PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Thirteenth Sitting

Tuesday 16 April 2013

(Morning)

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Written evidence reported to the House.
Clauses 36 to 43 agreed to, some with amendments.
Clause 44 under consideration when the Committee adjourned till this day at Two o'clock.

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Saturday 20 April 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Mr Christopher Chope, Mr Dai Havard

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

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 April 2013

(Morning)

[Mr Christopher Chope *in the Chair*]

Children and Families Bill

Written evidence to be reported to the House

CF 63 Local Government Ombudsman
CF 64 Working Families
CF 65 Twins and Multiple Births Association (Tamba)
CF 66 Equality and Human Rights Commission
CF 67 Equality and Human Rights Commission—supplementary evidence
CF 68 Kay Britton
CF 69 Elizabeth Manning
CF 70 Families Need Fathers
CF 71 Shirley Jenkins
CF 72 National Family Mediation
CF 73 National Children's Bureau
CF 74 Mr John Cahill
CF 75 Mrs Catherine Barrow
CF 76 His Honour John Platt
CF 77 Kinship Care Alliance
CF 78 Paula Jewes
CF 79 Derek Gould and John Devine
CF 80 TUC
CF 81 Linkage Community Trust
CF 82 British Association for Adoption & Fostering
CF 83 Portsmouth Parent Voice
CF 84 British Lung Foundation
CF 85 Celia Conrad

Clause 36

Assessment of education, health and care needs

9.25 am

Mr Robert Buckland (South Swindon) (Con): I beg to move amendment 43, in clause 36, page 28, line 28, after 'assessments', insert

'including—

(i) triggering assessments under section 17 of the Children Act; and

(ii) healthcare assessments.'.

It is a pleasure to serve once again under your chairmanship, Mr Chope, after our recess.

The amendment relates to whether an assessment for an education, health and care—EHC—plan could trigger a further assessment for social care and health care services. It is germane to one of the general themes of the Committee's debate: the synthesis between education, health and social care.

My amendment has two parts. Proposed new sub-paragraph (i) is designed to explore whether a statutory EHC assessment could trigger an assessment for social care under the Children Act 1989. Proposed new sub-paragraph (ii) is designed to explore how health care assessments will form part of the EHC assessment process, which is particularly significant given the new and welcome duty on health services to make provision as set out in the new EHC plans.

Dealing first with social care, the amendment would mean that a consideration of whether a child needed social care services pursuant to section 17 of the 1989 Act would become a requirement of the EHC assessment. It seems eminently sensible that a local authority should look at all the support a family needs, for example short break services—the sort of respite care that often makes a huge difference to a family under pressure—at the same time as EHC assessments are undertaken. The amendment would ensure that consideration of all the social care needs of the child and their family took place at the same time as consideration of their educational needs. The needs of the child do not stop at the school gate; they continue throughout the weekend, 24/7, for the family. Ensuring that we have a complete picture in terms of assessment therefore makes eminent sense.

There are other benefits to linking section 17 assessments with EHC assessments. Parents, sadly, are often not aware of their child's rights to social care and do not receive an assessment until a crisis point is reached, with all the concomitant trauma and expense that results from leaving things until the 11th hour—or sometimes beyond it. In 2012, Ofsted's review of social services for disabled children found

"weaknesses in plans for, and reviews of, children in need. For families where there are concerns, these weaknesses in the systems make it less likely that issues will be identified in a timely way and followed up rigorously."

The amendment would help to trigger that early assessment of need and help services to take a whole-family approach to meeting the needs of disabled children, which is lacking at the moment.

Accepting the principle that EHC assessments should include a consideration of needs under section 17 of the 1989 Act would be a significant step in creating the single assessment process that the Government rightly seek. I hope that the Minster will carefully consider that point and lend it support.

The second part of the amendment relates to health services, and I hope that this debate will give the Minister the opportunity to go into slightly more detail about how health services will be involved in EHC assessments. Placing a new duty on health commissioners to arrange the provision set out in an EHC plan would be a vital step. It is vital that we understand how health services will be involved in the assessments and the drawing up of EHC plans. If the health services are not fully involved, there will simply be nothing to write about in the health parts of the plans.

Will the Minister help the Committee on the following points? First, will regulations require health services to take part in the assessment process, and who will be required to take part? Secondly, who will be involved in

drawing up EHC plans from a health services point of view? Finally, who will decide what health elements are actually recorded in the plan and how parents can challenge decisions? I look forward to my hon. Friend's comments, and I commend the amendment to the Committee.

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): It is a pleasure to be back after our lovely Easter recess and to see you in the Chair again, Mr Chope.

I will not detain the Committee long, as I do not have much to add to what the hon. Member for South Swindon said, other than to commend him on his repeated attempts to save local authorities money by bringing together health and social care needs assessments. It is clear that the Minister is not for turning on this issue, so I again offer the hon. Member for South Swindon our support if he wishes to test the will of the Committee.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): It is a pleasure for me, too, to see you in the Chair after our Easter break, Mr Chope.

I thank my hon. Friend the Member for South Swindon for his amendment. He is right to try to ensure that, under an EHC assessment, all aspects of the child's or young person's needs are promptly and appropriately assessed and that the consideration of those needs is family-facing. As he acknowledges, the purpose of the EHC needs assessment is to identify in an holistic way not only the special educational provision required by the child or young person, but any health care and social care provision reasonably required by the learning difficulties and disabilities that result in him or her having special educational needs. My hon. Friend is also aware that we have set out in indicative regulations more detail about how agencies should work together. I will come to his questions about health in a moment.

Clause 28(3) is designed to ensure that officials responsible for education and training in a local authority work closely and co-operate with their colleagues responsible for social services. As indicative regulation 6 states, where the local authority is conducting an EHC needs assessment, it must seek advice, where it considers that appropriate, in relation to the social and health care needs of the child or young person. Should the advice indicate that a more detailed assessment is needed, the local authority or health authority will need to consider whether to carry out an assessment under existing legislation.

The powers in clause 36 already enable regulations to provide that EHC needs assessments may be combined with other assessments—that is subsection (11)(h)—and that information, obtained under a section 17 assessment for example, can be used for the purposes of an EHC needs assessment, so there is no need for an EHC needs assessment to trigger another assessment. We are clear that the new EHC needs assessments will be combined with social services assessments made under section 17. The Children Act 1989 makes it clear that section 17 assessments may be combined with other assessments, including assessments of SEN.

There is of course a general duty under section 17 of the 1989 Act for local authorities to provide services to meet the needs of children in need, including disabled children, in their area. The definition of a child in need is extremely wide, and deliberately so. Determining who is in need requires judgments from social workers who are in a position to consider family, educational, social and environmental circumstances. Although there is no explicit statutory duty to carry out an assessment of needs under section 17, case law, as well as statutory guidance, makes it clear that local authorities are under a duty to assess children's needs.

The Department's updated statutory safeguarding guidance clearly sets out the process for the assessment of children in need, and explains the purpose and importance of the assessment of children in determining which are the most appropriate services to provide across the whole range of education, health and social care. Young people aged 18 and over who now fall within the scope of SEN legislation and are eligible for adult social care, will, under the draft Care and Support Bill, receive support via a statutory care plan. The intention is that that will form the care element of the EHC plan for young people with SEN.

Regarding health services, which my hon. Friend the Member for South Swindon delved into during his opening remarks, 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, and the mandate makes that clear. Children and young people will be at the heart of the new health system.

In the indicative regulations, we say that where the local authority secures an EHC needs assessment for the first time for a child or young person it must seek "medical advice" from a medical practitioner identified by the relevant CCG. So there will be improved synergy, which my hon. Friend discussed, between education, health and social care in bringing together the various assessments and, therefore, the planning that follows for each individual child. In the case of services for disabled children under section 2 of the Chronically Sick and Disabled Persons Act 1970, once the local authority is satisfied that it is necessary to provide assistance under that section it is under a duty to provide that assistance.

Of course, the backdrop to all this is still the work going on in the pathfinder areas to examine how we can bring—at a ground level—the assessment process much closer together across all the different agencies. I refer my hon. Friend to the response from a parent who is involved in the EHC pilots in Hartlepool:

> "There is really no comparison between the statutory assessment and the new approach. As the annual statement reviews are totally education-focused, we don't get to know who my child is. I am fortunate enough to be involved in care co-ordination, which looks not only at my child but also his wider world. To have a similar approach in one plan, instead of several different ones, would be far less time-consuming and make life a lot easier for parents and carers."

So there is good evidence being established in the pathfinders, as demonstrated by that quote from a parent involved, that by bringing the assessment process together and backing it up by legislation—through the Bill, the regulations and the code of practice—we are in a better position to ensure that the assessment and provision of services happens, where required, in a much more holistic way. The legislation and indicative

[Mr Edward Timpson]

regulations make it clear that assessment should be co-ordinated across the education, health and care landscape.

On that basis, I hope that I have provided my hon. Friend with some reassurance that the points he has raised are addressed through the work we are doing, both through Parliament and in the pathfinder areas. Therefore I urge him to withdraw his amendment.

Mr Buckland: I have listened with care to the Minister. As I did so, I looked again at the draft code of practice—the indicative draft, which was provided to us before the recess. There is a lot of encouraging text in that document, particularly at paragraph 6.5, with an emphasis on a "tell us once" approach, which I entirely endorse because I know from my own experience how tiring it can be for someone to reinvent the wheel every time they see a new agency. However, I urge him to follow up the exhortation at the end of that paragraph, which says:

"This section will be developed further."

I am sure that his team will work as hard as they can to ensure that those responsible for the assessment understand the full extent of their statutory duties.

I am entirely in sympathy with the argument that we should avoid piling further legislation on further legislation. If, as the Minister has outlined, existing duties bring together and net together these obligations, I, for one, would be content. The key is to ensure that the code of practice, in its particularity, makes it crystal clear to all agencies that that joined-up, global approach to the child and their family is essential if the aims of this legislation are to be met. I am also encouraged by what he said about the Hartlepool pathfinder. I urge him and his team to continue working on this issue, to ensure that by the time the Bill finally emerges it will reflect, as fully as possible, the aspirations that people in this room and beyond all share. On the basis of what I have heard, I beg to ask leave to withdraw the amendment, but I know that his team will work even harder on the indicative draft.

Amendment, by leave, withdrawn.

Clause 36 ordered to stand part of the Bill.

Clause 37

Education, health and care plans

Mr Timpson: I beg to move amendment 62, in clause 37, page 29, line 3, leave out from 'provision' to end of line 4 and insert

'reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs.

'(2A) An EHC plan may also specify other health care and social care provision reasonably required by the child or young person.'.

Members will no doubt recall that when I introduced amendments 55 and 56, I talked about my intention to introduce a duty on health commissioners to arrange for the health care provision specified in the EHC plan, and I explained how the amendment addresses parents' long-standing concerns about the lack of accountability on health bodies for the provision specified in statements of special educational needs. I explained that, in my view, the creation of a new education, health and care plan and the new joint commissioning requirement has provided a unique opportunity to address that concern.

The duty on health commissioners has been warmly welcomed. Amendment 62 is one of a series of Government amendments relating to that duty. It amends clause 37(2), which sets out what an EHC plan may specify. The health and social care provision to be specified in the plan is provision that is reasonably required by the learning difficulties and disabilities that result in the child or young person having special educational needs. The amendment is consistent with amendment 58, which relates to the provision that the joint commissioning arrangements must include.

The amendment also makes it clear that local authorities and health commissioners may include additional health or social care provision in plans if it makes sense to do so. For example, if a child with a plan for their significant dyslexia developed an unrelated illness, it might make sense for them, their parents and the professionals supporting them to co-ordinate their care through the plan. That is a common-sense, child-centred approach.

Mrs Hodgson: I welcome the Government's amendment, and thank the Minister for introducing it.

Amendment 62 agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38

Preparation of EHC plans: draft plan

Mr Buckland: I beg to move amendment 44, in clause 38, page 29, line 27, at end insert—

'(g) an institution of higher education which the young person has accepted an offer from.'.

The aim of the amendment is to ensure that young people continue to be entitled to an education, health and care plan if they attend university or higher education, which is referred to in the amendment. Under the Bill as drafted, the plan would stop if a young person chose to go to university.

It is difficult to see how the exclusion of universities from the new framework can be justified, particularly in light of the fact that we have rightly accepted that the EHC plan should continue in some cases up to the age of 25. The acceptance that EHC plans should continue into further education is an important part of the argument. In the further education sector—I am glad to say that this is happening in my area as much as anywhere else—the possibility of studying higher education courses is increasing.

I am grateful to my hon. Friend the Minister and the Government for listening. We have accepted that EHC plans should continue when a young person undertakes an apprenticeship, and should continue even when a young person is not in employment, education or training. It seems to me, therefore, that there is a potentially worrying gap, in that the plans do not continue into university.

Many universities already meet the needs of disabled young people well, and the payment of the disabled students' allowance is often sufficient to meet the needs

of those young people. However, some disabled people report that they have to continue to battle to get all the support they need to access higher education, particularly as regards the social care services needed to help them live independently while studying.

Undoubtedly, there would be benefits to young people keeping co-ordinated health, education and social care support while they are at university. The fact that a young person might be moving away from a particular local authority that has made provision under the plan is not an issue. In fact, local authorities are already experienced in maintaining statements of special educational needs for young people who are not being educated in their area. A casual thought shows that to be true in the case of out-of-county or out-of-borough placements in residential schools, which are necessary for a relatively small cohort of young people with SEN.

Amendment 44 would mean that a university that has offered a place to a young person could be named on an EHC plan. If the young person did not have an offer from the university, the university could not be named in the plan. I am not suggesting that disabled young people should not be expected to contribute fees in the same way as non-disabled young people; my proposal is only that they continue to have co-ordinated arrangements for health, education and social care while they are at university, and to have that support reviewed.

9.45 am

I know that the Minister's intention is for the reforms to create a system in which we have the highest aspirations for disabled young people. That is why it is important to consider how best we can include universities in the new framework. It may not be easy, but what is difficult need not be impossible. I urge the Minister to look closely at the proposal, and to give further consideration to how best we can enable young people with disabilities to gain access to higher education.

Mrs Hodgson: I speak to the amendment as a mother of a child with severe dyslexia who has just made the move to university, as well as the Front-Bench spokesperson. After a variable experience—to put it mildly—with regard to support throughout my son's school days, and a poor experience when he was in further education, my husband and I were looking forward to our son going to university, because we knew, or we thought we knew, that provision in higher education is generally much better. In reality, my son's support package is still not in place, meaning that he is still struggling along, nearly a year into his degree course.

We hope that the equipment and software that he so desperately needs to support him will be approved and will finally be here for at least the majority of the summer term; it is now on order, I understand. When it is in place, it will be the best support that he has ever had in all his years in education, but the delay has been unacceptable, and was totally avoidable, had his FE college given him a proper and professional post-16 assessment, as I now know it should have done but did not—probably as a cost saver, but who knows?

That is the thing with our SEN system: parents learn along the way things that they wish they had known sooner. Parents of kids with special educational needs or disabilities have to be super-parents; they have to learn, fight, and circumvent the system to get their child the support that should have come their way as of right, via the professionals employed across the education system. If that did happen, all kids would be sure to get the support that they needed, not just those with fully fledged super-parents.

As far as I can see, the situation is not all rosy in HE. There are merits in trying to achieve a more joined-up system for a young person until they reach the age of 25, which, for those with the ability, will often encompass their university years. I am not convinced, however, that now is the right time, as much work has already gone into the Bill over the past two years, and I fear that so much more would need to be done to include the amendment.

That said, I am pleased that the hon. Member for South Swindon has instigated the debate, and I would be interested to know the Minister's thoughts on whether the Government will look at the idea in the medium or longer term.

Caroline Nokes (Romsey and Southampton North) (Con): It is a pleasure to serve under your chairmanship again after the Easter recess, Mr Chope. I wish to speak briefly in support of the amendment and the principle of ensuring that provision in a wide range of institutions for young people between 16 and 25 is available to all young people with SEN.

I appreciate how lucky I am to have in my constituency a range of institutions that provide support for children and young people with SEN up to 25. It is critical that we do not pigeonhole people. Too often, there is an assumption that those with SEN will not go on to university. The absolute opposite is true, however, and it was a real privilege for me to meet, just before Easter, a young man who fully hopes to go to university this autumn, who is the head boy of his school, and who has achieved an enormous amount despite his learning difficulties. The National Audit Office can put a fiscal benefit on encouraging and enabling such young people to go off and learn independently, but in my view that is not the most important aspect. The most important aspect is that they should have the same range of choices as their peers. There should not be discrimination regarding further education institutions and whether a young person can go on to university; they should have exactly the same range open to them if they have the support of the education, health and care plan.

Mr Timpson: I am again grateful to my hon. Friend the Member for South Swindon for tabling amendment 44, and I am pleased to have the opportunity to clarify how our reforms will work alongside the existing systems of support for disabled young people in higher education. I understand why my hon. Friend seeks to extend the scope of EHC plans to include higher education. I will set out some of the good reasons why that is not desirable, but I hope to provide him with some reassurance about how we can improve the transition into higher education. I will also pick up on some of the points raised by the hon. Member for Washington and Sunderland West and consider how we can engage with universities as we continue with the reforms to ensure that we involve the work that is done in the EHC plan as much as possible through the transition process.

[Mr Timpson]

As my hon. Friend the Member for South Swindon will know, unlike in further education, local authorities do not commission places from higher education institutions. It would not, therefore, be reasonable to hold a local authority accountable for securing special educational provision through an EHC plan when a young person is at university, because the institution is entirely independent of the local authority.

I listened carefully to the description that the hon. Member for Washington and Sunderland West gave of her family's experience. Unfortunately, as she has exemplified, there are still cases of young people not receiving support at the right time. That is one of the reasons why we continue to push to improve the system. There are also examples of the system working well, and we need to spread good practice more widely. For example, "Into Higher Education 2013", a guide for disabled students who are thinking about studying in higher education, which is published by Disability Rights UK, contains a case study of a young man with Asperger's syndrome who is studying for a foundation degree. He said:

"Being a disabled student at college has never really stood out as my sole characteristic. Perhaps it is noticeable to some people, maybe even many, but it never really got in the way of anything. Tutors and support workers were always fantastic at what they did. They were supportive and understanding, as well as great people to get along with. If I ever needed assistance, they were always there for me."

I am sure that the hon. Lady wishes that that had been the case in her situation. The young man continued:

"The support I received was funded through Disabled Students' Allowances (DSAs). Applying for DSAs with honest answers about my condition and the help I needed meant they could judge what assistance was necessary at college and at home without anything being redundant."

In the code of practice, we are ensuring that planning for the transition to university—a good outcome that should be in a plan—should be done in February of each year, rather than at the last minute. In that way, the situation that the hon. Lady described can be avoided, and I hope that that provides her with some reassurance. We must, of course, keep a close eye on the situation.

Significant support is available to young people in higher education through disabled students' allowances. They are not means-tested, they are awarded in addition to the standard package of support, and they do not have to be repaid. They can help to cover any additional cost that a student may incur because of a disability. In the 2010-11 academic year, 47,400 full-time students were provided with DSA support amounting to £109.2 million.

Mrs Hodgson: I want to clarify that the support that my son has received from the professionals with regard to accessing DSA has been second to none. The problem has mainly been the length of time that the process has taken, because it only started once he had enrolled. FE had not put him through a post-16 assessment, so nothing could be done before his enrolment on the day he turned up at university. It has taken from late September until now to get that support in place. I am grateful to hear that the process should start in the February of each year; however, in that case we need to engage with schools and FE on the post-16 assessment that is necessary, especially for children with dyslexia.

Mr Timpson: I thank the hon. Lady for her clarification, and for her support in looking to improve the transition period. She might want to look again at the code of practice to see whether it fulfils that objective, and I am happy to discuss that with her further in due course.

I would also like to assure my hon. Friend the Member for South Swindon that the health and social care support a young person receives will continue, where needed, when they move away to university. Higher education institutions are also, of course, subject to the Equality Act 2010 and have their own systems of support for students with a disability. In most cases, social care will continue to be provided by the home local authority, as young people remain ordinarily resident there. Under the changes in the draft Care and Support Bill, which I mentioned in a previous debate, 18-year-olds who are eligible for adult social care will in future receive a statutory care plan. Health care support will also continue where it is still required. Young people can stay with their home GP or choose to register with the health practice within their university if that is more convenient for them, especially if, as in many cases, their needs are complex.

As part of planning for transition, EHC plans prior to going to university should set out how support will be maintained, including any handover between services—clearly, a crucial period—to ensure that that is planned in advance and managed smoothly. I am happy to explore further with my hon. Friend how we can strengthen the transition, so that universities are fully versed in the individual needs and circumstances of every student joining them from the EHC plan. There is nothing to prevent any university that wants to from using that as a framework for how it then provides the necessary support for each of those students, to ensure that all their needs are being met and students can fulfil their potential as they move through university life to the completion of their courses.

I hope that provides my hon. Friend with some reassurance. I am happy to continue to discuss with him ways in which we can strengthen provision in the period of transition. On that basis, I urge him to withdraw his amendment.

Mr Buckland: I listened with care not only to the Minister but to the hon. Member for Washington and Sunderland West. She spoke, with a great deal of personal experience, about a stage that I have yet to come to, which is the transition from secondary to further education and then on to higher education. We all know that that is far too difficult and vexed. We have a golden opportunity to get that right and ensure that that transition is a matter of achievement and is a smooth process, rather than the challenge that it all too often presents at the moment.

My hon. Friend the Minister talked about the unsuitability of naming universities, bearing in mind the fact that they are institutions that are wholly outwith the control of local authorities. I would urge a little caution about that argument. We already know that particular named institutions that are out of borough or out of county are not within the control or ownership of a local authority; they will often be in the independent sector. We have had much debate in Committee about the importance of the independent sector in providing specialist support for low incidence special needs—

in other words, refreshing those parts that, frankly, local authorities, with all their expertise and therefore all the demands upon their services, cannot reach. Therefore, there is an analogy to be drawn between the status of those institutions that are not within the control of local authorities and that of higher education institutions.

I accept, however, that the focus and thrust of this debate has been the need to ensure, first and foremost, that there is proper preparation for a young person's move to higher education. It is to be hoped—although it cannot always be the case, as there will be individuals with continuing high physical needs—that, as a child or young person with SEN grows up, their ability to live more and more independently will increase. I say those words advisedly; as I have said, that will not always be the case. However, if one accepts that trajectory, the degree of support that would be needed will in many cases lessen.

10 am

Having said that, lessening does not mean ending. Therefore there is a continuing concern that we end up in a situation where young people feel that because they will not be covered by the EHC plan—because there is not that continuity of provision—they are unable to go on to higher education. That would be a highly undesirable state of affairs. It would achieve the opposite of what the Government are trying to achieve with the Bill. I look forward to working further with my hon. Friend on these matters. I note that he is in listening mode and it is in that spirit that I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 38 ordered to stand part of the Bill.

Clause 39

FINALISING EHC PLANS: REQUEST FOR A PARTICULAR SCHOOL OR INSTITUTION

Mrs Hodgson: I beg to move amendment 129, in clause 39, page 30, leave out lines 4 to 10 and insert

'it is the opinion of the persons or agencies involved in drafting the child or young person's EHC plan that the school or institution requested is unsuitable for the age, ability, aptitude, desired outcomes, well-being or special educational needs of the child or young person concerned, and that reasonable adjustments cannot be made.'.

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

Amendment 205, in clause 39, page 30, line 10, at end insert—

'(4A) Where a local authority considers that subsection 4(b) applies it must, before reaching a conclusion on that matter, consider such incompatibility in a manner that does not discriminate between maintained schools and non-maintained schools.'.

Amendment 130, in clause 39, page 30, line 11, after 'must', insert

', subject to agreement of the child or young person concerned and their parents,'.

Mrs Hodgson: Amendment 129 aims to generate debate about the reasons that schools should be able to use to refuse to accept a child with special educational needs, suggesting that the decision could be taken away from them and given to the professionals involved in drawing up the child's education, health and care plan. As I have discussed before, there are concerns, including those articulated by the Children's Commissioner, that some schools unfairly reject, either formally or informally, children with special educational needs, because they think they will be too much trouble or will put the school at a disadvantage in terms of league table performance.

We must seek to stamp out this practice, and although I do not intend to push the matter to a vote, I hope the Minister will examine whether such caveats can be removed or modified to reduce the scope for this kind of practice, and place the decision in the hands of those who are more neutral. Amendment 130 to subsection (5) would ensure that where parents try to name a school and a local authority relies on an exception under subsection (4) to refuse to name that school, and then puts forward another school, that second-choice school can only be named on the plan if the young person or their parents agree.

This amendment could equally have been made to subsection (6), which sets out who a local authority should consult before naming a school other than the choice of the parents or young person, but it specifies that only the school should be consulted, not the parents or young person. If this clause were to be applied to the letter, the first a parent or young person would know that a completely different school had been named on the plan would be when they are sent a copy of the finalised version. That would seem to be a drafting oversight, as I cannot imagine that it would be the intention of the Minister that parents should not have the power of veto just because their first choice did not work out.

Conscious of time as we want to make progress, all I will ask of the Minister is that he considers whether Government amendments might be tabled later on this matter. The amendment tabled by the hon. Member for South Swindon seeks to ensure that local authority commissioners do not rule out non-maintained or independent special schools or colleges because they believe, rightly or wrongly, that placing a child in one of those schools will be more costly on a year-by-year basis. I spoke in another debate about the need to encourage commissioning that looks at the long-term impacts of a placement on the outcomes of a child or young person. I did not get a specific response to that point from the Minister, so I ask again whether the Department might look to provide guidance to assist local authorities in being good commissioners, which will ultimately save them money.

Mr Timpson: I know amendments 205 and 230 are also in this group. I am grateful to the hon. Lady for giving us the chance to discuss the provision in clause 39 in relation to a local authority's decision on whether to name the school or institution requested by a child's parent or by a young person in an education, health and care plan. Clause 39 makes clear that where a parent or young person requests that a particular school or other institution is named in an education, health and care plan, the local authority must name it in the plan unless the school or other institution requested is unsuitable

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for the age, ability, aptitude or special educational needs of the child or young person concerned, or their attendance would be incompatible with the provision of efficient education for others, or the efficient use of resource.

As the hon. Lady said, amendment 129 appears to be designed to ensure that local authorities take account of the specific needs of the child or young person, including the desired outcomes for them and their well-being. The provisions in the Bill provide for this, in that clause 37 requires the plan to specify the outcomes sought for the child or young person in the special education provision and other provision that they require. The advice obtained from professionals and agencies involved in the assessment of the child or young person's needs will have been considered and will be reflected in the plan by those who draft it.

The provision for local authorities to have regard to children or young people's well-being is made in clause 25. In view of their responsibility under clause 42 for securing the provision in a child or young person's plan, it is right that the decision about the school or other institution to be named in the plan should rest with the local authority taking account of the conditions in clause 39(4).

As we discussed when debating amendment 107 and clause 33, there will be occasions when the attendance of a child at a particular school or other institution would significantly impact on the education of others. The provision in clause 39(4) for local authorities to consider the efficient education of others provides an important safeguard in that respect. Similarly, the requirement to consider the efficient use of resources will inevitably involve consideration of the reasonable steps that might be taken to enable the placement to take place, including any reasonable steps under the Equality Act 2010.

Parents and young people will be consulted all the way through the assessment process and a placement so that they do not learn of a placement only at the end of that process. The hon. Lady is right to raise that because one of the concerns that parents have had of the current system is that they get the information at a late stage when they needed it at a much earlier stage. The whole purpose of the reforms is to have parents involved throughout the process.

I will look, as the hon. Lady has asked, at how we ensure that that takes place and the circumstances in which the school named is not necessarily the one that the parents expected so that they have sufficient time to consider that and make the appropriate arrangements either to challenge that decision or to negotiate with the local authority an arrangement that satisfies them. I hope that, on that basis, the hon. Lady is satisfied and will withdraw her amendment.

Mrs Hodgson: I thank the Minister for his response and his reassurance that parents and children will be included much earlier on in the process. With that assurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 39 ordered to stand part of the Bill.

Clause 40

FINALISING EHC PLANS: NO REQUEST FOR PARTICULAR SCHOOL OR OTHER INSTITUTION

Mrs Hodgson: I beg to move amendment 131, in clause 40, page 30, line 38, at end insert—

'(2A) In determining which school or institution to name on an EHC plan, the local authority must have regard to—

(a) where the child or young person is ordinarily resident, and the accessibility of the school or institution in relation to this;

(b) the suitability of schools and institutions based on the age, ability, aptitude, desired outcomes, well-being or special educational needs of the child or young person concerned;

(c) the quality of teaching within the school, as deemed by the Chief Inspector; and

(d) any other considerations or preferences stated by the child or young person and their families.'.

The intention behind the amendment tabled by me and my hon. Friend the Member for Wigan is to ensure that where a young person or parent has not indicated any particular preference for an education provider to be named on a plan, local authorities consider a range of factors when deciding which institution to name. The amendment primarily aims to ensure that in cases where, for whatever reason, a parent is not as engaged in the process as they might be, commissioners take decisions on the parent's behalf that they believe are the best interests of the parents and the child in question, rather than those of the authority. That is particularly important with regard to: whether they want to be in mainstream or special provision; whether a school is close to—or accessible from—a child's home; and, frankly, whether the school is any good at providing for the additional needs that the child will have.

I am sure that the Minister would not want children or young people to end up with worse provision because no preference was expressed by their parents. I would therefore be grateful for any assurances that he can offer in that regard.

Mr Timpson: We discussed some of these issues before in relation to amendments 107 to 109, 129, 205 and 130, and I believe that many of the same considerations apply here. I am grateful to the hon. Lady for raising an important point that transcends all those amendments.

As I reiterated in the previous debate, the involvement of children and young people and parents in decisions about the provision that they require, their wishes and preferences is, of course, a key element in this part of the Bill and is reflected in the general principles at the start of this part of it, at clause 19, and in the specifics of the assessment process thereafter. Indeed, parents and young people have the right to request a particular school or institution to be named in their plan, if they wish. However, clause 40 applies where they do not express any preference, as the hon. Lady said.

Local authorities should and do try to secure provision for children and young people with special educational needs as close to where they live as possible, but, as we know, in some instances that may not be possible, particularly if the child or young person has a high-level low incidence of need. In those cases, it may be necessary for the local authority to secure provision further afield.

In view of its responsibility, under clause 42, for securing the provision in a child or young person's plan, it will necessarily choose an institution that is suitable for the age, ability and aptitude of the child and suitable for the special educational needs of the child. However, it is right that the decision about the school or other institution to be named in the plan should rest with the local authority, taking account of the important conditions in clause 33(2). If the child's parent or the young person does not agree with the school or other institution named by the local authority, they can appeal to the tribunal. The hon. Lady knows that we are extending the rights of parents, and particularly young people, to make that challenge through the appeal process, over and above what currently exists.

In light of my decision in the previous debate to consider what the hon. Lady said about ensuring that parents have the requisite information and knowledge at a time that they can properly be engaged in the process, so that the right decision is made, and in view of the reassurances that I have given about other elements of the Bill that impact on the matter, I hope that she will feel it appropriate to ask leave to withdraw her amendment.

Mrs Hodgson: Again, I thank the Minister for his commitment to consider the wording. With those reassurances, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 40 ordered to stand part of the Bill.

Clause 41

Independent special schools and special post-16 institutions: approval

Mr Buckland: I beg to move amendment 190, in clause 41, page 31, line 10, at end insert 'and listed in a local offer.'.

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

Amendment 191, in clause 41, page 31, line 22, at end insert—

'(3A) The Secretary of State must give consideration to an institution's request to be approved if it meets the criteria outlined in Regulations made under this section.'.

Amendment 132, in clause 41, page 31, line 23, at end insert—

'(4A) The Secretary of State must maintain a current list of institutions approved under this section on the Departmental website, including information on the institution and the nature of special educational provision, health care provision and social care provision available.'.

Amendment 133, in clause 41, page 31, line 23, at end insert—

'(4B) The Secretary of State must issue notice to local authorities of the designation of an institution under this section within two weeks of said designation, including information on the institution and the nature of special educational provision, health care provision and social care provision available.'.

Amendment 134, in clause 41, page 31, leave out lines 32 and 33 at end insert—

'(d) further specifying information to be provided to the public and local authorities by the Secretary of State in exercising his duties under subsections (4A) and (4B).'.

Amendment 192, in clause 41, page 31, line 33, at end insert—

'(e) what recourse institutions will have to appeal or review decisions made by the Secretary of State;

(f) as to what timetable a list of institutions will be adjusted, published and reviewed;

(g) what relation an approved list of institutions has with regulations governing local offers.'.

Mr Buckland: I commend the Government on including independent special schools and post-16 institutions. It is an important and welcome acknowledgement that the independent sector is an essential, integral part of SEN provision, as has been mentioned in other debates. We can all think of examples of how the independent sector is supporting families in the constituencies of Members in this Committee Room and beyond.

The amendments would ensure that as much confidence and clarity as possible can be given to independent service providers that wish to be included in the new section 41 list of providers who can be requested as part of the plan. The amendments would ensure that young people are not denied the full range of choices and opportunities that exist out there.

Amendments 190 to 192, tabled in my name, deal with the nuts and bolts of the process and cover the gamut of the process right through to appeal and deal with how any decisions made can be reviewed. In a nutshell, as much as can be done to tighten up the legislation to make it clear should be done. I look forward to hearing my hon. Friend's remarks as to how he sees the process working in a way that helps not only the independent sector but, most importantly, the parents, children and young people involved. Yet again, the emphasis must be on clarity, redress and recourse to a review or appeal of any decision. On that basis, I look forward to my hon. Friend's reply.

10.15 am

Mrs Hodgson: First, I join the hon. Gentleman in welcoming the clause. The Opposition campaigned with others to ensure that independent special schools and colleges, which are often centres of excellence in providing for children and young people, particularly those with more complex needs, were part of the mix of provision eligible to be named in an education, health and care plan. We are pleased that the designation scheme we suggested has made it into the Bill.

As the hon. Gentleman said, our amendments would ensure that, now that children and young people will have such institutions available to them, they and their parents are informed of that and can access the information they need to decide whether to apply. Specifically, that will require the Department for Education to let local authorities know when a school or college has been approved, so that the authority can put it in its local offer document, and to maintain a central list on the internet to allow parents to research options. That would not be particularly onerous for the Department, and access to that information would be of great benefit to parents. If the Minister cannot accept the amendments, I hope he will set out how the Department intends to publicise that information.

There is concern about the draft illustrative regulations the Department published to accompany the clause, as they seem to relate only to post-16 independent special

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institutions and not to what we would think of as special schools. Is that an error, or are there other regulations, either to follow or already on the books, that the Department will apply to the clause?

Mr Timpson: The clause sets out how the Secretary of State can approve independent special schools and independent specialist colleges with the consent of their proprietor, so that they can be the subject of a request to be named in an education, health and care plan as it is drawn up.

I listened carefully to the points made during pre-legislative scrutiny on whether independent special schools and independent specialist providers should be included in the Bill, and I came to the view that I could accept the Education Committee's recommendation that they should. As a result, the Bill now gives 16 to 24-year-olds important new rights to express a preference for an education provider that meets their needs and to have that preference reflected in their education, health and care plan.

If those rights are to be exercised, it is important that specialist provision is available to meet a range of needs. A number of independent specialist colleges have expressed concern to me that, in the transition to the new funding arrangements for the academic year 2013-14, which will come into effect from August 2013 and prepare the ground for the new system, local authorities might not commission sufficient places to enable specialist provision to survive. Ensuring that specialist provision is available for those who need it is important and gives good value for money, so we are acting to safeguard capacity by introducing transitional protection for independent specialist colleges.

Before Easter, the Education Funding Agency advised such colleges that we will guarantee funding for the current number of filled places over the next two years, while places that are not filled by local authorities will be funded at 100% of unit costs in the next academic year and 80% in the year after. That will give institutions breathing space and provide time for the new arrangements under the Bill to bed in, thereby protecting provision for the more vulnerable students. In addition, my right hon. Friend the Minister for Schools will oversee a high-level implementation group to look at how the operation of the high-needs funding reforms can be improved.

Clause 41 is included so that we have a simple definition of what it means to be an independent special school or an independent specialist provider for the relevant purposes. That is necessary, as there is not currently a legal definition that we could use. The clause also sets out how the approval may be withdrawn.

I have published indicative regulations to be made under the clause, which set out the principles of how we will approve independent special schools and special post-16 institutions. I assure the hon. Member for Washington and Sunderland West that those will apply to schools as well as colleges, but we will look again to ensure that that is abundantly clear in the indicative regulations. That is our intention, and I think that we are as one in what we want to achieve.

The indicative regulations prescribe what type of institution may be approved, the criteria it must meet, the circumstances in which approval may be withdrawn and how a list of those institutions is to be published. I want the process for approval as a provider under the clause to be as straightforward and unbureaucratic as possible. I am sure that hon. Members agree with such an approach. I can assure the hon. Member for Washington and Sunderland West and my hon. Friend the Member for South Swindon that the amendments are not required.

The indicative regulations make it clear at regulation 7 that

"the Secretary of State must publish a list of all institutions that have been approved on the internet".

Amendment 132, which is about publishing that information on the Department's website, is therefore not necessary. The local offer will include information about the provision a local authority expects to be available, both within and outside its area, for the children and young people for whom it is responsible. That will include provision at independent special schools and independent specialist providers, whether or not they have been approved under clause 41, so amendment 190 is likewise not necessary. Amendment 191 is unnecessary because the Secretary of State will have to consider every application made, to ascertain whether the criteria for approval have been met.

Amendment 133 is not necessary either, because the requirement on the Secretary of State to maintain a list of approved institutions, published on the internet, gives the necessary flexibility to keep the list up to date to inform local authorities, parents and young people. Regulation 6, on approval of independent educational institutions and special post-16 institutions, will ensure that where approval is withdrawn, local authorities are notified of that decision, which will not take effect until 28 days after the decision was made. That will allow sufficient time to factor the withdrawal into the continuing discussions with parents, children and young people about their placements. As amendments 132 and 133 are not necessary, there is no need for amendment 134, which relates to them.

The indicative regulations set out the procedures and timetable for the Secretary of State to follow on approving institutions and withdrawing that approval. Under clause 30, the local offer will include information about the provision that is expected to be available within and outside a local authority area. Regulations 5 and 6 set out the procedures for the Secretary of State to follow in withdrawing approval. The regulations do not set out procedures on how to appeal or review the Secretary of State's decision, but we do not believe those are necessary. Even where an institution's approval has been withdrawn by the Secretary of State, that does not prevent it from being named in an education, health and care plan if both the local authority and the institution agree that it is able to make appropriate provision available.

I understand the desire to set out clearly in the Bill how the Secretary of State should exercise his functions in relation to institutions approved under the clause, but the clause and the indicative regulations made under it already set out how the Secretary of State should do that. I believe that those requirements should be flexible and responsive, allowing sensible discretion. That is why we have proposed setting them out in a light-touch way in regulations, which can be readily adapted if necessary, rather than specifying requirements on the face of the Bill.

In the light of those reassurances, I urge the hon. Lady and my hon. Friend not to press their amendments.

Mr Buckland: I assure my hon. Friend that I agree with him in principle. Where procedures have been set out in the regulations, I am content. As long as they appear in a document with some legal force, it does not have to be primary legislation. The advantages of flexibility in using secondary legislation are axiomatic.

I listened to what my hon. Friend said about the powers in relation to local authorities and institutions and approval being withdrawn, but there are still potential problems with funding. I can see arguments about whether the DFE would feel that a given institution should indeed be in receipt of any public funding. There may well be a need for absolute clarity in regulations when it comes to resolving those issues, so that when EHC plans are prepared no one is left in any doubt as to the suitability and authorisation of a named establishment. It would be regrettable if an institution found itself in no man's land, caught between not being approved and being named in an EHC. I urge my hon. Friend to look at that point carefully when finalising the regulations that will underpin the measures. On the basis that I agree with him on the principle of not overcomplicating primary legislation, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 41 ordered to stand part of the Bill.

Clause 42

Duty to secure special educational provision in accordance with EHC Plan

Mr Timpson: I beg to move amendment 63, in clause 42, page 31, line 34, at end insert—

'(Z1) This section applies where a local authority maintains an EHC plan for a child or young person.'.

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

Government amendment 64.

Amendment 135, in clause 42, page 31, line 36, after 'provision', insert 'and social care provision'.

Government amendments 65 to 67.

New clause 16—*Duty to secure social care provision in accordance with EHC Plan*—

'( ) A local authority that maintains an EHC plan for a child or young person must secure the social care provision identified through an assessment under section 17 of the Children Act 1989 specified in the plan.'.

New clause 17—*Continuity of special educational provision when a child or young person moves residence*—

'(1) This section applies where—

(a) a local authority (the "sending authority") maintains an education, health and care plan for a child or young person, and

(b) another local authority (the "receiving authority") is notified by the child's parent or the young person that they intend to move residence to the receiving authority's area.

(2) Where the sending authority is notified by the child's parent or the young person that they intend to move residence it must provide the receiving authority with a copy of the education, health and care plan.

(3) The receiving authority must—

(a) review the child or young person's education health and care plan having regard to the need for continuity of provision, and the outcomes specified in the plan; and

(b) provide the child's parent or the young person with such information as it considers appropriate.'.

Mr Timpson: The Government amendments are designed to support the new duty on health commissioners to arrange the provision of the health care services in EHC plans. We discussed this in detail in a previous sitting and earlier this morning. Amendment 63 makes clear the circumstances in which the duty applies, when a local authority maintains an EHC plan for a child or young person. Amendment 64 provides that where a plan specifies health care, the responsible commissioning body must arrange that provision.

Amendments 65 and 66 make clear when a duty on health commissioners does not apply. That happens when parents or young people have made suitable alternative arrangements to cover all or part of the health care provision specified in the plan. That means that the duty can be disapplied wholly or partially. That is consistent with arrangements where parents or young people make alternative arrangements for special educational provision specified in a plan. Amendment 67 clarifies that "specified" means specified in the plan for the child or young person.

Mr Buckland: New clause 16 is designed to explore the extent to which, in principle, a local authority should be placed under a duty to supply social care as specified in EHC plans.

We have already discussed this morning, on a slightly different topic, the operation of the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970. The Minister outlined the nature of the duties and the entwinement of those existing statutory duties. The proposed new clause would require a local authority to set out any social care provision that had been identified under a section 17 assessment. That provision would be set out in an EHC plan, and there would be a further duty on a local authority to secure it.

As we know, the Government have already moved to extend the statutory duty to cover not just educational provision but health care provision; the only part of the equation untouched is the social care element. I believe that the social care services that a family has been identified as needing should be included in EHC plans and that local authorities should be under a duty to provide those services. We know how important social services are in supporting not just disabled children and young people themselves, but their families. We have already talked this morning about short-term breaks and respite care and all the benefits they bring to the well-being of the young person and the carer's family.

Happily, there are many good examples of social care services but, sadly, there are far too many examples of poor practice. Families get an assessment but not the services identified—expectations are raised that are cruelly unfulfilled. There is often a lack of clarity about which Act social care services for disabled children are provided under, and whether a child and their family should be receiving a particular service. That results in far too

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many gaps in support and a failure to fulfil entitlements. My amendment would be a major step towards improving transparency and accountability for those services.

10.30 am

As my hon. Friend the Minister knows and as we have already discussed, we in this room are fully aware of the social care duties to individual children under section 2 of the Chronically Sick and Disabled Persons Act 1970, but outside this place there is far too often a misconception that no such duty exists. It is important to use this opportunity to clear up that misconception and at a stroke make the duties clear not only to providers, but to service users and their families, who should be fully aware of their rights in a way that is accessible, rather than working their way through a legislative maze of Acts, some of which are 40 or more years old. My amendment would bring all the services together in a single plan that meets the Government's objectives and would not place additional burdens on local authorities, and it would deal with misconceptions and provide clarity.

From Ofsted's thematic inspection of care last year, we know that in many cases there is not the co-ordination of approaches that is needed. I believe that my amendment would not only create clarity for children and young people and their families, but increase accountability for delivering services and create parity between education, health and social care. It would do all that without placing any major new duties on local authorities. If you like, Mr Chope, it is a bit of codification; we like codification and consolidation, even if it is not within the strict rules that apply in this place. As legislators, we should attempt at all times to make the law clear, which is one of our primary duties on being elected, and here is a prime opportunity to do so.

Mrs Hodgson: I welcome the Government amendments, which are another piece of the jigsaw of amendments that will ensure that health bodies provide whatever is it is decided that an individual child or young person needs. I am happy to say that those amendments have made my amendment 136 redundant, and I have therefore withdrawn it. However, amendment 135 would introduce the final piece of the jigsaw of entitlement to the provision outlined in a plan—social care. I notice that the hon. Member for South Swindon and I have once again attempted to skin the proverbial cat in different ways.

I want to talk about my amendment in relation to new clause 17, tabled by the hon. Member for Romsey and Southampton North, which is intended to improve the portability of education, health and care plans between local authority areas. I am not sure what inspired her to table the new clause, but I am sure that we will find out soon enough. The importance of portability was most powerfully put to me by Michael and Henrietta Spink, founders of the Henry Spink Foundation, a charity that helps parents to cope with disabled children. As some Members may know, the Spinks are the parents of two boys with chronic and multiple disabilities who had the worst battle imaginable to secure a package of social care services from their local authority for each boy, at a huge personal cost to them professionally, financially and emotionally.

The Spinks eventually decided that it would be more financially viable to sell up in London and live permanently in their holiday home in Cornwall, but they were told that their sons could not receive the same package of support in a receiving local authority, especially down in Cornwall—even for a transitional period—and that they would be better off staying in London. They were effectively prisoners in the local authority where they lived and their children had been born, and moving for whatever reason was simply out of the question. That lack of portability for health and social care seems illogical, quite cruel and Dickensian in 21st-century Britain.

Statements are portable, and I am pleased to see in the regulations that the Department has sent to the Committee that education, health and care plans will be too, but neither gives families a right to social care provision. Until they do, families such as the Spinks will continue to be trapped by the fact that they cannot risk losing the provision they have fought so hard to get. It is not just that sorting it all out again would be inconvenient; their sons' lives depend on that provision. If for no other reason than that, I ask the Minister to consider including an entitlement to specified social care provision under the legal protection that an education, health and care plan will give families, whether by accepting the amendments or by introducing his own at a later date.

I have an excellent book written by Henrietta Spink chronicling her journey through our system with her two boys. It is an excellent and thought-provoking read, and if he has not come across it already, I will happily pass it to my hon. Friend the Minister.

Caroline Nokes: I rise specifically to address new clause 17, which has the straightforward aim of making education, health and care plans as portable as possible and removing the element of adversarial struggle that parents may face.

Earlier today, the hon. Member for Washington and Sunderland West referred to super-parents; I think we have all met such super-parents in our constituencies—people who have won the battle to get what they sought for their child. I am sure every Member can attest to the sense of relief in those super-parents, as if a weight has been lifted from their shoulders, when they finally achieve the package of support and care that their young person needs. Families move, however, and they move for a variety of reasons. I will highlight one specific category of families, but there are people who have to move for work, for financial reasons or through choice, and many families find that there is an insurmountable barrier. The types of family I will discuss are service personnel.

We all know that service personnel move far more regularly than other families. They do not move through choice; they are simply sent wherever the Army, Navy or Air Force dictates. For those with children, it is invariably a battle to get them into school. For those who have children with special educational needs, the battle is magnified many times. I always find it regrettable that this Committee has to use words such as fight, battle and struggle, and that we refer to successful parents as super-parents. There are hundreds of families who, when they are confronted with the prospect of having to move because of their employment or because they are in the Army or Navy, are left with no choice but

to go back through the whole system again, which can happen many times over the course of a young person's passage from five to 25.

Middle Wallop in my constituency is the home of the Army Air Corps, and many parents there have approached me about getting their child into a secondary school of their choice. In Hampshire we are very lucky to have excellent secondary schools, but teachers at Wallop primary school often talk about the challenges they face as a result of having an Army base so close. There is a churn of children as new ones come in and others leave mid-school year, which makes it difficult to have any continuity. For parents with children coming in at what might be described as inconvenient times for the local authority, planning for school places is incredibly difficult.

The draft Care and Support Bill contains a helpful clause that sets out a local authority's responsibilities both when someone moves into an area and when they move out. New clause 17 seeks to echo that clause. Although I concede that it would not be practical to expect local authorities to replicate exactly the provision agreed by another authority, rather than start from scratch, the new provision should be expected to be based on the previous assessment and agreed outcomes.

The hon. Lady mentioned the case of the Spinks, who were seeking to move out of London to Cornwall. I have been contacted by the charity Ambitious about Autism, which has highlighted the case of a family with a 12-year-old son who attends its TreeHouse school in Muswell Hill. It is an excellent school, and I would recommend a visit to any members of the Committee. The family live in a rented flat in Westminster; it is small and has no outside area, so the family are keen to buy a home of their own, but because of Mohammed's statement and the struggle they went through to achieve it, they feel trapped in a flat with no garden, where there is no space for a growing boy who needs to run around and control his diabetes through exercise. His mother says:

"Both my husband and I work full time, and we want to invest in a home of our own. As we can't afford to buy in Westminster we started to look somewhere more affordable. But we soon realised we can't move out of Westminster for fear of losing Mohammed's placement...We would have to start the assessment process from scratch, even though Mohammed has very complex needs."

The stress of that, coupled with the fact that they might lose a place at an absolutely brilliant school, has terrified them to the extent that they are staying put, prisoners in their own home, too scared to run the risk of moving. In Mohammed's mother's words:

"We've been stuck this way for three years now, with no way out in sight."

I would like the Minister to consider the plight of families who are too scared to move home and families who might be forced to move because of their job or because they are service personnel. They are just asking that they not be penalised either financially or through stress and anxiety. I ask that he make EHC plans as portable as possible and that the receiving authority be obliged to act upon provision previously agreed by the authority out of whose area a family is moving.

Mr Buckland: I am grateful to my hon. Friend for raising that important point. Should not the simplicity of the system come to this: the parent or family seeking to move should have a clearly identified means of contacting the potential new local authority, so that the statement and EHC plan can be sent on and there can be a speedy process by which the new authority can accept the plan in full or decide that it needs to be amended? Would that not be a major breakthrough, which would enable the mobility that my hon. Friend rightly talks about?

Caroline Nokes: I entirely agree with my hon. Friend. That is what the new clause seeks to do. It seeks to put in place a practical, swift system whereby an existing assessment and statement can be passed from one authority to another and families do not have to go through the legal battle, and the time battle, once again. I hope that the Minister is able to shed some light on how the Government intend to make that possible.

Mr Timpson: First, I will deal with amendment 135 and new clause 16, both of which seek to introduce a duty on local authorities to deliver social care provision set out in EHC plans.

I start by emphasising the importance of the existing legislative provisions for social care support for children and families provided by section 17 of the Children Act 1989. Those provisions already provide important protections for children, and the Bill does not affect those local authority functions. It is right to say that the duty under section 17 is a general duty owed to all children in need rather than an individually owed duty, but it is right that a local authority that has identified social services to meet assessed needs for social care and has specified them in the plan will provide those services. Furthermore, in the case of services for disabled children, under section 2 of the Chronically Sick and Disabled Persons Act 1970, once the local authority is satisfied that it is necessary to provide assistance under the section, the authority is under a duty to provide the assistance. As now, the route for challenge to hold services to account will be through the local authority complaints process and by way of judicial review.

I shall dig a little deeper into the issue that my hon. Friend the Member for South Swindon raised about how the 1970 Act sits with section 17 of the 1989 Act. The 1970 Act forms the basis for the provision of a range of assistance and services, including equipment adaptations and home help. Where a local authority has determined that section 17 provision is necessary to meet assessed need, we would fully expect that authority to provide the social care. If disabled children are assessed as needing support under section 17, section 2 of the 1970 Act applies. That means that local authorities are required to provide for disabled children under section 2 once they are satisfied that it is necessary to provide assistance under that section.

10.45 am

Although there is a relationship between the two Acts, there is no absolute duty on the local authority to provide services. The authority must determine whether it is necessary to make provision and in doing so take into account its own resources and the resources of the family. The section 2 duty requires the local authority to be satisfied that the authority has responsibility for the relevant functions for that child—for example, if they are disabled, under part 3 of the Children Act 1989. They must then consider whether it is necessary for the

authority to make arrangements to assist the disabled child. If they are not satisfied that it is necessary to make arrangements, there is a duty on the local authority to provide.

Although I take the challenge from my hon. Friend the Member for South Swindon to look at how we can try to find—as he puts it—the missing piece of jigsaw, I do not believe that this is the missing piece. In introducing the new education, health and care needs assessments and plans, we have made it clear that such assessments will be combined with social services assessments under section 17. The Children Act makes it clear that section 17 assessments may be combined with other assessments, including in relation to special educational needs.

As I have already said, the EHC needs assessment will be an holistic assessment of a young person's education, health and social care needs. The purpose of that assessment is to identify not only the special education provision required but any health care and social care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs. In deciding whether to secure an EHC needs assessment, the local authority must consult the child's parents or the young person. As the draft regulations indicate, where the local authority is conducting an EHC needs assessment they must seek advice where they consider it appropriate in relation to the social care needs of the child or young person.

Clause 28 already requires officers of the local authority who exercise the authority's functions in relation to education and social services to co-operate. It will be for the local authority to carry out an assessment of the child's or young person's needs for social care services under section 17 and decide what services to provide and what action to take.

Councils are under a general duty to provide social care services for disabled children and young people. The education, health and care plan offers a co-ordinated approach to assessment for children and young people with SEN across their full range of needs, whether that is education, health or social care. I am well aware that under the status quo, too many children are left without the support that they need to reach their developmental targets and their full potential. I understand the rationale to create a specific duty for local authorities to provide social care services to children and young people where social care is included in their EHC plans. However, there is a large body of legislation in this area. There are duties on local authorities to meet the needs of children in need. Section 17 of the Children Act 1989 sets out that duty, which encompasses a wide range of needs and identifies disability as one of the three criteria for determining whether or not a child is to be regarded as "in need". We need to improve the performance on the ground, the identification and the early help that is on offer from local authorities so that the service is improved in areas where it still falls short.

Mr Buckland: The Minister has been admirably frank about the precise extent to which the 1989 and 1970 Acts work. Does he agree that in the case of a particular type of provision—let us say an educational provision such as speech and language therapy—we must avoid the depressing scenario where, in a future judicial review case, a local authority is left to argue that the particular provision would not be covered by education but by some of the older statutory duties that are perhaps not quite as clear about the extent of duty to provide as the educational provisions. Does he agree that we need to avoid those artificial and unhelpful attempts by the local authority to minimise their obligations to children and young people?

Mr Timpson: My hon. Friend is right in his analysis, which is why, in the case of speech and language therapy, we have been clear as to where the responsibility will lie in future, so that there can be no misunderstanding—to put it at its best—as to who should be delivering that service and held accountable for doing so. We need to recognise that under the duties in the Bill to co-operate and to undertake joint commissioning and by strengthening the complaints procedures we are providing a framework in which is greater joint responsibility for the delivery of education, health and care plans, as opposed to the existing statements. There is a large body of legislation out there, but we need to bring it into a form that leaves no room for manoeuvre, and then it is about how it is delivered. By including young people and parents throughout the process, we leave them in a better position to understand where responsibility lies, which is where the local offer will be of great help, and how they can challenge a decision, having established who is responsible and the what, why, when and how. The Bill, the code of practice and the indicative draft regulations provide the right approach to tackling such issues, without stymieing the local accountability that is important to ensure that services on the ground deliver for local people.

Social care for vulnerable children encompasses a wide range of needs, from disabilities to emotional and family problems, so we do not think it right to prioritise as a matter of course the needs of children with EHC plans over all other children in need. We have already discussed the draft Care and Support Bill, and the extra support that it will provide to young people aged over 18 who are eligible for adult social care and statutory care plans. That is a strengthening for those over 18 who will now fall under the SEN legislation. Both Bills include provisions to improve significantly the transition between children's and adult social care, to avoid the cliff edge that we see far too often as children move from one system to another.

In a whole range of ways, there is not only a strengthening of the involvement of parents and young people in ensuring that they get the necessary provision, but a bringing together in the assessment process of the planning, the joint commissioning, the duty to co-operate and the local offer. Other elements of the Bill also have education, health and social care bound together holistically and more transparently than has been the case in the past.

To respond to the intention behind the amendment, the definition of a child in need in section 17 is deliberately wide. Decisions about whether a child is in need and what, if any, services to provide are for the authority's social worker, who will consider all the relevant circumstances and the local eligibility criteria. Creating an individually owned duty under section 17 for one specific group of children—in this case, those assessed as needing special educational provision—has the potential to marginalise other groups of children, such as young carers, asylum-seeking children or children suffering neglect. Local authorities are best placed to make decisions on which services individual children need, based on

local professional judgment and with regard to the resources available. The strength of the existing legal protections is sufficient to do that. Government amendments to the provisions on joint commissioning and EHC plans will also strengthen significantly the position of children with SEN who have health care needs.

Following the powerful contribution of my hon. Friend the Member for Romsey and Southampton North on her experience in her constituency and hearing about the experience of Henrietta Spink, I understand that the intention behind new clause 17 is to ensure that, when children or young people with an EHC plan move between local authorities, they continue to receive the provision set out in their plan where appropriate—to make it as portable as possible, as my hon. Friend put it. I completely agree that it is vital to get the transfer right. That is why we have included detailed provision in the indicative regulations. Regulation 3, paragraph 15, entitled "Transfer of EHC plans", sets out in detail what should happen when a child or young person with an EHC plan moves to another local authority. I encourage my hon. Friend to look carefully at that. If she still has issues that she wants to raise, I will be content to take it up with her again so that it fulfils her objective.

The scenarios that my hon. Friend shared with us are ones that we do not want to see in future. That is the whole purpose of trying to set out in regulations how important it is for local authorities that are transferring responsibility for a child's welfare, education, health and social care needs from one local authority to another to do so in a way that does not affect the child's welfare in any way, shape or form. We are trying to address that and I am happy to continue to look at the matter so that we do not miss out on the opportunity of securing the right level of guidance for local authorities.

Mrs Hodgson: I, too, want to commend the hon. Member for Romsey and Southampton North for tabling the new clause and for the excellent speech that she gave in support of it. I have listened carefully to what the Minister has said. In the case of receiving local authorities, how can we ensure that there is some recourse for parents when they are faced with a local authority that is being resistant and obstructive in receiving the family that is trying to move to that new area, because of the cost implications? Where can parents go in those circumstances? What recourse do they have?

Mr Timpson: If the hon. Lady looks at the indicative draft regulations, she will see that they say in paragraph 15:

"The old authority, within 15 working days beginning with the day on which it became aware of the move, shall transfer the EHC plan to the new authority...The new authority shall within 6 weeks of the date of the transfer notify the child's parent or the young person informing him—

(a) that the EHC plan has been transferred;

(b) whether it proposes to make an EHC needs assessment"

and so on. There is a clear transition process set out in regulations that the local authority must follow. Complaints procedures are in place for parents if they feel that it is not being followed as it should be.

Again, I encourage the hon. Lady to consider what is in the draft regulations to ensure that they fulfil what we are all trying to achieve in improving the movement of any plan around the country, so that it does not get lost in bureaucracy or in ignorance of what should happen. It is incumbent on all of us to make sure that that takes place. As I said, I am happy to continue to look at that to make sure that we get it right. I hope I have reassured the Committee that we take seriously the points that have been raised, but we believe that we have reached a position in the legislation that best fulfils what we are seeking to achieve. I therefore urge hon. Members not to press their amendment and new clauses to a Division.

Amendment 63 agreed to.

Amendments made: 64, in clause 42, page 31, line 35, leave out subsection (1) and insert—

'(1) The local authority must secure the specified special educational provision for the child or young person.

(1A) If the plan specifies health care provision, the responsible commissioning body must arrange the specified health care provision for the child or young person.

(1B) "The responsible commissioning body", in relation to any specified health care provision, means the body (or each body) that is under a duty to arrange health care provision of that kind in respect of the child or young person.'.

Amendment 65, in clause 42, page 31, line 37, leave out 'Subsection (1) does not apply if' and insert—

'Subsections (1) and (1A) do not apply to the extent that'.

Amendment 66, in clause 42, page 31, line 38, after 'suitable', insert 'alternative'.

Amendment 67, in clause 42, page 31, line 38, at end insert—

'(3) "Specified", in relation to an EHC plan, means specified in the plan.'.—*(Mr Timpson.)*

Clause 42, as amended, ordered to stand part of the Bill.

Clause 43

SCHOOLS AND OTHER INSTITUTIONS NAMED IN EHC PLAN: DUTY TO ADMIT

11 am

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

The Chair: With this it will be convenient to discuss new clause 7—

Minimum four-day week requirement for special educational provision at further education institutions—

'Where an institution within the further education sector in England admits a young person aged under 19 for whom an EHC plan is maintained, it must deliver the special educational provision required by that young person on at least four days in every week in which that provision is delivered.'.

Mr Timpson: I would like to speak first to clause 43 and then to proposed new clause 7.

Clause 43 ensures that where an institution for which a parent or young person can express a preference is named in an education, health and care plan—

The Chair: Order. Just to clarify, I am not sure that new clause 7 is in the Minister's name. I do not know whether he wants to adopt it, but he can speak to it.

Mr Timpson: That was the intention, Mr Chope. I am grateful to you for making that crystal clear for all to hear.

As I say, clause 43 ensures that where an institution for which a parent or young person can express a preference is named in an education, health and care plan, that institution must admit the child or young person in question. The clause for the first time extends the duty to admit to children and young people aged nought to 25. The range of institutions for which a parent or young person can express a preference under the clause includes maintained schools, maintained nursery schools, academies, FE institutions, non-maintained special schools, approved independent special schools and independent specialist colleges. Schools and other providers will be consulted before being named in the child or young person's plan.

I would now like to speak to proposed new clause 7, which was tabled by my hon. Friend the Member for Romsey and Southampton North. I thank her for raising this important issue. My hon. Friend the Member for New Forest East (Dr Lewis) has on a number of occasions impressed upon me the case for increasing the number of days a week spent in an FE college, on behalf of young people and their parents in his constituency. I agree that it is critical that young people aged 16 and over with special educational needs should receive provision that appropriately meets their needs. That is why the Bill is introducing a seamless system for young people aged up to 25, extending their rights and protections in the further education sector, all of which has been universally welcomed.

It should reassure my hon. Friend the Member for Romsey and Southampton North that our new system will ensure that young people receive the appropriate amount of education, training and support to meet their needs. Part of that is the new right to request that a particular college be named in their EHC plan. A local authority will meet that request, provided that it is suitable and represents an efficient use of resources. If a young person is not happy with the provision set out in the plan, they will of course have the new right to appeal their concerns at a tribunal.

Chapter 6 of the indicative code of practice states that in agreeing the content of a plan for young people in further education, local authorities may

"consider the need to provide a full package of provision and support—including for independent study—that covers five days a week where that is appropriate to meet the young person's needs."

Where appropriate, courses normally offered over three days may need to be spread over four or five days to enable the young person to maximise their ability to learn and reach the educational milestones we all want to see reached. There is sufficient funding available to support that longer period in each case, where required.

Of course, not all young people in further education want their learning spread over additional days, as it may not be in their best interests and may mark them out as different from their peers. There need to be sensible local answers available to ensure that decisions reflect individual student preferences as well as needs. Although I agree with the principle raised by my hon. Friend, I do not believe that prescribing an exact amount of time at a college will always be the most effective way forward for all young people.

Education, health and care plans are developed to set out the most appropriate provision in meeting the individual young person's needs. The code of practice suggests the amount of time in college that may be appropriate and which the local authority should consider, but making the right provision available for each young person must be at the heart of the plan, which is made in consultation with parents and the young person themselves. Given those safeguards and assurances, I urge the hon. Lady to consider whether she wants to press her new clause to a vote, and I therefore propose that clause 43 stand part of the Bill.

Caroline Nokes: I welcome the Minister's comments about the way in which EHC plans will be tailored specifically to the needs of individual young people.

New clause 7 was tabled in my name and that of my hon. Friend the Member for New Forest East, who, as the Minister mentioned, has raised this issue many times. He has been largely provoked by an excellent organisation in the New Forest called SCARF—Supporting Special Children and their Relatives and Friends—which works very closely with Di Roberts, the principal of Brockenhurst college. Members may recall that Di gave evidence to the Committee, and I have been privileged to work with her on a number of issues.

Brockenhurst college serves my constituency and is regarded in Hampshire and in Dorset, which contains the Chairman's constituency, as one of the best places to go if a 16 to 18-year-old has special educational needs. It is regarded widely in the county as the leader on the issue. The principals of Brockenhurst and other colleges, as well as some of my constituents, have raised a significant challenge highlighted not only by professionals in the FE sector but also by parents, which is that of the yawning chasm that arises when a young person turns 16. I will highlight one case from my constituency of a primary school head teacher whose son will turn 16 this year and leave full-time education in July. Despite excellent support from staff at his secondary school, the family has no certainty over where their son will go in September, because as it currently stands, there will be no educational provision that meets his need for the entire duration from Monday to Friday. A primary school head teacher—I hasten to add that he is male, because hon. Members will recognise the problem we have in recruiting male staff to primary schools and providing positive male role models—is seriously considering giving up work so that he can be available to look after his son when he is not in college.

Up until 16, parents have certainty that their child will be in a safe environment and suitably stimulated, educated and looked after for five days a week. Post-16, however, there is a yawning chasm. I welcome the Minister's comments that the issue will be addressed. I welcome the extension of provision to 600 hours a week. I sincerely hope that the EHC plans can be sufficiently tailor-made to provide the additional supervision that young people with special educational needs might require. Di Roberts makes the point, fairly, that college students without special education needs can be left to their own devices quite happily with periods of private study in the library or in various quiet areas in the college. Unfortunately, however, young people with special educational needs may need extra assistance or supervision.

Andy Sawford (Corby) (Lab/Co-op): These issues were strongly raised with me by the Corby autism support group, so I welcome the hon. Lady's raising them today with the Minister.

Caroline Nokes: I thank the hon. Gentleman for that contribution. The problems exist not only for children with learning difficulties but also for students with disabilities, who just need an extra bit of help. It is critically important that the EHC plans enable them to be in college for a suitable amount of time. The Minister is of course absolutely right that there will be those who do not want to be in education for five days a week and for whom that is not appropriate, but there will be those who need to be there for more than three days simply to allow their parents to get on with their lives. Those super-parents need to be able to carry on caring for the rest of their families, to carry on going out to work and living their lives without being absolutely terrified of the yawning chasm that approaches when their child or young person turns 16.

The Association of Colleges made the interesting comment that it had no objection in principle to educating young people with SEN for four days a week, but it was quick to point out that the funding and support has to follow.

Mr Timpson: My hon. Friend is making a strong case for ensuring that all children who move through the education system get the appropriate support that they need—whether that is two, three, four or five days a week. Funding for high needs students was £585 million in 2011-12 and will be £639 million in 2013-14, so the funding is there to try to support the right amount of time that a young person needs for their education.

Caroline Nokes: I thank the Minister for that intervention. I am coming to the close of my comments and I promise not to keep him too long on this point. Families of children with special educational needs cope, usually quite brilliantly, but in order to be able to keep on coping they need certainty, and they need to know that their young person is in a safe environment where he or she will receive appropriate support. These young people do not want to be nurse-maided by their parents or by their colleges, but their parents need to have the confidence to be able to go out and to get on with their lives without worrying whether those looking after the young people have the necessary support and whether the colleges are receiving funding, as the Minister has just indicated.

I know that my hon. Friend the Member for New Forest East has raised this matter many times with the Minister and I am sure he will do so again when the Bill reappears before the House, but I hope that the Minister's reassurances will be enough to satisfy him. They have certainly been enough to satisfy me this morning.

Mr Timpson: I am very grateful. This has been a helpful debate, and has clarified the support that the Government are giving.

Question put and agreed to.

Clause 43 ordered to stand part of the Bill.

Clause 44

REVIEWS AND RE-ASSESSMENTS

Mr Buckland: I beg to move amendment 45, in clause 44, page 32, line 18, after 'maintains', insert ', or has ever maintained,'.

The Chair: With this it will be convenient to discuss amendment 186, in clause 44, page 32, line 36, at end insert—

> '(b) about circumstances in which a local authority must or may review an EHC plan as a result of responsibility for all or part of a child or young person's EHC plan being transferred between teams in a local authority.'

Mr Buckland: Amendment 45 relates to how we deal with young people who have fallen out of education but need to return to it. That does happen. Young people with autism take time out of education for a whole range of reasons. Sometimes they have health issues, such as underlying anxiety, or, in some cases, mental health problems that mean that they cannot access education. Sometimes—and this is really depressing—young people with autism are excluded from college, or, because of a lack of appropriate support in the college sector, they exclude themselves. Under the Bill as drafted, if that happens, those young people will lose the package of support that they have been receiving, so the question of support to get back into education is germane. How will those young people be supported back into education if the package ends?

My amendment tries to deal with that scenario. The words "has ever maintained" will deal with that problem in a simple way. I look to the Minister to address those issues, so that the good intentions of the Bill are not frustrated when it comes to the reality of life for the many young people with disabilities whose ability to access to education fluctuates according to their needs.

Amendment 186 seeks to ensure that the Bill is as clear as possible about the regulations relating to reviews and reassessments of EHC plans. In particular, it addresses the issue of transition. We have heard much about the cliff edge; we all know it is there. Rather than just talking about it, we need to make sure that action is taken. We should ask: why is it there? So often it is because, however well intentioned the departments in a local authority are, there is not enough synthesis between them at the key moment of transition. For example, children's services in my borough are brought together in a co-ordinated way by local health providers and the local authority, and that works extremely well. My local authority is now making concerted attempts to ensure that there is a crossover early in young people's lives, and that discussions are held and plans are made by children's and adult services. They should not wait until the age of 16; the work can start at 15, 14, or even earlier in some cases.

Amendment 186 goes to the heart of that point. It sets out the issue of the transfer of responsibility between teams in a local authority. It will, in my submission, help to focus the minds of those drafting the regulations, and put those issues beyond any doubt. Where there are examples of bad practice, the regulations can deal with them, and authorities that are somewhat behind the times can be exhorted to ensure that early work goes on,

[Mr Buckland]

so that we do not end up with difficulties at transition. That is the purpose of amendment 186. I look forward to hearing from the Minister.

11.15 am

Mr Timpson: First, I shall speak to amendment 45. My hon. Friend spoke about the importance of ensuring that it is as straightforward as possible for young people with special educational needs aged 16 to 25 who are not in education, employment or training to re-enter education, where it is appropriate for them to do so. Where they already have an education, health and care plan, it is sensible that that is used as the starting point for considering further support. Local authorities must maintain the plans of young people aged 16 or 17 who drop out of education or training while still subject to compulsory participation, and must seek to re-engage them in education or training as soon as possible.

Where a young person is past the requirements of compulsory education, is over 18, and is not in education, training or employment, local authorities must review their plan. They must consult the young person and decide whether it is in their best interests to remain in formal education or training. In reaching that decision, local authorities must consider whether further time is needed for the young person to complete or consolidate their learning and to prepare them for adulthood. If the review determines that the young person wants to complete their learning, and that re-engaging them in education or training is in their best interests, the local authority should maintain that person's plan and find them a suitable placement as soon as possible. Importantly, there would be no need for a reassessment in either of those circumstances.

It is right to say that where a young person has left education for employment or another destination and later seeks to return to education, that warrants a new assessment for an EHC plan, if one is requested, rather than a reassessment. Young people in such circumstances generally will have completed their formal education and transitioned to adulthood. Local authorities will need to consider carefully with the young person whether returning to formal education is the right thing for them to do. It is entirely possible for local authorities to draw on earlier assessments and plans if that would help inform the new assessment process. I will look carefully at how we ensure that that is made clear in the code of practice and the regulations.

Further information on what local authorities need to do for young people who become NEET and want to re-enter education is set out in regulation 17 of the draft regulations on assessment and planning, and in paragraph 6.15 of the indicative code of practice. As ever, as those documents are still in draft form, I will endeavour to ensure that they achieve what we have set out to achieve. I hope that I have reassured my hon. Friend that the Bill, the draft regulations and the code of practice are clear that reviews and assessments should be carried out for young people with special education needs who become NEET, so I ask him to withdraw his amendment.

On amendment 186, which my hon. Friend also asked me to consider, I agree that, when some or all of the elements of an EHC plan are transferred between teams within a local authority, that is a sensible time to review the plan. That is most likely to be when young people are transferring from school to further education, or from children's to adult social care services.

The Bill already contains regulation-making powers for when reviews must or may take place, and we have used that to provide further details in the corresponding draft regulations and the indicative code of practice. Regulation 19(5) of the indicative regulations is clear that when a young person is likely to leave education within the next two years, the review should consider the support they need to prepare them to make that transition. I hope that later versions of the code will also contain additional information on the specific transition between children's and adult social care services that my hon. Friend identified.

We will continue to learn from the 20 pathfinders about best practice and assessing and reviewing education, health and care plans. If that work indicates that we need to be more explicit about when reviews of plans must take place, we will include additional guidance in the code of practice. I hope that reassures my hon. Friend that his points are being addressed, and that education, health and care plans will be reviewed regularly and at all appropriate points, including when young people move between different local authorities. We will continue to use the pathfinders to inform our development of the code. On that basis, I urge him to withdraw his amendment.

Mr Buckland: I am very grateful to my hon. Friend. It is quite clear that the purpose of the amendments is being met. He rightly refers to the indicative draft, and he has once again reassured me that it is a work in progress that will be further refined as we get to a final position. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mrs Hodgson: I beg to move amendment 137, in clause 44, page 32, line 29, at end insert 'and prior educational outcomes'.

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

Amendment 138, in clause 44, page 32, line 31, after 'child', insert

', the child themselves where appropriate,'.

Amendment 142, in clause 45, page 33, line 20, at end insert 'and prior educational outcomes'.

Mrs Hodgson: I will not detain the Committee long on these amendments, as they echo others that I introduced earlier. We debated amendments similar to amendments 137 and 142 at the end of the last sitting, and the Minister assured me, and the hon. Member for South Swindon, that the Bill would not allow local authorities to use a young person's age—we are particularly concerned with young people aged 18 to 25 here—as the basis for cutting short their education before they had achieved reasonable goals or outcomes.

I recognise that the draft regulations include a specific reference to outcomes with regard to reviewing a plan, although not with regard to ceasing one, but I would

like to test the Minister a little further. At many points in the regulations, the local authority has leeway to cease a plan if a young person is over 18 and wishes to return to education. In such cases, the local authority is allowed to judge whether it thinks ceasing the plan would be appropriate. That leaves it open to it to make a decision based purely on age. If the Minister is not minded to accept these amendments, I would be grateful if he looked again at the regulations to ensure that they are as watertight as they can be, with regard to ensuring that young people are given all the education and training that they need, while they still want it.

Amendment 138 would give children a right to request a reassessment for themselves. That might be necessary in only a handful of cases that I described in previous debates—for example, where the parent does not have the inclination, capacity, or the level of engagement with their child's development and education that we might expect. These are not the super-parents that we often refer to. I see no good reason why a child in such a situation should not have their request listened to because they have not reached a certain age.

We will discuss allowing children to launch their own appeal cases, in pilot schemes, later in the Bill. That is welcome. It would be consistent with that direction of travel to make this improvement to children's right to be heard and to self-determination by making this change to the clause. I hope that the Minister agrees. I suspect that he will not take the amendment on, but I hope that he will at least think on it between now and the Lords stages.

Mr Timpson: Amendments 137 and 142 are about the importance of educational outcomes. I agree with the hon. Lady that it is important to ensure that the achievement of educational outcomes is integral to decisions about reviewing, reassessing or continuing education, health and care plans. That is important for everyone, not just young people aged 18 or over. The decision should not be based on the young person's age alone. That is why it is clear throughout the Bill that supporting children and young people to achieve outcomes is of primary importance—a point urged on us by Opposition Front Benchers on Second Reading.

We want the clause to prompt local authorities, once a young person is aged over 18 and is no longer subject to compulsory participation in education or training, to take a thorough look at whether outcomes have been achieved and the young person has made a successful transition to adulthood. Where that is not so, and the young person wants to remain in education and needs more time to achieve their outcomes, the local authority must maintain the EHC plan. The relevant regulation in the draft plan assessment regulations sets out that, when undertaking reviews, local authorities must consider the child or young person's progress towards achieving the outcomes specified in the EHC plan, and whether those outcomes remain appropriate for the child or young person. Paragraph 6.15 of the indicative code of practice provides further detail on considering whether outcomes have been achieved when carrying out reviews and assessments.

Clause 45(3) already requires local authorities to have regard to whether the educational outcomes specified in a plan have been achieved when they are considering whether to cease maintaining a plan. Again, this is for everyone, not just young people aged 18 or over. The indicative code of practice provides further detail on that in paragraphs 6.17 and 6.18. I am happy to take up the hon. Lady's suggestion that I look at that carefully, to establish that it is providing the right level of detail on how—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.