasonable way in which he deals with these matters and approaches probing amendments. Having listened carefully to him, I am prepared to withdraw the amendment. I am grateful to him for having informed the debate further. I know that he shares my aspiration to ensure that there is multiplicity of provision for those all-important early years. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: For clarity, the decision on whether to press new clause 21 to a Division is for a later date.

Mrs Hodgson: If I may, Mr Havard, the only thing I would like to add is that when the Minister draws up the wider clarification on the code of practice with regard to SENCOs in early years provision, perhaps he could look at new clause 21 as the basis for that.

The Chair: I am sure that the Minister heard the hon. Lady's remark.

Mr Timpson: I beg to move amendment 55, in clause 21, page 18, line 19, leave out 'all forms of'.

The Chair: With this it will be convenient to discuss Government amendment 56.

Mr Timpson: The amendments form part of a Government proposal to introduce a duty on health commissioners to deliver the health care provision specified in education, health and care plans. I would like to spend a moment explaining the purpose of the amendments and their significance before turning to the details.

As hon. Members will know, I announced my intention to introduce a duty on health commissioners at the opening sitting of the Committee. That was welcomed by Committee members and strongly supported by parents, the voluntary sector, professionals, commissioners and providers. For example, the National Network of Parent Carer Forums, representing parent carers of disabled children across the country, said:

"The decision by the Government to respond to concerns raised by the families of children and young people with disabilities, and the organisations that support them, about the need for clarity around the provision of health services shows an ongoing commitment to delivering improved outcomes for children and young people with special educational needs."

We heard the following from Christine Lenehan, the chief executive of the Council for Disabled Children:

"We were really pleased to get the joint commissioning duty as outlined in the Bill...Now having a duty on health cements that down from a general to an individual level. We now have something on the table that says, 'These children have a range of needs. We have a corporate responsibility as a community to deliver to these sets of needs. How do we do it sensibly?' That is enormously helpful." —*[Official Report, Children and Families Public Bill Committee, 5 March 2013; c. 46, Q102.]*

The chief executive of Contact a Family—also a board member of the Every Disabled Child Matters campaign—told the Committee that

"it was phenomenally good news to hear this morning about the duty on health to provide... it also gives parents something solid that they can use when they are having these discussions with their service providers about how they get the right services for their child. I do not think we can overestimate the potential of what you announced this morning. It is phenomenally useful." —*[Official Report, Children and Families Public Bill Committee, 5 March 2013; c. 47, Q103.]*

We also heard today about the movements of the Children's Commissioner, who said in evidence:

"We were delighted to be told earlier today that clinical commissioning groups are going to have a strong responsibility in the health part of the EHCPs...we stressed very strongly that that should be the case." —*[Official Report, Children and Families Public Bill Committee, 5 March 2013; c. 89, Q196.]*

There was therefore a healthy response to our amendment, the purpose of which is to address long-standing concerns about the lack of accountability on health bodies for the provisions specified in statements of special educational need. The creation of the new education, health and care plans and the new joint commissioning requirement has provided a unique opportunity to address such concerns. The duty on health commissioners introduced by the amendment would mean that if a child or young person's plan specifies

health care provision, the responsible commissioning body must deliver that health care provision. That direct legal requirement will bring confidence and certainty to parents and young people that they will get the health care agreed and specified in their plans. It will address parents' long-standing concerns about being passed between local authorities and health bodies, long delays before their child gets treatment, and having to fight to ensure that their child gets the health care support they need.

3.30 pm

The amendments to the provisions relating to education, health and care plans and to joint commissioning will mean that joint commissioning arrangements will cover and plans will specify education, health care and social care provision reasonably required by the learning difficulties and disabilities that result in children and young people having special educational needs. In placing the duty on health commissioners to arrange the provision of health care specified in the plan, the Government are responding to the weight of evidence over some years demonstrating the impact on children and young people with complex special educational needs of being unable to access the health care that they have been assessed as needing. Most recently, the Select Committee on Education reported, at the end of its pre-legislative scrutiny of the draft Bill, that

“The active involvement of the NHS in commissioning, delivery and redress is critical to the success of the legislation. Despite the acknowledged difficulties, the Government must ensure that the NHS is obliged to participate fully.”

The new duty on health commissioners goes a long way to securing that active involvement of the NHS and obliging it to play its part. It is right to use the opportunity of the reforms to extend the duties to ensure the provision of services specified in plans so that they apply to health care services as well as education services.

As we have heard, there are already strong protections for children in need under section 17 of the Children Act 1989. That places a general duty on councils to provide social care services for disabled children and young people, so it is not necessary to extend requirements to provide services specified in the social care elements of plans. We are clear, however, that health care provision means that which is reasonably required by the learning difficulties and disabilities that result in the child or young person having special educational needs. That is an important definition as it enables us to support children's and young people's health needs in a way that is meaningful in their daily lives. For example, for some children with education, health and care plans, such as those with cerebral palsy, their disability might result in learning and communication difficulties as well as feeding and continence problems. Under the new duty, they must by law have health care provision related to all those elements included in their plan, as they arise from the disability which results in their special educational needs. That means that health care in plans does not stop at the school gates. That is an important principle and one that will be of real benefit to children and families.

To support the duty on health commissioners, we have included amendments to clarify the scope of joint commissioning and what the responsible commissioning bodies are. Those amendments ensure that the definition of health care for the purposes of joint commissioning

and the plans is consistent throughout part 3 of the Bill, and that it is clear on whom the duty rests. I will in due course come on to the details of the amendments relating to commissioning bodies and joint commissioning.

Amendments 55 and 56 are technical, and amend the definition of the health care provision that may be included in education, health and care plans. Amendment 55 removes “all forms of”, so that health care is now simply defined as the provision of health care. That is a technical amendment to make it clear that health care may be any kind of health care as it relates to children and young people with special educational needs. That supports our intention that the health care provision specified in plans is that which is reasonably required by the learning difficulties and disabilities that result in the child or young person having special educational needs. Amendment 56 removes “whether or not” to make it clear that references in part 3 to health care are to services provided as part of the NHS. Such services may be provided by or on the behalf of NHS bodies, including by private providers. I am therefore confident that the duty on health commissioners will make a real difference to the lives of children, young people and parents.

Mr Buckland: I am glad that the Minister has explained “health care provision”, and he has tightened up the definition admirably. I do not have a question specific to the amendment, but we are in effect having a stand part debate. Clause 21(5) states:

“Health care provision or social care provision which is made wholly or mainly for the purposes of the education or training of a child or young person”.

There is concern that the phrase “wholly or mainly” may interfere with case-by-case decision making on whether that provision is within education. Is there a danger that it sets quite a high threshold? I would be grateful to hear the Government's take on that concern.

Mr Timpson: I hear what my hon. Friend says, but I do not share his concern. We have carefully drafted the clause to ensure that, under the amendments I have just described, health care will cover all factors affecting the education of the child. I gave the example of a child with cerebral palsy to enable consideration of the widest possible range of support for a health condition that might affect educational needs.

We have left unchanged clause 21(5), which sets out that

“Health care provision or social care provision which is made wholly or mainly for the purposes of the education or training of a child or young person is to be treated as special educational provision.”

Having done that, we decided, as I said earlier, to retain and protect existing case law, which defines speech and language therapy where it is provided wholly and mainly for the purpose of educational training as an education service. Arguably, now that we have a duty on health commissioners, there is no need to reclassify some health care provision as special educational provision. In those circumstances, the clause maintains the existing right of appeal to the tribunal for special educational provision, so that parents will not lose their current protections.

I will think carefully about the point that my hon. Friend has raised, because we do not want to disincentivise or create unnecessary difficulties. We are simply trying

to improve, simplify and streamline the process, so that there is a clear connection and correlation between the education support and the health support needed, so that education is provided at the highest possible level.

Pat Glass: On a point of clarification, my understanding of case law is that health provision such as speech therapy rests with the health authority, but where the health authority fails to deliver that, and it is impacting on the child's education, the responsibility falls on the education services. If there is a statutory duty for health services to deliver what is clearly identified within an education, health and care plan, will that not make case law redundant? It is clear that the responsibility and the statutory duty lie with health services.

Mr Timpson: In clause 21(5), we make clear what the case law that has developed over time now says. It sets out:

“Health care provision or social care provision which is made wholly or mainly for the purposes of the education or training of a child or young person is to be treated as special educational provision.”

We have decided to keep that protection for the reason given by the hon. Lady. Clearly, the school will not deliver the speech and language therapy directly through its own expertise; it will require input and resource from outside. As the Bill follows what case law has determined, if that provision does not happen—even though it is in the plan and has been assessed as being necessary if that child is to reach their educational potential—the tribunal will still have the power to decide on that aspect. Ultimately, the local authority has the duty to ensure that provision is made, albeit not directly by itself. The hon. Lady is helpfully trying to ensure that there is no change, and that the process for parents and young people with regard to speech and language therapy is maintained. I can give that reassurance as a result of what is in the Bill.

Mrs Hodgson: Conscious of the time and the need to make progress, I rise only to say that we support the Government's amendments.

Amendment 55 agreed to.

Amendment made: 56, in clause 21, page 18, line 20, leave out '(whether or not'.—(Mr Timpson.)

Clause 21, as amended, ordered to stand part of the Bill.

Clause 22

IDENTIFYING CHILDREN AND YOUNG PEOPLE WITH SPECIAL EDUCATIONAL NEEDS

Mr Buckland: I beg to move amendment 195, in clause 22, page 18, line 32, after 'identifies', insert 'as early as possible'.

The Chair: With this it will be convenient to discuss amendment 40, in clause 22, page 18, line 33, at end add—

'(2) Regulations must make provision for how local authorities exercise their functions referred to in subsection (1).'

Mr Buckland: I will speak first to amendment 40. The aim of the amendment is to establish how the Government envisage local authorities identifying all children and young people in their area with special educational needs, and how the information will be gathered from early years providers, schools and colleges.

The Bill extends the scope of who local authorities will be responsible for. First, it extends their responsibilities from just children to children and young people with special educational needs, with young people being defined as those over compulsory school age but under 25. Secondly, the Bill also makes the local authority responsible for all children and young people with SEN in the area, whereas under previous legislation it was responsible only for children who may need a statement of special educational needs.

That is an important and welcome redefinition. It is a very positive move, and I believe that it will ensure that the local offer covers, among other things, all children and young people with SEN, including those without education, health and care plans. The amendment is designed to explore how, in practice, local authorities should identify all such children and young people in their area. The information is vital if the data review underpinning the review of local needs and the development of the local offer is to work. It is important that the information is robust enough properly to inform joint commissioning.

Children and young people with special educational needs may be identified by their early years settings, by their school at a later stage, or even later, when they are in college. I am keen to explore how local authorities could best gather the information from education providers, and I would like to know more about how the SEN data could be linked to data collected by health authorities and health agencies as part of their joint strategic needs assessment.

It has long been a problem that local authorities have depended on the good will of dedicated public servants to gather information about particular needs. In Swindon, for example, a member of the local authority dedicated herself to gathering information about autism and related disorders. That was extremely good and useful work, but she was not obliged to do it. Through the years, I think that we have all experienced the paucity or inconsistency of such information from local authority areas.

Caroline Nokes (Romsey and Southampton North) (Con): Does my hon. Friend share my concern that the problem is not just about the sharing of information within local authorities? There are Members who, like me, represent an area that lies on the boundary of several local authorities. In such areas there is a genuine difficulty in sharing information between authorities when, for instance, a child is in early years provision in a different local authority area to that in which their parents live, and is receiving health care provision from the neighbouring region.

Mr Buckland: I absolutely understand that problem, and with a uniform and consistent approach, the sort of mischief that my hon. Friend properly outlines could be avoided. Not only are we missing individuals with needs, but local authorities are not able to plan properly for future provision. It does not stop at education; this

involves care, housing and all the demands that people with disabilities and special educational needs naturally place on the system. The clause on identification, which I warmly welcome, should therefore be as strong and watertight as possible.

3.45 pm

Amendment 195 would add the few simple words, “as early as possible”, which is an aspiration that we all share. We often use the phrase “early intervention”, but we need to underline it by making necessary adjustments to statutes and to Bills passing through the House. In that context, I particularly want to highlight the condition of dyslexia. Children with dyslexia should be diagnosed earlier, so that they can quickly be given the help they need. Early identification of conditions such as dyslexia and specific learning difficulties gives the best opportunity to provide cost-efficient and effective interventions for children. We often make the point, and it is worth making it again—I will keep making it until I am blue in the face—that if we do something early, it costs less and avoids more costly specialist support later.

Clause 22 clearly stipulates that a local authority “must exercise its functions with a view to securing that it identifies all the children and young people in its area who have or may have special educational needs.”

That comes at the point when children with dyslexia are making crucial transitions. Adding the words, “as early as possible”, will give not only children and young people, but their families, the confidence that everything will be done to identify their conditions as early as possible.

Chris Skidmore (Kingswood) (Con): I am interested in what my hon. Friend says, and I want to explore his amendment. How would he define “as early as possible”? We all wish for everything to be done as early as possible. Is there not also a tension in the amendment? At the same time as looking for a quantitative identification of the greatest possible number of those with special educational needs, there is also qualitative identification. If one presses towards having identification as early as possible, that might lead to the unintended consequence of misidentification.

Mr Buckland: As usual, my hon. Friend makes a characteristically insightful and thoughtful point. I accept that there are some conditions that, by their very nature, are not susceptible to early identification. Asperger’s, for example, is not necessarily the easiest condition to identify at an early stage. However, it would be a missed opportunity not to use this valuable legislation to emphasise the generally important point that early identification is desirable. The wording is careful, because “as early as possible” gives a degree of discretion that meets the problem rightly outlined by my hon. Friend.

For those reasons, and the ones we see in our case load, I believe that the amendment is of merit. We have plenty of examples—I am sure that we all have them in our inboxes as I speak—of concerned parents or members of the wider family who keep on telling the school or the provider that something is not right, and yet nothing is done. Those days need to end, and it is through such measures that we can do even more to ensure that the families of the children concerned are listened to when they make reasonable observations based on their knowledge of their child. That is why I tabled these probing amendments.

Mrs Hodgson: Conscious of the time and the need to make progress, I have nothing to add to what the hon. Gentleman has said, other than that his amendments are eminently and characteristically sensible. I hope that the Minister can give him the assurances he seeks. If the hon. Gentleman decides to divide the Committee, he can count on our support.

Mr Timpson: The amendments deal with the way that local authorities exercise their functions when identifying the children and young people in their areas with special educational needs. Amendment 195 seeks to ensure that local authorities identify children and young people as early as possible. I understand why my hon. Friend the Member for South Swindon proposed the amendment. We have already had a good debate on the benefits of early identification, which are widely recognised. We know that identifying need at the earliest point at which a physical, sensory, learning or mental health need presents itself, and then providing good interventions, improves long-term outcomes for the child and results in savings.

I want to reassure my hon. Friend that, in developing the Bill—particularly clause 23—the code and the new system, early identification was important. If he takes a moment to glance through the draft code, he will find that at paragraph 1.6, where it says, “Principles underpinning the Code”, the very first headline is:

“Early identification of needs so that professionals can intervene early with the most appropriate support for a child and their family”.

That is extrapolated further at paragraph 5.4, under the heading, “Identifying needs”, with the subheading, in bold:

“The importance of early identification”.

We are under no doubt that the focus on early identification has to be sharper. That is reflected in both this clause and the draft code, which places an emphasis on trying to do that.

Although the needs of many children and young people can be identified at birth or an early age, some difficulties only become evident as children grow and develop. It is therefore important that all those who work with children and young people are alert to emerging difficulties and respond early. There are several key points at which special educational needs may be identified, and I touched on some earlier. They include early health assessments, such as the hearing screening test. Early years providers can spot if a child’s progress is causing concern. There is the progress check at the age of two, at which parents are provided with a written summary of their child’s development, and the assessment at the end of the early years foundation stage profile at the age of five, which provides a picture of a child’s progress against expected levels and their readiness for year 1.

I am also aware of the work that is being undertaken to try to move to an integrated review in 2015. I think that will help to address my hon. Friend’s concern about the co-ordination of information, and the fact that there is a plethora of information, but it is not necessarily being shared with the right people at the right time. The integrated review, part of the healthy child programme, in which health visitors check two-year-olds’ physical development, is to be integrated into a single review that identifies a child’s progress, strengths and needs,

and enables appropriate intervention and support for children and their families where there is less progress than expected, in order to try to draw in a wider group of professionals who all have an interest in putting support in at the earliest opportunity for maximum effect.

I am pleased that the provisions in the Bill will mean that anyone can bring a child or young person to the attention of the local authority, including parents, relatives and professionals, such as a social workers, teachers, college lecturers, general practitioners or health visitors, among others. Of course, young people may also refer themselves, which is an important element of the reforms. All that is supported and underpinned by the duty on schools to use their best endeavours for young people with special educational needs, a duty that the Bill is extending to the further education sector for the first time. As I have said, guidance for local authorities and practitioners on the importance of early identification and intervention will be set out in more detail in the new nought to 25 code of practice. It is currently shown at paragraphs 1.6 and 5.4 of the draft code. I am sure that as the code goes through the consultation process, people will want to look carefully at the provisions on early identification. They are a significant improvement on the existing position and will support early identification of needs.

Amendment 40 seeks to introduce a new requirement for regulations to set out how local authorities will exercise their duty under the clause. I appreciate that my hon. Friend the Member for South Swindon wanted more detail on that point, and I hope that I can elaborate now. Of course, I should note that it is not a new responsibility for local authorities. Section 321 of the Education Act 1996 already requires them to exercise their powers with a view to identifying special needs in the children for whom they are responsible. The Bill will extend that responsibility to all children and young people from nought to 25. There are many ways in which a local authority will identify children and young people in its area, and each authority will know the most effective way of doing so. There are some important provisions within the Bill that will ensure that children and young people are identified quickly.

First, as I have already said, anyone can bring a child or young person to the attention of the local authority. That is significant, as it makes it clear that there is no need for a request from the child's parent or educational institution before the local authority takes any action. That is where health visitors, family nurses and others who come into contact with a child at a much earlier stage in their life can trigger the work that needs to be done by local authorities and others.

Secondly, a local authority must keep the provision in its area under review and consider the extent to which it meets the needs of children and young people. It cannot just rest on its laurels and be satisfied with what it currently provides. It must consult children, young people and their parents, and schools, colleges and other relevant organisations. It must also, with its partner NHS commissioning bodies, make arrangements for the provision to be secured across education, health and care services. That process of dialogue and review will help to identify children and young people in the area who require support and the nature of their support needs.

Finally, the preparation of the local offer, which my hon. Friend welcomed and which will be carried out in close collaboration with children and young people

with special educational needs and their parents, and the duty to publish their comments will mean that local authorities are more aware of and—importantly—responsive to the children and young people with additional needs in their community.

It is important to emphasise that the duty in the clause does not require local authorities to screen all children and young people in their area. It is not a general trawl. There will be careful identification by a much wider group of professionals and others. I hope that my hon. Friend is reassured, and I urge him to withdraw his amendment.

Mr Buckland: I am grateful to the Minister for taking us through part of the code of practice, which I think we have now received in electronic form; I am sure that all hon. Members will look at it extremely carefully. It is vital that we concentrate on the fact that while identification of individuals is important, it is also important to identify their needs. I hope that as the duty, which is wider than its predecessor, is developed, the particular needs of the child or young person will be catalogued, along with the fact that they have a special educational need. I have listened carefully to the Minister, and I am encouraged by the approach that he and the Government are taking. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 22 ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Clause 24

DUTY OF HEALTH BODIES TO BRING CERTAIN CHILDREN TO LOCAL AUTHORITY'S ATTENTION

Mr Buckland: I beg to move amendment 206, in clause 24, page 19, line 3, leave out 'who is under compulsory school age'.

The amendment is simple. At the moment, the clause would place a new duty on health services to inform the relevant local authority if a child under compulsory school age may have special educational needs. The amendment would extend that duty to apply to all children or young people who may have special educational needs, regardless of age.

The amendment has been tabled particularly in relation to deaf children. As currently drafted, the clause will apply only to deaf children in pre-school stages, but the fact is that many children become deaf later in life. I want to ensure that none of those children falls through the net and that there is greater collaboration between health agencies in education for children of all ages with special educational needs.

4 pm

The duty that will apply to children who may have SEN is encouraging, because that widens the ambit. However, in wording such clauses, it is important to ensure that we do not miss out a cohort of children who, although they enjoy good healthy hearing at an early stage in life, for various reasons—sometimes as a result of infection, sometimes as a result of something more organic—lose their hearing and become utterly deaf. We will all be able to think of other conditions to which that relates, but that is the reason why I tabled the amendment.

Mr Timpson: I am, again, grateful to my hon. Friend for moving an amendment. It gives the Committee a chance to discuss the extremely important issue of the early identification of special educational needs.

Clause 24 takes forward a provision in the Education Act 1996. It is part of the commitment that I made, during pre-legislative scrutiny, about maintaining existing protections and safeguards in the Bill. As my hon. Friend set out, learning that a very young child has—or probably has—special educational needs can be a difficult time for parents, who may be anxious to know what it means and how their child will get the help that he or she needs.

The clause will help to address those concerns. It will promote close working between health bodies and local authorities, and enable the local authority to consider at an early stage what educational and other support might be needed by the child, as well as what further advice and support might help the parents. It will support the highly successful early support approach, which is in place in many local authorities and has informed our SEN reforms. It will complement other measures to pick up young children's needs, such as the early years progress check at age two carried out by early years practitioners, and the separate health and development check carried out by health visitors. As I said in the last debate, we are bringing those two checks together in a single integrated review at age two.

I understand why my hon. Friend is seeking to extend the requirements of the clause to all children. Special educational needs can become apparent after a child reaches compulsory school age, but the clause relates specifically to children under compulsory school age and focuses on health professionals, because at that age those children are most likely to have much more contact with health services than with the local authority. I hope that I can reassure my hon. Friend that other provisions in the Bill support the identification of children's special educational needs and make the amendment unnecessary.

The Bill contains a range of measures to bring local authorities and health bodies together to provide better support to children and young people with special educational needs. Clause 23 will enable health professionals and others to bring to the local authority's attention any child or young person who they believe has or may have special educational needs, whatever their age. Schools, colleges, parents and young people have the right to ask the local authority to carry out an assessment for an education, health and care plan if they feel that a child is not making progress and requires the local authority to secure additional support.

Clause 25, which we will come to, will require local authorities to exercise their special educational needs functions under the Bill with a view to ensuring the integration of special educational provision with health care and social care provision, where that promotes the well-being of children or young people with special educational needs in their area, or improves the quality of special educational provision for children and young people for whom they are responsible. Clause 26 requires local authorities and their partner clinical commissioning groups to make joint arrangements for commissioning education, health and care provision for children and young people with special educational needs.

Every mainstream school has a special educational needs co-ordinator who will ensure that staff know about the need to identify children with special educational needs, support staff in doing so and provide them with the right help. All mainstream schools and colleges have a duty, as we have heard, to use their best endeavours to ensure that children and young people with special educational needs get the help that their needs call for.

I hear what my hon. Friend says, and he is right to have raised the matter. I hope that I have provided reassurance that, throughout the Bill, there are strong provisions to ensure early identification and, beyond that and into school, a wider range of professionals who can trigger an identification process so that any subsequent needs that have to be met are met. Given those provisions, I hope my hon. Friend feels reassured enough to withdraw his amendment.

Mr Buckland: On balance, I think I am reassured. I am grateful to my hon. Friend the Minister for reminding us that there will be a framework within which the needs of older children can be brought not only to the attention of the authorities but to a position where the care needed can be delivered.

I generally welcome clause 24, which is very much in line with my advocacy, over a number of years, of the importance of identifying and addressing the health needs of children of pre-school age.

Chris Skidmore: In addition to the Minister's comments, I specifically reassure my hon. Friend on the duty of health bodies. Paragraph 3.3 of the code of practice, which addresses working in partnership, states:

"The designated medical officer for SEN (who might be an employee of an organisation such as a CCG or NHS Trust)"—rather than just the local authority—

"should ensure all early years providers, schools and colleges in the local authority have a contact for seeking medical advice on children who may have SEN, and should ensure other agencies are fully engaged with arrangements for ensuring appropriate statutory notifications are made."

That ensures that, before compulsory schooling, the designated medical officer will have a role.

Mr Buckland: I am greatly assisted, as ever, by my hon. Friend. He addresses my concern, which is that we do not want children who develop deafness or other conditions at a later stage to be left out of the provision in any way.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Mrs Hodgson: The identification of children with special educational needs is perhaps the most important part of the jigsaw. I know the Government worry about overidentification, but I worry more about underidentification because it is the children whose needs are not identified at a stage where remedial action can be taken, or whose needs are not identified at all, who will suffer the worst outcomes.

We have only to read the report by Lord Ramsbotham to know that our prisons and young offenders institutions are full of people who ended up getting involved in crime because they were never able to engage properly

with their own education, whether because of speech, language or communication issues, dyslexia or any number of other hidden learning difficulties that, if not picked up, can manifest as bad behaviour.

Health bodies and professionals have a key role in identifying such children. Health visitors are particularly important for obvious reasons, and I look forward to the large swell in numbers that we were promised. By the last count, however, there were only 300 more health visitors than in the comparable month three years previously, which leaves the Government with quite a bit more work to do to get to the 4,200 extra health visitors that were promised. None the less, progress is progress.

Hopefully, those extra health visitors will mean that they and their colleagues will be able to spend more time with each family and child, affording health visitors a greater chance of spotting the early signs of, for example, lack of bonding, lack of attachment, developmental delay or, prior to the birth, symptoms of avoidable pregnancy complications, such as from alcohol and drug abuse or smoking.

We know that those things can cause and increase the risk of children being born with birth defects such as foetal alcohol syndrome or an addiction to drugs—or of being born prematurely, in the case of smoking. All those things can lead to disabilities, ongoing health problems or special educational needs.

Andrea Leadsom: It is absolutely fantastic that more health visitors will be coming on stream, although obviously it takes a while for them to be trained. However, is the hon. Lady as concerned as I am that their training does not properly cover the absolutely vital importance of secure early attachment? The early development of a baby's brain from conception to age two is of particular importance, and the brain trebles in weight over the first two years. Emotional resilience, issues such as speech and language, and later behavioural problems are largely set down by age two.

Mrs Hodgson: I agree, and I commend the hon. Lady for all the work she does in this area. It is vital that this information and knowledge are disseminated as widely as possible among expectant mothers and all professionals who come into contact with children. The information needs to be given to mothers at the earliest possible opportunity, because as the hon. Lady says there is a small window when the baby's brain grows so much. Once problems have manifested themselves, it is no good informing the mother of all the things she was doing wrong, or what she could have done during those vital years.

Health visitors are still being trained, and we need them as soon as we can get them. I hope that there is no consequential decrease in the number of nurses as nurses become health visitors, because that would defeat the whole purpose of the exercise. Health visitors are trained in attachment theory and bonding, and all early years professionals, including Sure Start workers, are aware of the information.

The issue is vital. We need the earliest of early intervention, on babies, if we are not to have to intervene later down the line when they become teenagers. To sum up, I should say that we welcome the clause and do not seek to amend it.

Mr Timpson: I thank the hon. Lady for her thoughtful contribution to this clause stand part debate. To reassure her on a number of the issues she raised, particularly about health visitors, I should say that we hold to the commitment made by the Government to increase the number of health visitors by 4,200 by 2015.

It just so happens that yesterday I talked to the Under-Secretary of State for Health, my hon. Friend the Member for Central Suffolk and North Ipswich (Dr Poulter), about exactly this issue. I can tell the hon. Lady that there is strong progress in the recruitment of health visitors from the number she has already shared with the Committee. I also had the benefit of a former Health Minister giving me a clear steer on the constant review of health visitor training. It is important to ensure that that is up to date and reflects what we know to be the best evidence base, to make the role as effective as possible.

I agree with the hon. Lady about attachment, whether or not you call it a theory. I actually see it as a practical aspect of the relationship between a baby or a young child and their parent. Along with other hon. Members, I feel strongly that we have a better understanding of attachment, and we have to ensure that the wider range of practitioners who come into contact with children have a sound knowledge and understanding of it. I share the hon. Lady's views on that, and thank her for her measured contribution to this clause stand part debate. I hope that we can agree that the clause enhances the Bill, for the reasons that Members have articulated.

4.15 pm

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

PROMOTING INTEGRATION

Mr Buckland: I beg to move amendment 187, in clause 25, page 19, line 21, leave out 'in its area who have special educational needs and insert—

- (i) in its area who have special educational needs, or
- (ii) outside its area for children or young people for whom it is responsible who have special educational needs.'

The Chair: With this it will be convenient to discuss amendment 198, in clause 25, page 19, line 36, at end insert—

'(h) communication, language and literacy.'

Mr Buckland: Amendment 187 would amend subsection (1)(a) of the clause, which, at the moment, is worded to cover young people in a particular local authority who have special educational needs. The clause is all about promoting the integration of provision, which again is generally extremely welcome. The amendment comes in the context of a clause that I believe will do a lot to promote what is essential if education, health and care plans and the concept of bringing together services around the child and young person are to work.

There is a concern that subsection (1)(a) is worded slightly differently from subsection (1)(b). Subsection (1)(b)(ii) refers to improving the quality of special educational

provision “outside its area”, which is a useful inclusion, because it understands that some children and young people with what is termed low incidence special needs—say, a deaf-blind person—will often have to go outside their local area to receive a service. That is the nature of things.

We cannot reasonably expect—I do not think that any family I know who have a child or young person with a low incidence special need reasonably expects it—that sort of specialist provision to be available in every local authority area. It is just not possible, and, frankly, there is a lot of reassurance in the minds of parents when they know that their loved one will go to a place with a high degree of specialism that, very often, provides world-class services for those complex conditions.

However, it is important that we miss no opportunity to ensure that the Bill covers all eventualities. At the moment, as I read it, subsection (1)(a) requires a local authority to

“promote the well-being of children or young people in its area”

but a child or young person receiving services outside its area is not necessarily covered. I want to make it clear in the Bill that although such young people are still the responsibility of the local authority, they are not, for the purposes of their education, inside the area, because they have to access the specialist provision that I talked about.

We will all be familiar with examples. I can think, for example, of a young person, perhaps living in the Swindon area, who has to reside in particular specialist provision in west Berkshire. They are still the responsibility of Swindon, but for the purposes of their education, they are outside that particular local authority area. It would be unfortunate, to say the least, if there were somehow a loophole in the clause and that young person was not included in the admirable objective.

Let us remind ourselves what it is all about: the promotion of integration and about ensuring and promoting the well-being of the children themselves. For that reason, I submit that there is a logical symmetry in my amendment that would tie up paragraphs (a) and (b) of subsection (1). I accept that paragraph (b) deals with the provision that is made in a local authority’s area and outside its area, but we are focusing on the child or young person themselves, are we not? That is why we must ensure that low incidence SEN is covered as well. It is for that reason that I move the amendment.

Annette Brooke: I will briefly address the issue raised in amendment 198 and make an observation. It is obvious that poor language skills lead to public and mental health issues. Language, communication and literacy underpin the list in subsection (2), and well-being cannot be achieved unless a child has those fundamental skills. It reminds me of the situation in developing countries, where a level of literacy skills is important for development to take off. Although this might not be the most appropriate point to talk about the importance of being able to use and make the most of language, it is pertinent to think about that issue in the context of the list in subsection (2), because a child cannot achieve those things unless they can communicate.

Mrs Hodgson: The integration of commissioning provided for in the clause is welcome, and I therefore do not seek to detain the Committee long. At first glance,

the wording of amendment 187 seemed quite strange. However, the speech of the hon. Member for South Swindon made clear the assurances that he is looking for. I now understand what he is trying to do with his amendment. I hope his speech also made it clear to the Minister, and I hope the Minister will take his concerns on board.

On amendment 198, the Committee will know that the Opposition believe that the definition of well-being in the Children Act 2004 is the ideal definition. Whether we should add to the definition in the clause is therefore a moot point from our point of view. However, the hon. Member for Mid Dorset and North Poole used the amendment to raise some good points. Although we do not support the amendment, I look forward to the Minister giving her the assurances she seeks.

Mr Timpson: Amendments 187 and 198 relate to the promotion of the well-being of children and young people, as we heard. I am confident that my hon. Friend the Member for South Swindon is as keen as I am to ensure that local authorities use the clause to improve parents’ and young people’s experience of co-ordinated services. That is the reason for its drafting and inclusion in the Bill.

I am grateful for my hon. Friend’s amendment, which would make sure that children and young people outside the local authority area, but for whom the local authority is still responsible, benefit from the promotion of their well-being. The clause includes all children for whom the local authority is responsible, and even if they are educated outside the area the home authority remains legally responsible for them and must promote their well-being. My hon. Friend cited an example from his constituency that shows the practical effect of the clause. If a child lives in Bromley, it does not matter whether they go to school in Bromley or Kent. Therefore, the well-being provision in paragraph (a) already covers that child wherever they go to school. There is no loophole, but by hon. Friend is right to probe the clause to see whether one exists. The proposed new paragraph is not required to achieve the effect that my hon. Friend intends. I hope that that reassures him.

I am grateful to my hon. Friend the Member for Mid Dorset and North Poole for reminding us in amendment 198 of the importance of communication, literacy and language skills in the development and well-being of children and young people. Her proposed amendment would add that element to the definition of well-being set out in the clause. The definition of well-being that we have used in the clause is deliberately broad and far-reaching to cover all aspects of a child or young person’s life. I am confident that the communication, literacy and language skills referred to by my hon. Friend are already covered by the clause, for example, under:

“physical and mental health and emotional well-being”

and

“participation in education, training or recreation”.

I hope that by putting that on the record I have helped my hon. Friend. The clause sets the context for the rest of the Bill’s provisions, and the supporting regulations and code of practice. A child’s specific needs, such as support for speech, language and communication, would be picked up and addressed through arrangements at school or through their education, health and care plan.

I hope that that has reassured both my hon. Friends. Their amendments are good probing amendments that have elicited more detail about how the provisions will work in practice. I urge them to withdraw their amendments.

Mr Buckland: I am grateful to my hon. Friend. He, like me, is a lawyer. Perhaps lawyers sometimes obsess about the meaning of words. All of the lawyers who are not in this place will be familiar—especially in the light of the past 24 hours—with the importance of the meaning of words, however small they might be. I am grateful to my hon. Friend for reassuring me that the words “in its area” will not be construed narrowly. Even though the child may be resident for part or all of the week outside an area, “in its area” is to mean the child or young person for whom the authority is responsible. I am pleased to hear that children and young people with low incidence needs who have to travel and often have to stay away from their homes will be covered by the clause. On that basis, I will not press the amendment further. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Andy Sawford: I wish to raise a point about the relative duties placed on local authorities and on clinical commissioning groups. I met the chair of the children and young people’s board of the Local Government Association recently, who raised several points. For example, in clause 25, there is a duty on local authorities to promote integration, and in clause 27 there is a duty on councils to keep education and care provision under review, but there are no equivalent duties on health bodies, particularly on clinical commissioning groups. That is in part covered in clause 26. I would expect the Minister to refer to this welcome clause when we move to the debate on the next clause on the relationship between the local authority and the clinical commissioning groups.

The wider point is about the relative duties and what may seem to local authorities to be a bias towards them in law that may not reflect what is in practice a responsibility of both local authorities and social care providers, particularly health care providers, for which clinical commissioning groups will now be the lead. There is a balance, frankly, between resources and responsibility in practice out there on the ground. Can the Minister give some assurances about how the clauses are structured? Does he feel that there should be an equivalent duty on clinical commissioning groups to promote integration, rather than the onus being on the local authority? Integration needs to be two way.

Mr Timpson: The hon. Member for Corby could not have put it better in his last sentence, which encapsulates the whole purpose of integration, whether it is physical integration, the commissioning of services or other means of integration. It is a two-way street and sometimes a three, four and five-way street. He is right to look carefully at the various duties on different bodies that will be under duties to promote integration in carrying out their functions.

He alluded to the role of local authorities and where the health services fit into that equation of better integration. One of the benefits of the new health duty that we have

placed on health commissioning bodies is that it will engender a greater level of integration. To reassure him that this is not a one-way street, I remind him that other duties already exist on national health service bodies to promote integration between health, social care and health-related services. That was introduced in the Health and Social Care Act 2012, so that duty is already in law.

4.30 pm

The integration clause in the Bill mirrors the existing duty, and ensures that local authorities and NHS bodies have similar duties to promote integration in carrying out their functions. With the existing duties on health bodies, including the NHS Commissioning Board and clinical commissioning groups, to ensure that all partners are acting with a view to integrate both social care and health-related services, I believe that we are creating the right level of integration. It is a two-way street, with the prospect of widening that integration, and it sits alongside other duties that we have placed on local authorities and local partners, including the NHS, to co-operate with each other over and above the joint commissioning arrangements.

I hope that I have reassured the hon. Gentleman that there are a number of mirror clauses across legislation that ensure that integration has the best possible chance of success.

Andy Sawford: I am reassured by the Minister’s remarks, but does he agree that it might be helpful briefly to encapsulate those mirror clauses, perhaps in a letter to the Local Government Association and members of the Committee? That would be very helpful indeed so that we can understand what he set out.

Mr Timpson: I am always happy to consider practical suggestions to increase awareness of the changes that we are making to improve the services of local authorities and others, and I am happy to consider the hon. Gentleman’s suggestion. That may be one way in which we can bring about a better understanding of where the duties will now lie to improve integration in the future. We will of course have the code of practice, which local authorities will have a duty to adhere to, as well as the regulations that flow from it. I am happy to look at his suggestion and discuss it further with him outside the Committee.

Steve Reed (Croydon North) (Lab): There seems to be little point in having an EHC plan if the needs cannot be met. Can the Minister reassure the Committee that the Government will commit to providing the resources and funding for the assessment and delivery of the EHC plans, rather than creating another unfunded burden on already overstretched budgets?

Mr Timpson: As I have already explained to the hon. Gentleman, it is right that decisions about the resources available to local authorities and how they balance those resources against the duties upon them are made locally. He is aware that the policy of this Government is to devolve responsibility, accountability and delivery of services to a local level. However, through joint commissioning, the duty to co-operate and other duties associated with the EHC plan, we are trying in the

legislation to improve the efficiency of local authorities, both internally and in their partnerships with other bodies and organisations, within their local authority area and across local authority boundaries, so that they can get more value for their money. I think that that is the right approach. We have seen from the pathfinders that many local authorities are doing exactly that, to great effect.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

The Chair: Just as an advisory, I am looking at the business that is happening in the Chamber, at the clock, and at the business we have to get through. We are now coming up to clause 26, to which there are a series of amendments. I believe that the vote in the Chamber will be just before 5 o'clock. I am anticipating that there will be one vote, as on Second Reading, in which case we will have to adjourn for 15 minutes. Can the Whips perhaps give some consideration to where we will have got to by the time we have to vote so that we can make a secondary plan for how we proceed for the remainder of the afternoon?

Clause 26

JOINT COMMISSIONING ARRANGEMENTS

Mr Timpson: I beg to move amendment 57, in clause 26, page 19, line 38, leave out 'clinical commissioning groups' and insert 'commissioning bodies'.

The Chair: With this it will be convenient to discuss the following:

Amendment 74, in clause 26, page 20, line 3, at end insert—

'(d) any other provision deemed necessary to meet the special educational, health or social care needs of a child or young person.'

Government amendment 58.

Amendment 47, in clause 26, page 20, line 7, leave out 'special educational' and insert 'educational, health and care'.

Amendment 199, in clause 26, page 20, line 23, at end insert—

'(d) securing the provision set out in section 30 [Local offer for children and young people with special educational needs].'

Government amendments 59 to 61.

Mr Timpson: Government amendments 57, 58, 59, 60 and 61 support the new duty on health commissioners to arrange the provision of health care services in education, health and care plans. I have spoken previously about the importance of that duty and the positive impact it will have on children, young people and their parents. The amendments on joint commissioning are crucial to ensuring that the duty on health commissioners operates effectively from a strategic planning and commissioning perspective, as well as ensuring that the individual needs of children and young people are met. That is at the heart of these reforms and, as the chief executive of the Council for Disabled Children said in her evidence to this Committee:

"We were really pleased to get the joint commissioning duty as outlined in the Bill...Now having a duty on health cements that down from a general to an individual level."—[*Official Report, Children and Families Public Bill Committee*, 5 March 2013; c. 46, Q102.]

Amendments 57 and 59 clarify which commissioning bodies are involved in joint commissioning. Amendment 57 leaves out the words "clinical commissioning groups" and replaces them with "commissioning bodies". Amendment 59 inserts new text to define commissioning bodies. The local authority's partner commissioning bodies are defined to include the NHS Commissioning Board, as well as the individual clinical commissioning groups. I put on record my huge gratitude to Ministers in the Department of Health. They have worked closely with my Department to ensure the clear and concise drafting of this part of the Bill, so that it accurately reflects what we want to achieve right across the commissioning duties of health bodies. That will cover circumstances in which the board is responsible for commissioning services directly, such as low-incidence, high-need specialist services, and particular groups for whom it has commissioning responsibility, such as the children of members of the armed forces.

Each clinical commissioning group that is under a duty to arrange the provision of services and facilities under the National Health Service Act 2006 will be a partner commissioning body. We have added a power to provide in regulations that a clinical commissioning group is not to be treated as a partner in certain circumstances. That allows us to reflect the limited set of circumstances in which a clinical commissioning group has a statutory duty to commission services that are not relevant for joint arrangements, such as the commissioning of emergency care services.

Amendments 60 and 61 update the co-operation duties to make them consistent with the amended joint commissioning provisions. Amendment 60 updates the general co-operation duties so that the definition of partner clinical commissioning groups is consistent with the definition, as amended by amendment 59. Amendment 61 adds a new provision to the general co-operation duties. That will make it consistent with the regulation-making powers in the joint commissioning clause, as amended by amendment 59.

Amendment 58 clarifies the range of children and young people to be covered by the joint commissioning arrangements. Joint commissioning must include arrangements for considering and agreeing the education, health and care provision reasonably required by children with the learning difficulties and disabilities that result in their having special educational needs. The amendment is consistent with the amendment made to clause 37 on education, health and care plans.

Mr Buckland: I rise to speak to amendment 47, which is in my name. I am happy to say that the Minister has pre-empted me. I tabled the amendment to explore whether the drafting of clause 26 could extend the joint commissioning requirements to cover health and social care services as well as education. I can see that Government amendment 58 is designed to ensure that services not directly related to education are included in the duty to commission services jointly. I seek only one clarification from the Minister. Can he confirm whether this welcome amendment will mean that the duty to put joint

commissioning arrangements in place will cover health and social care, even where it does not relate to educational need? With that sole question, I welcome the Government amendments.

Mrs Hodgson: I once again pay much deserved tribute to the Minister for bringing forward the amendments. In conjunction with those to clause 42, they will significantly strengthen the Bill. I hope that in return he will support the other amendments in this grouping, which would all strengthen the Bill even further.

I will speak to the amendment in my name and that of my hon. Friend the Member for Wigan. Government Members will speak to theirs. In common with amendments we have already discussed and those to follow, amendment 74 seeks to ensure that the kind of provision subject to joint commissioning is not just the kind that goes directly to the child or the young person, fitting neatly into one of three boxes, but includes support for families to enable them better to support the child and their siblings. All hon. Members will know from personal experience or constituency cases that having a child with SEN or disability, particularly when that is manifested in challenging or aggressive behaviour, can be extremely stressful for parents, siblings and other family members, and cause a number of problems such as mental and physical health issues, and inability to take up or stay in work.

Supporting a child's family in understanding how to cope with and cater for a child's SEN or disability is often the most cost-effective kind of intervention and should be encouraged. However, overestimating the ability of a family to support a child can also be detrimental to all concerned. It can aggravate certain problems, negate efforts and resources spent elsewhere, contribute towards family breakdown and increase the likelihood of the care system being involved. We brought in short breaks that can help families immensely; I certainly welcome the Government's continued support for them. However, as important and valued as they are, in the end they are just that—short breaks in what can be a 24/7 caring role.

While local authorities and health agencies are coming together to plan and commission services, it would surely be an effective use of their time and resources to consider what services might be needed to support the whole family who have children with SEN, rather than just the children. I would be more than happy to withdraw the amendment if the Minister can assure me that he intends that kind of service to be covered by subsection (5), and that he or the Department will communicate that clearly to the joint commissioning teams when the Bill reaches the statute book. I hope, too, that the Minister will respond positively to the other amendments tabled that we also support.

Annette Brooke: I shall be brief, because I think we will discuss this matter in greater detail in a subsequent clause. My amendment probes the issue of why the local offer should be covered by regulations rather than being in the Bill. I am interested in hearing the Minister's response to that, because effectively it is adding to the list of three, which I am pleased to see, the local offer. There is a great deal of concern generally about what the local offer will deliver, so we need to probe the matter in this and subsequent clauses. I raise it as an issue at this early stage.

The Chair: I am trying to work out what we might do in relation to potential votes. It is a bit of a magical mystery tour at the moment, so please bear with me. I now believe that the vote is to be at 6 pm, so we might not be disturbed and may hopefully be able to complete clause 26 today, which would be an achievement.

Mr Timpson: It is always nice to be associated with an achievement, Mr Havard. It does not happen that often, so I think we will all take it and run with it. I will start with amendment 74 from the hon. Member for Washington and Sunderland West, which proposes extending the remit of joint commissioning. As currently drafted, the joint commissioning clause creates a new requirement on local authorities and their partner health commissioners. It reflects the importance that the Government place on improving local arrangements for vital services for children and young people with special educational needs. Her warm and supportive words suggest that she agrees that clause 26 is a significant step forward in ensuring that those vital services are available.

4.45 pm

The joint commissioning clause has been drawn up carefully to reflect the scope of part 3. Children and young people with special educational needs above all need to be confident that they can access special education, health care and social care provision. The needs for those services are to be considered in assessments of education, health and care plan; they are fundamental to children and young people's learning, development and progress.

The joint commissioning duty in the Bill centres on children and young people with SEN, and there are other existing requirements to carry out joint strategic needs assessments and to commission on that basis, which cover wider health and social care services. That is an effort to reflect what is in the Bill for children with special educational needs within health and social care services, so that the joint strategic needs assessments help to generate the same level of commissioning.

As I have said, there is nothing that precludes joint commissioning arrangements from covering other services for children and young people with SEN, or that precludes people from entering into other arrangements covering services for children without SEN, and that has been seen on the ground in some of the pathfinder areas. Support for families needing social care services, such as short breaks, is provided for under section 17 of the Children Act 2004. The duty in clause 26 relates to joint commissioning arrangements for children and young people with SEN, and where the services support the child's family as part of a package of support for the child, they may be included in the arrangements.

Amendment 47, tabled by my hon. Friend the Member for South Swindon, seeks to amend the clause so that the joint commissioning arrangements cover the education, health and care needs of all children and young people, including disabled children, rather than specifically those with special educational needs. The amendment would make the ambit of joint commissioning arrangements very wide, and in my amendment to the clause I have taken the opportunity to clarify that the arrangements must include arrangements for agreeing and considering the education, health and care provision that is reasonably required by the learning difficulties and disabilities that

result in children and young people having special educational needs. We must be clear that the purpose of the new approach, as set out in the provisions, is to bring about a long overdue improvement in meeting the requirements of children with special educational needs. The Bill's main focus is to address problems in the SEN system. It is important that protections are provided for the children and young people with the most complex combination of needs, including SEN.

It might help to reassure my hon. Friend the Member for South Swindon if I briefly set out some context. The Government are committed to improving health outcomes for all children and young people and, as I have already iterated, in February they launched the national pledge for better health outcomes for children and young people, which set out our shared ambitions for children and young people's health in the wider new health system and beyond. Integrating education, health and care services is central to achieving the improved health outcomes that are set out in the pledge, which emanates from the national pledge. All local services and social care have a vital contribution to make, including schools and wider local services, particularly for children with a disability or a long-term health condition.

Arrangements will still be in place for children without SEN to have their needs considered, and crucial to that will be how services are planned and commissioned. The joint strategic needs assessment process is integral to that; it will drive the commissioning decisions of clinical commissioning groups, which will determine what services must be provided to meet the reasonable health needs of children and young people for whom they are responsible. At a population level, the services will be reflected in the local offer of services published by the local authority. A clinical commission group may also commission a specific service to meet the needs of a child or a young person, based on the assessment of their needs and a consideration of their individual case. Local authorities and their partners may take a broader approach if they wish. Disabled children without an education, health and care plan will still receive services to meet their care and health needs under other legislation, which has been referred to on numerous occasions—section 17 of the Children Act 2004, section 3 of the National Health Service Act 2006 and the Equality Act 2010.

Through amendment 199, my hon. Friend the Member for Mid Dorset and North Poole raises an important point about the relationship between the local offer and the joint commissioning arrangements. The intended relationship is that the local offer should reflect the services arranged through the joint commissioning arrangements by providing information on the services covered under those arrangements. We have explained the relationship clearly in section 4.4 of the indicative code of practice:

“Local authorities and their partners will need to develop the local offer in the context of their local Health and Wellbeing Strategy, joint commissioning arrangements and agreements about the delegation of SEN funding with local partners. The local offer is the key vehicle for communicating the effects of these strategic discussions to local families affected by SEN.”

It might be my hon. Friend's intention to create a duty on local authorities and relevant health commissioners to provide, as well as to commission, services assessed

as necessary for the local population, and she may be concerned about what local people should do if they are not getting services arranged as part of the local joint commissioning arrangements. That raises an important point, which I believe is already adequately covered in the clauses as they stand. I am sure that we will come on to some of those as we progress through the Bill.

The joint commissioning arrangements are intended to create clear responsibilities for assessing local needs, and to put in place services to meet those needs. The local offer will reflect information about those services and will include information for local people on what they can do if they want to complain about the services in the local offer. It will also make clear what parents and young people should do if they are unhappy with the services arranged by schools, along with the local authority and health partners, for those with SEN and no education, health and care plan, and what parents and young people should do if they are unhappy with services in plans.

The code that I referred to is a good starting point for anyone who wants to understand the different functions of the Bill and how they relate to one another. It also gives guidance on how those functions are to be executed by the various bodies that are under a duty to do so. I am therefore of the view that the amendments tabled are unnecessary, albeit important in giving us the opportunity to flag up in more detail how services will sit in the new structures. I therefore urge my hon. Friends to withdraw their amendments.

Amendment 57 agreed to.

The Chair: I am still looking at the business in the Chamber, and there may be another revision to what will happen. I propose to continue with the next part of our business, although there may be a Division at something like 3 or 4 minutes to 5. If that vote takes place, we will adjourn for 15 minutes and then reconvene. We are scheduled to finish at 5.30 pm anyway, so we can review the situation when we return, and decide where we are in terms of progress with clause 26 and whether we wish to try to complete consideration of it today.

Mr Buckland: I beg to move amendment 204, in clause 26, page 19, line 42, at end insert—

‘(1A) A local authority in England must, in exercising its functions under this Part, consider how it may encourage through any process of procurement it shall carry out—

- (a) a diversity of provision of education; and
- (b) non-discrimination between maintained schools and non-maintained schools.’

The Chair: With this it will be convenient to discuss the following:

Amendment 214, in clause 26, page 19, line 42, at end insert—

‘(1A) Local authorities and Health and Wellbeing Boards must put in place arrangements for jointly reviewing services and developing joint outcomes frameworks.’

Amendment 77, in clause 26, page 20, line 34, at end add—

‘(9) The local authority must publish joint commissioning agreements in digital format within one calendar month of said agreement being finalised or revised, and make printed copies available on request.

(10) In providing printed copies of joint commissioning agreements by virtue of subsection (9), the local authority may charge a fee, the level of which should not exceed the cost of supplying the copy.’

Amendment 188, in clause 28, page 22, line 39, at end add—

‘(4) A local authority in England may co-operate with another local authority in England to commission and provide services for children and young people with low incidence special educational needs.’

Amendment 159, in clause 59, page 42, line 4, at end add—

‘(6) Agreements made under this section should be published by the local authority in digital format within one calendar month of being made.’

Mr Buckland: I shall do my best to make sure that my part of the debate ends before the Division. I will speak to amendments 204 and 214. Amendment 214 relates to local authorities and health and wellbeing boards putting in place arrangements for jointly reviewing services and developing joint outcomes frameworks.

The amendments are designed to seek clarity on how the joint commissioning arrangements in the Bill will be linked to the health and wellbeing boards. Those boards must prepare a joint strategic needs assessment that informs local health commissioning. It is vital that there is clarity around how the processes interact with the new joint commissioning duties created in the Bill.

It seems sensible that if we are to have a joint commissioning arrangement across education, health and social care, we should also have joint assessments of need across those services. I am therefore particularly keen to hear my hon. Friend the Minister’s thoughts on what measures could be taken to ensure that the assessment process is aligned with the duties of the jointly commissioned services in the Bill. If we continue to have a separate needs assessment process, it is unlikely, I am afraid, that we will get good joint commissioning. In the same way, if health, education and social care are not operating with a single set of outcomes in mind, joint commissioning arrangements will remain difficult to agree in practice, so I am anxious to explore what the health and wellbeing board’s role may be in developing joint outcomes frameworks for children with special educational needs that cut across all services. That is of great importance, as health services in particular use these outcomes frameworks when measuring the effectiveness of services. Health and wellbeing boards are one of the few bodies not to appear in the Bill. I am keen to hear from the Minister whether the Bill would benefit from their inclusion.

Amendment 204 would insert a new subsection (1A) into clause 26 to impose a particular duty on the local authority to consider how it may encourage, through any process of procurement it may carry out, a diversity of provision of education, and non-discrimination between maintained and non-maintained schools. The amendment was tabled with the assistance of the National Association of Independent Schools and Non-Maintained Special Schools. We all acknowledge the important contribution that such organisations play in the context of special educational needs. We need them; without them, we really would not have the depth or range of provision that so many children and young people need.

I am afraid that there are concerns that the current arrangements are leading to a form of discrimination between maintained and non-maintained schools. It is vital that we take this opportunity to ensure that the discrimination that is perceived to exist does not continue. There are some conflicts between the perceived procurement obligations of local authorities and the need to provide pupil and parental choice when it comes to provision of SEN. Local authorities are currently taking a particular approach towards procurement that, in effect, gives an advantage to maintained schools, in that procedures of a bureaucratic nature are often used when placing and involving non-maintained and independent schools within framework agreements. It is important that that block is removed, so that there is genuine equality of arms when it comes to that provision. NASS has explored several issues with its members, and that gave rise to that concern.

4.57 pm

Sitting suspended for a Division in the House.

5.12 pm

On resuming—

Mr Buckland: As I was explaining, independent providers are concerned that the system operates inconsistently, which does not lend itself to genuine continuity of provision in relation to the choice of young people, children and their families about SEN provision.

Local authorities have argued that procuring via a framework agreement gives them the cheapest deals with a quality assurance, and that that allows placements of children and young people with SEN to be in non-maintained—including independent—schools with the least impact on resources all round. However, it is clear to the National Association of Independent Schools and Non-Maintained Special Schools that block purchasing and framework procurements involve administrative burdens that maintained schools do not have to go through.

In the association’s view, that is discriminatory and reduces choice for students, meaning that children and young people are often excluded from the personalised teaching and learning that non-maintained and independent schools can often bring. Of course, procurement law has to be followed, but the way that it is applied can be relatively flexible in relation to SEN provision. There should not therefore be any reason why local authorities are in effect making it harder for children and young people to attend non-maintained, independent special schools.

Last year, NASS worked with the Nationwide Association of Fostering Providers and the Independent Children’s Homes Association to undertake a survey of the impact of local authority procurement on the providers of voluntary and independent children’s services. It found that providers are spending increasing time on procurement-related activity and that, when making placements, some local authorities are more focused on costs than on the needs of the child.

For education and care placements, authorities are not required to do more than to have regard to EU procurement law when considering placements. However, many authorities are running full procurement activities,

which are most usually seen when procuring type A services under EU procurement rules. That is yet another example of EU rules being adopted literally, rather than being part of the mix in relation to the procurement of services.

Frankly, it is depressing and irritating to hear EU rules being cited by local authorities when, in many instances, especially in the field of education and care, they are, rather than being absolute, no more than a consideration. That certainly does not mean withdrawal from the EU—far from it. It is once again an example of local authorities acting rather than anything to do with that organisation, the EU.

The Chair: Order. The hon. Gentleman's comments are going slightly broader than the amendment.

Mr Buckland: I just wanted to make that clear, because it is important. These little points underline some wider truths, shall we say?

There is a concern that, because the existing procedures are in place, there will be significant challenges in the future for local authorities properly to consider efficiency when considering the attendance of a child or a young person at their requested school if such a placement is to be from the non-maintained and independent school sector. The purpose of the amendment is to ensure that no discrimination should exist in the provision of services.

Mrs Hodgson: The amendments tabled by the hon. Member for South Swindon raise some valid points that are worth debating today, but not at length. Local authorities working together to commission services for children and young people with low incidence needs is absolutely the right thing to do, and it should really be happening at the moment. Therefore, amendment 188, which the hon. Gentleman tabled, has our support. Doing everything we can to promote good commissioning will be central to whether the new system delivers real improvements in provision.

I have spoken at the annual conference of the National Association of Independent Schools and Non-Maintained Special Schools—thankfully, NASS for short—for the past two years. I have not been invited back yet to make it a hat trick, but—fingers crossed—there is still time. At those conferences, NASS has launched some very comprehensive research on the economics of choosing between maintained and non-maintained provision when those involved in commissioning support are doing so.

NASS worries, probably fairly, that decisions are made based on the bottom line, or on the year-by-year basis, which quite often—rightly or wrongly—comes out in favour of a supported place in a mainstream school. I am all in favour of increasing the capacity of our mainstream schools to be able to cater for more children who have the severity of special educational needs and disabilities, or SENDs, that requires a statement. However, in some cases a placement in an excellent non-maintained or independent special school or college, even if only part time or for a few years, can improve a child's outcomes greatly, and common sense tells us that that will save money in the long run. Of course, especially in a time of austerity commissioners find it hard to look past the current or the coming year, and rarely look at what their spending can save for other budget holders in the public sector in future years.

If we want to improve provision while saving money, we must encourage commissioners to look beyond their annual budget and instead look at what a child needs to reach their full potential, and at what it will cost them for that child not to have the right support. They need to look at what it will cost in social care over the child's lifetime if the child never develops the skills needed to live independently; they need to look at what it will cost the welfare system if that child never has the capacity to hold down employment; they need to look at what it will cost the police and the criminal justice system if that child has the kind of condition that leads them to violent or aggressive behaviour; and they need to look at what it will cost the NHS if the child is never given the skills to look after themselves and their health, or if the child suffers from acute mental health problems later in life. There is no easy way to achieve that and I do not think it will necessarily be achieved by anything we can do in the Bill or through other legislation, but it is the next big thing that we need to deal with.

By comparison, the amendments that I and my hon. Friend the Member for Wigan tabled are modest ones, which merely seek to ensure that the Bill leads to the system being more open to scrutiny by parents, local politicians and professionals. I am happy not to press the amendments if the Minister can give assurances that either future Government amendments or regulations will make it clear that these agreements—indeed, any agreements reached—by and between agencies in relation to their obligations under the clause should be published for all to see.

I do not think that that request is onerous or burdensome in any way. Documents will have to be drawn up regardless and they can be put online in a matter of minutes. However, the principle of an open, transparent system, in which parents have all the information they could need, is surely something that we should be aiming for, as I hope the Minister will agree.

Mr Timpson: I know I was virtual earlier in these proceedings, but I am sorry if I failed to catch your eye, Mr Havard.

I would like to speak to the five amendments that relate to transparency, joint commissioning, procurement and accountability. In doing so, I want to thank hon. Members who have made considered contributions and done sensible analysis of where the many problems that we are trying to address lie. These are all important aspects of the new system and run throughout the provisions. I hope that I can reassure hon. Members that the amendments in the group are not required to achieve their aims.

Amendment 204, tabled by my hon. Friend the Member for South Swindon, seeks to add a requirement on local authorities to consider, when they are procuring services, how they can encourage a diversity of education provision and non-discrimination between maintained and non-maintained schools. I share the aims of the amendment, which are to encourage a diverse range of schools for children with special educational needs and an even-handedness between one type of school and another, in respect of meeting the needs of children and young people with special educational needs.

The Government want a diversity of educational provision to be available for children and young people with special educational needs. The academies and free

schools programmes are designed to encourage that and have been very successful. There are specific provisions in the Bill to achieve those broader aims.

Local authorities have a duty to keep their special educational provision and social care provision under review. The duty on local authorities in clause 27 to consult a range of people and organisations when doing so requires them to consult the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that they think are, or are likely to be, attended by children and young people for whom they are responsible. That ensures that authorities consult schools and post-16 institutions in the maintained, non-maintained and independent sectors when assessing the sufficiency and range of their provision.

Clause 38 gives young people and parents of children with education, health and care plans the right to request that their local authority name a particular maintained or non-maintained school in their plan. Clause 41 enables the Secretary of State to approve independent schools and independent specialist colleges, for which parents and young people can express a preference, adding to the diversity of choice. That was something that, through the process of pre-legislative scrutiny, we managed to make significant advances on, so that we could broaden the choice for parents and young people when deciding what the best educational setting is for them or their children.

The Bill brings non-maintained special schools and independent special schools within the parental choice arrangements for the first time, so that parents can request a place and have the same rights to have that preference met. The local authority must name the parent or young person's requested school, irrespective of the type, unless doing so would not meet the child's needs, would not be compatible with the efficient education of others or would be an inefficient use of resources. We will require local authorities to publish details of the provision they expect to be available for children and young people with special educational needs for whom they are responsible—including specialist provision and provision made outside their area for children and young people in their area for whom they are responsible.

It is also right to remind my hon. Friend that reforms to the funding of higher-needs pupils are designed to remove perverse incentives to place in maintained provision instead of non-maintained provision. The new arrangements will ensure a level playing field, with different schools funded on the same basis. Initially, that will cover non-maintained special schools, but we intend to extend it to cover institutions approved by the Secretary of State under clause 41. Given those assurances, I hope that my hon. Friend will withdraw his amendment.

Turning to amendment 214, I thank my hon. Friend again for raising the important question of health and wellbeing boards and their role in joint commissioning. The reforms of the national health service have placed health and wellbeing boards at the centre of determining local needs as they work with their partners to agree a strategy for meeting them.

The health and wellbeing boards will have a critical role to play in joint commissioning arrangements. They must conduct regular joint strategic needs assessments and develop joint health and well-being strategies. Their analysis of needs and agreed priorities will be used to help to determine what actions local authorities, the

local NHS and other partners need to take to meet health and social care needs and to address the wider determinants that affect health and well-being. They will draw on the NHS outcomes framework to inform that process.

Joint commissioning arrangements for children and young people with special educational needs will draw on the local priorities identified by health and wellbeing boards and the regular review of those priorities. Clinical commissioning groups must involve health and wellbeing boards in the preparation of their commissioning plans and consult the boards on whether they consider a draft plan to have taken proper account of each health and well-being strategy. Health and wellbeing boards are addressed by provisions in clause 26(3).

Of course, the boards are committees of the local authority. I can further reassure my hon. Friend that the draft code of practice states:

“The arrangements for joint commissioning for children and young people with SEN will draw on...the local needs identified by Health and Wellbeing Boards in their Joint Strategic Needs Assessments”.

The accountability structures of clinical commissioning groups and the involvement of health and wellbeing boards means they are adequately covered by the legislation. I therefore urge my hon. Friend not to press amendment 214.

Amendment 188 highlights the importance of commissioning and providing services for children and young people with low-incidence special educational needs. I understand that my hon. Friend's intention is to ensure that such children and young people receive the best services possible, and I recognise that for low incidence special educational needs, not every local authority may have on hand the services needed. He talked about that in an earlier debate.

Local authorities, however, are already able to commission services across local authority boundaries, and it is up to them to use their best judgment to decide when it is appropriate for the child or young person for the local authority to commission and provide services with another local authority, working with the health service.

The current focus of clause 28 is rightly on the institutions with which local authorities will need to co-operate—local authorities can already be expected to co-operate generally. When specific co-operation with another local authority is required, the Bill provides for that in clause 31, and clauses 39 and 40 provide for co-operation where a local authority is considering naming a school maintained by another local authority in an education, health and care plan.

Finally, I draw my hon. Friend's attention to some of the work going on in pathfinders, particularly in SE7, where they are working across local authority boundaries. They are drawing up their own protocol to ensure that co-operation, commissioning and the procurement of services are thought about not only within local authority boundaries but across local authority boundaries. That is another way in which we are trying to engender the cultural change that we want. I therefore urge my hon. Friend not to press amendment 188.

Amendments 77 and 159 were tabled by the hon. Member for Washington and Sunderland West. I recognise that she is keen to ensure that the planning and

commissioning of education, health and care services is transparent, an ambition that the Government and I fully share. I believe that by “joint commissioning agreements” amendment 77 refers to any agreement reached through the arrangements required by clause 26. I hope I can satisfy the hon. Lady that that requirement is not necessary.

I am sure the Committee will discuss this in more detail on Thursday when we reach clause 30, but the local offer is central to any discussion on transparency. Through the local offer, local authorities are already required to publish a full range of information, including on available education, health and care provision.

I encourage the hon. Lady to look carefully at the indicative draft regulations on the local offer, which set out in clear terms the length, breadth and detail that will be required from local authorities and other agencies to ensure that the local offer provides the fullest possible account of the services available and how they can be accessed. If they are not made available after being included in the local offer, and where there is an assessed need, the parents of that young person may seek redress.

The impact of joint commissioning arrangements—on the services that are available; on agreeing education, health and care needs assessments; and on arrangements for personal budgets, complaints and advice—will also need to be reflected in the local offer. That is made explicit in the draft regulations and the indicative code of practice, which states:

“Local authorities and their partners will need to develop the local offer in the context of their local Health and Wellbeing Strategy, joint commissioning arrangements and agreements about the delegation of SEN funding with local partners. The local offer is the key vehicle for communicating the effects of these strategic discussions to local families affected by SEN.”

Local authorities are under an existing duty to publish the health and well-being strategy. That will set out the high-level strategic priorities for the area. Requiring local authorities also to publish joint commissioning agreements would create an unnecessary bureaucratic burden. The information that parents, young people and local agencies may need should already be available through the local offer and/or through the health and well-being strategy.

5.30 pm

Amendment 159 relates to clause 59, which enables local authorities to supply services to help the governing body, proprietor of an education setting or another local authority to meet their duty to use their best endeavours to secure the special educational provision required by the child or young person with an education, health and care plan. The hon. Member for Washington and Sunderland West’s amendment seeks transparency and would require local authorities to publish digitally any such agreement within a month of its being made. I am also keen to ensure that local purchasing decisions are transparent. However, local authorities have their own arrangements for ensuring local accountability.

The Department for Communities and Local Government has asked all local councils and fire and rescue authorities in England to publish spending

information over £500 online, and that is reforming local audit arrangements. Local bodies will be able to appoint their own auditors from an open and competitive market and those arrangements will be overseen by the National Audit Office, the Financial Reporting Council and professional accountancy bodies, which will ensure that high standards of auditing continue. In that context, I hope the hon. Lady is reassured that sufficient information will be made available, and I hope that she will withdraw her amendment.

Mr Buckland: I am extremely grateful to the Minister for reminding me about my amendment 188, to which I did not speak; I think we can blame the Division for that. My mind had momentarily drawn a blank.

I am grateful to the Minister for his response to the argument that I would have put about the importance of ensuring that the collaborative approach between local authorities to ensure a regional provision for low incidence special educational needs is provided. I need not, therefore, reiterate the point. I am grateful to the Minister for addressing that.

I listened carefully to the Minister’s observations on my other amendments and I am satisfied that a reasonable explanation has been proffered. I know the Government will continue to give active consideration to the points I raised. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 58, in clause 26, page 20, line 7, leave out

‘special educational needs of the children and young people concerned’

and insert

‘learning difficulties and disabilities which result in the children and young people concerned having special educational needs’.

Amendment 59, in clause 26, page 20, line 32, leave out subsection (8) and insert—

‘(8) A local authority’s “partner commissioning bodies” are—

- (a) the National Health Service Commissioning Board, to the extent that it is under a duty under section 3B of the National Health Service Act 2006 to arrange for the provision of services or facilities for any children and young people for whom the authority is responsible who have special educational needs, and
- (b) each clinical commissioning group that is under a duty under section 3 of that Act to arrange for the provision of services or facilities for any such children and young people.

(9) Regulations may prescribe circumstances in which a clinical commissioning group that would otherwise be a partner commissioning body of a local authority by virtue of subsection (8)(b) is to be treated as not being a partner commissioning body of the authority.’—(*Mr Timpson.*)

Clause 26, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—(*Anne Milton.*)

5.34 pm

Adjourned till Thursday 21 March at half-past Eleven o’clock.

