PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Fifteenth Sitting

Thursday 18 April 2013

(Morning)

CONTENTS

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not later than

Monday 22 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, Mr 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

Thursday 18 April 2013

(Morning)

[Mr Christopher Chope *in the Chair*]

Children and Families Bill

Written evidence to be reported to the House

CF 86 Bernadette Dent

CF 87 Bristol Grandparents Support Group

CF 88 Rebecca Martland

CF 89 Bliss

11.30 am

Ordered,

That the Order of the Committee of 5 March 2013 be amended as follows—

1. In paragraph (1)—

(a) after sub-paragraph (h) omit 'and', and

(b) after sub-paragraph (i) insert 'and

(j) at 11.30 am and 2.00 pm on Thursday 25 April;'.

2. In paragraph (4) for 'Tuesday 23 April' substitute 'Thursday 25 April'.—*(Mr Timpson.)*

Clause 64

SEN information report

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): I beg to move amendment 171, in clause 64, page 44, line 3, at end insert—

'(v) policies designed to promote the understanding of disability amongst other pupils and the inclusion of disabled pupils in lessons and activities.'.

The Chair: With this it will be convenient to discuss amendment 202, in clause 64, page 44, line 3, at end insert—

'(v) progress made by children and young people with special educational needs in language, literacy, communication and numeracy;

(vi) services contributed to or procured through section 30 [Local offer for children and young people with special educational needs].'.

Mrs Hodgson: We are still on the subject of the information on special educational provision that education institutions provide as a matter of routine. This time, rather than information about the support given in individual cases, we are talking about the kind of information that a school would publish online or, perhaps, as an annexe to its prospectus. That is an important duty, and I therefore support the clause.

My amendment would make one small change: it would add the institution's policies on actively increasing the understanding of disability among the wider school body and on including disabled pupils in the whole life of the school. That would be an important addition to the types of information for publication listed in the clause, as those focus primarily on the perfunctory elements of what a school needs to do, including providing physical access to buildings, and ensuring that admissions policies and members of staff do not discriminate against disabled pupils. What schools do not need to do, under the clause, is publish information on how they ensure that disabled pupils enjoy their time at school by making sure, as far as possible, that those pupils are not bullied or left out by other children because their classmates do not understand their disability or why it is wrong to do those things.

That is not to say that schools will not have such policies in place; however, if we were to include them in the clause as part of what schools need to make public, we could be absolutely sure that they had them. If such policies are codified and in place, it will not be anything of a job for schools to put them online or print them off if asked, so I do not believe that the amendment would create any burdens for them. If schools do not have the policies codified and in place, the amendment would light a fire under them to do that, which would benefit pupils with disabilities attending those schools, as well as the families of potential future attendees. If the Minister is not minded to accept the amendment, I hope that he will set out how we can ensure that those kinds of policies and documents are published by schools as a matter of course; perhaps that will be through regulations.

I congratulate the hon. Member for Mid Dorset and North Poole, who is not here at present, on her amendment 202, which would widen the scope of the clause to include the progress made in key areas by children and young people with special educational needs at the school. Parents would welcome having that information readily available to them; they could probably get it if they fished around online, but requiring the school to make it available would make the process much easier. I therefore support amendment 202 and hope that the Minister will view it in a sympathetic light.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): Clause 64 sets out the basic requirements on schools to publish SEN information, and reflects the important duties that schools have towards disabled children and young people under the Equality Act 2010, which, when carried out well by schools, will involve promoting the understanding of disability among other pupils and the inclusion of disabled pupils in lessons and activities, as sought by amendment 171. Other provisions in the Bill support that aim: clause 61 places a duty on mainstream schools and others to use their best endeavours to make sure that children with special educational needs get the help that their needs call for, and clause 35 requires mainstream schools to make sure that children with special educational needs engage in the activities of the school together with other children.

A school's SEN information report is an important tool to help parents and young people to get the information that they need. However, that process must happen efficiently and without placing undue burdens on schools. We have made available an indicative draft of the regulations for clause 64, which would require schools to publish

information about arrangements for assessing the progress of pupils with special educational needs, as sought by my hon. Friend the Member for Mid Dorset and North Poole, who is not in her place, through amendment 202. That will include pupils with speech, language and communication needs, and those with literacy difficulties.

I can reassure the Committee that local authorities will be expected to set out in the local offer the provision that they expect schools to make from their own resources to support children and young people with special educational needs. We intend that the local offer will also set out where parents and others can find further information about provision made by individual schools. We are aligning the regulations for the local offer with the regulations made under clause 64 with that in mind.

I hope that provides reassurance that, through regulations and the local offer, the issues raised by hon. Members are being addressed, and I therefore urge the hon. Member for Washington and Sunderland West to withdraw her amendment.

Mrs Hodgson: With that assurance, I am happy to withdraw my amendment, but I cannot speak on behalf of the hon. Member for Mid Dorset and North Poole.

The Chair: It is not the amendment of the hon. Member for Mid Dorset and North Poole, who is not here, that is being considered; your amendment is.

Mrs Hodgson: Thank you for that guidance. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 64 ordered to stand part of the Bill.

Clause 65

Provision and publication of special needs information

Mrs Hodgson: I beg to move amendment 172, in clause 65, page 44, line 16, leave out '19' and insert '25'.

The Chair: With this it will be convenient to discuss amendment 173, in clause 65, page 44, line 34, leave out '19' and insert '25'.

Mrs Hodgson: In the Bill, the Government are setting out to create a nought-to-25 system—a goal, as we have said in many debates, as necessary as it is welcome. Under the Bill, a young person may continue receiving special educational support up to the age of 25, provided that they still want it and the local authority believes it is in their best interests.

With that in mind, there seems to be an anomaly in the clause, in that needs and outcomes will be measured and published only for young people aged 19 and under; that potentially ignores around a fifth of those with education, health and care plans, not to mention all the other young people with special educational needs or disability who may be in education beyond their 19th birthday.

That information is needed. Without clear data about the numbers and needs of young people with SEND who are aged 19 to 25, it will be impossible to plan and commission services effectively for that group. It will also be impossible to hold local and national agencies to account for their progress, or lack of it, in their support of young people with special educational needs.

The National Audit Office recommended in 2011 that better data be collected about those young people with SEND who are beyond compulsory school age, so that we can effectively monitor outcomes for those young people and ensure value for money in their post-school education.

We know that local authorities are under increasing financial pressure. That means that they need to commission services in an accurate and targeted way if they are to use limited resources efficiently. There are real question marks over whether they will be able to do so if they do not have accurate data about young people aged 19 to 25 and their needs. Young people with special educational needs are disproportionately excluded, bullied and represented in the category of young people not in employment, education or training. It is therefore crucial that we continue to monitor how effectively policy is working to reverse those trends. It will be extremely difficult to do that without clear, comprehensive data about young people in that age range.

The amendments seek to rectify that in the clause by switching the two references to "19" to "25". I hope the Minister will accept those amendments. If he does not, I hope that he will tell the Committee whether he agrees that unless data are collected to cover the full range of ages over which a young person might receive support through an education, health and care plan, it might be difficult to measure the impact of EHCs beyond the age of 19 and, therefore, the efficacy of extending the plans to age 25.

Mr Timpson: I again thank the hon. Lady for the amendments, and for her ongoing commitment to seek publically available and transparent information about special educational provision. As she knows, it is as a result of her private Member's Bill that the Department annually publishes data on children with special educational needs, in an analysis of SEN information under sections 332C and 332D of the Education Act 1996. I am sure that is imprinted on her brain. That publication will continue by virtue of clause 65.

The Skills Funding Agency and Education Funding Agency also collect and publish annually SEN data for students up to the age of 25 in the further education sector. Those are gathered through the individual learner record and expenditure reports. That will also continue. In addition, plans are in place to strengthen our understanding of where children and young people with special educational needs go when they leave school or college. I expect to publish new key stage 4 destination data later this year, and key stage 5 data as soon as possible, helping to fulfil the recommendations in the NAO report of 2011. Given that we already have the flexibility to seek and publish data on those up to the age of 25, the change in question is not needed. With those reassurances, I hope that the hon. Lady feels able to withdraw the amendment.

Mrs Hodgson: I am pleased to hear that the information is available somewhere, although I still think that there would be merit in bringing it all together in one report, and under one reporting mechanism. I do not want to divide the Committee, but will the Minister and his officials re-examine the issue, to see whether in future having all the information in the same place, rather than in two separate places, would be beneficial? I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mrs Hodgson: I beg to move amendment 174, in clause 65, page 44, line 17, at end insert—

'(1A) Information collected and provided under subsection (2) should be published including local and regional breakdowns.'.

The Chair: With this it will be convenient to discuss amendment 176, in clause 65, page 44, line 39, at end insert—

'(4A) In exercising his duties under subsection (4), the Secretary of State shall—

(a) invite comment on the content and format of published information;

(b) publish the comments received and any subsequent responses, in the form of a report; and

(c) provide an explanation of any year on year differences in the content and format of the published information in an accompanying document.'.

Mrs Hodgson: As some members of the Committee are by now well aware, the clause transposes the Special Educational Needs (Information) Act 2008 into the Bill. I am sure that they are also aware—but I will tell them again—that it was my private Member's Bill.

Thanks to that Act, we can now see how well children and young people with special educational needs perform, and, therefore, how well the health, education and other systems are doing at providing them with the support that they need to realise their academic potential. The information that it obliges the Secretary of State to publish helps parents and campaigners to hold the relevant bodies to account locally and nationally. Getting it on to the statute book was my proudest achievement in Parliament—thus far; there is an election in two years, and I hope to do many more things from the Minister's desk. I hope that he will leave me a nice note.

The latest statistical report to be published because of the Act came out in October, and is worth a look. I am aware that it is a crude measure of how well we provide for children's needs, but that latest batch of information makes pleasing reading about the performance at GCSE of children with special educational needs.

In 2007, only 10% of children identified as having an SEN got five A* to C grades, including English and maths. In 2011 the figure was 22%. That is still much too low, but it is an amazing improvement none the less. The breakdown of improvement according to the primary type of impairment shows that the proportion of those with hearing impairments reaching that standard rose by 46%. For those with visual impairments it rose by 37%; for those with multi-sensory impairments it rose by 85%; and for those with physical disabilities it rose by 48%. The headline figure for all children with special educational needs who achieved five A* to C grades, not necessarily including English and maths, jumped from 21% to 54%. It is wonderful that there have been those increases, and it is exciting to think how much more we can improve outcomes for young people, if they are given the right support.

As I thought—unsurprisingly—that my idea to publish the information was so good, I was careful to read the Act and the clause side by side, to make sure that the Government had not omitted anything, or added something that I disagreed with, but I am pleased to say that the clause is a faithful transposition of my Act. If it had not been, we might have had quite a few amendments to debate. Hon. Members may therefore wonder why I am effectively attempting to amend my own legislation. The reason is that, notwithstanding the fact that the Government have chosen not to abolish the requirement, I have latterly been concerned about their commitment to providing the information.

The first couple of reports were proper, official bound documents. The Minister's predecessor even sent me one, with a personal covering letter, in her first year as a Minister, shortly after I became her shadow. Since then, however, the reports seem to have been pared down. The last one was just a series of spreadsheets and barely formatted PDFs on the Department's website. I hope that is more a sign of austere times at the Department for Education than because the Department does not think the exercise worth while. I do not mind what format the information is in, as long as it is accessible and can be found easily. It is useful information, and parents and campaign groups can use it for the purpose that my Act was intended to serve.

11.45 am

One of the things that many campaign groups found particularly useful about the first reports was that they included regional breakdowns of needs and outcomes. When that information was missing from the 2011 report, I asked the Minister why changes had been made to the information provided. I was told that it was as a result of feedback received on the 2010 report, but when my office made a freedom of information request on the feedback, the Department had a record of only two responses, neither of which requested that the Department stop publishing regional breakdowns.

Regional and local information is especially useful in relation to lobbying councils and holding them to account, but all we have now is national information, useful though that is. Amendment 174 was tabled to ensure that such information is made available, and amendment 176 would ensure greater transparency around the changes in the information supplied from one year to the next as a result of feedback received. I hope that the Minister will accept the amendments. If he does not, I hope he will understand why I have proposed them and assure me that the Department will provide full reports with local and regional information in forthcoming releases.

I also want to bring to the Minister's attention an e-mail that we both received in our parliamentary accounts last night from Paula Jewes of Merton, whom I mentioned on Tuesday. Following what the Minister said in response to my new clause 20 on the information available to the public on tribunal cases, Ms Jewes, whose background is as a statistician and who therefore has some skill in this area, trawled the MOJ and HMCTS websites, as the Minister suggested, to find the information that he said was available, but she was unable to find it. The Minister's officials have had time to brief him properly, so he may be able to provide that information now, and even perhaps the web address where the information can be found. Even better, however, would be an assurance that the Department will collect and publish it as part of the report that the clause requires the Secretary of State to produce, so that the information needed by parents and campaigners is in one place and in an accessible and useful format. If he could at least commit to considering this, he would make a lot of people happy, not least myself, Mr Chope.

Mr Timpson: I always try to make the hon. Lady happy, although on this occasion I do not agree with her suggestion of some form of hot-desking between Opposition and Government Front Benches. However, I do agree with the drive behind the amendments to improve the information that is published on special educational needs. I hope I can provide her with the reassurance that the current arrangements for publishing information meet her concerns, but before I explain what the Department publishes, I will take up her challenge on the MOJ and HMCTS website information. I am happy to write to her with precise details that she will be able to disseminate among the large group of interested parties which whom she continues to be in touch.

Mrs Hodgson: When the Minister makes that information available to me, could he also make it available to the national network of parent carer forums, as suggested by Paula Jewes, because she thinks that that would be a good mechanism for disseminating the information to parents?

Mr Timpson: Absolutely. Parent carer forums are a fantastic network available to many families with children and young people with special educational needs. I want to make sure that they remain so and become a real conduit of vital information for those who need it. I am very happy to follow that up.

The Department publishes data by region and by local authority in the annual statistical first release, "Special Educational Needs in England", and similar local authority and regional breakdowns for attainment data in the "Attainment by Pupil Characteristics" statistical first releases. In the "Special Educational Needs in England" publication in 2012, there were 14 such tables. The web-based publication, "Children with Special Educational Needs: an analysis", which is produced under section 332 of the 1996 Act, the predecessor of clause 65, provides links to those other statistical releases. Having said that, I am happy to assure the hon. Lady that we will consider increasing the amount of data in that publication by region and local authority. I am content to give an assurance that the Department will also consider whether more detail needs to be given on the feedback received and how that would change the publication, particularly if we receive a greater number of representations. On that basis, I urge her to withdraw her amendment.

Mrs Hodgson: I am grateful to the Minister for his continued assurances and willingness to take on board advice coming from the public who are following these proceedings, as well as from the official Opposition. With his reassurances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

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

New clause 26—*Reporting on implementation of Part 3*—

'Within the period of one year beginning with the commencement of this Part, and every year thereafter, the Secretary of State must lay before Parliament a report about the effect of this Part.'.

Mr Timpson: I will speak briefly on clause stand part, given the debates we have had on the amendments. The Committee acknowledges the importance of clause 65 and the provision it makes for the Secretary of State for Education to publish annually a report analysing information about special educational needs across England. That is a welcome innovation, proposed by the hon. Member for Washington and Sunderland West, whose private Member's Bill became the Special Educational Needs (Information) Act 2008.

I will say no more at this stage, to allow the hon. Lady to speak about new clause 26.

Mrs Hodgson: The debate on new clause 26 moved around a bit, but I think that you have found the right place for it here, Mr Chope, so I thank you for that.

The new clause would require the Government to publish a report every year that assesses the impact of the reforms in this part of the Bill, how they are bedding in and the improvements in outcomes to which they have contributed. That could quite easily become part of the report that the Department will produce by virtue of clause 65 and my Special Educational Needs (Information) Act before it.

The reforms will lend themselves well to ongoing assessment. Plenty of statistics will be produced—the numbers of children benefiting from direct payments, for example—on top of those produced by virtue of the clause and the Act that it replaces and the Department's other statistical publications. Given that we have those statistics, it will benefit the Department to publish its analysis of what the figures tell us about the effect of the changes made by the Bill. I anticipate the impact being broadly positive, so I am actually keen for the Government to blow their own trumpet about the improvements made.

The Government will want, and need, to keep a watching brief over how the reforms are implemented for at least the first few years after the Bill makes it on to the statute book. The pathfinders' experiences suggest that implementation might be difficult. That is why pathfinders are conducted, and learning from them will benefit roll-out in other areas, but undoubtedly there will still be issues and the Department should take a strong role in helping local authorities to manage the change. The new clause was tabled simply to obtain assurances that that will be the case and that the Government will report on how well they are doing in securing effective implementation of their reforms. If the Minister is not minded to accept the new clause, I hope that he will at least give the Committee those assurances.

Mr Timpson: As we have heard, new clause 26 deals with how the effect of the SEN provisions in the Bill will be assessed. Clearly, we want to ensure that SEN services continually develop in response to the needs of children with SEN and their families, so that we see the positive impact that the hon. Lady and I expect.

Local authorities will be required, through clause 27, to keep special education provision and social care provision under review and to consult children and young people with SEN and their parents. In doing so, parents, children and young people must be engaged in reviewing and developing the local offer; local authorities

[Mr Timpson]

must seek and publish comments from them on that. That will provide much greater transparency not only on the support available, but on what local users think of the provision. The Secretary of State for Education already publishes an annual report analysing information about children and young people under 19 in schools with SEN and about the provision made for them.

Last November I announced an extension to the independent evaluation of the pathfinder programme by up to two years. That extended evaluation will use a broad range of measures to determine the effect of the reforms. We are currently finalising the detail of the extended evaluation, including what it would cover and when it will report. I will release further information which I am happy to share with the hon. Lady. Finally, as she will also be aware, the Government have already given a commitment to the House in relation to post-legislative scrutiny. I expect the Department for Education to provide a formal memorandum to Parliament setting out a preliminary assessment of the legislation's impact.

I hope the hon. Lady is reassured that those arrangements will ensure that information on the effect of the reforms will be available without the need for an additional report. I urge her not to press her new clause.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill.

Clause 66

CODE OF PRACTICE

Mr Robert Buckland (South Swindon) (Con): I beg to move amendment 207, in clause 66, page 45, line 30, leave out subsection (2) and insert—

'(2) The Secretary of State must review and revise the code on a regular basis.'.

The amendment would strengthen the wording of subsection (2) which states:

"The Secretary of State may review the code from time to time."

"Time to time" usually means a very long time indeed. The code of practice has not been changed since 2001, a period of 12 years, which I suppose is "from time to time" within this rather wide drafting, but we can go one better. The phrase "on a regular basis" would give my hon. Friend the Minister and his team the discretion to determine what that means, but would avoid the fossilisation that has occurred with the existing code.

The danger with setting codes as tablets of stone is that they can quickly become redundant and often unhelpful to practitioners, parents, families, children and young people, who rely on the code as an important source of information their rights and the responsibilities of providing agencies, and as a guide through the often difficult paths of special needs provision. The publication of the indicative draft has been an invaluable aid to our debates and my hon. Friend the Minister acknowledges that it is a work in progress. I am sure he would agree that when the draft is ready for initial approval—we will come on to the mechanism of approval in the next set of amendments—that is not the end of the process, and certainly not the beginning of the end, but merely the end of the beginning, to use that well worn Churchillian phrase in an entirely different context.

There will be an expectation that after perhaps a couple of years there will be a need to revisit the code, to tighten it up, to update it and to remove anything that is redundant and out of date and to make sure that it is, to use another well worn phrase, a truly living document. In other words we should move away from the fossilisation of the past and ensure that within a wide discretion my hon. Friend and his Department review and revise the code as appropriate on a regular basis. That could be after a few years, but there may be times when more frequent revision is needed because of legislative change from another source. Many different scenarios could apply here. The amendment is designed to probe my hon. Friend's thinking. It is intended to be as helpful as possible, to avoid the mistakes of the past and to ensure that the document continues to be relevant for all those who have to use it.

12 noon

Mr Timpson: Amendment 207 is designed to ensure that the code of practice is kept up to date and reflects any changes to relevant legislation or structural reforms. Subsection (2) gives the Secretary of State the power to do just that: it gives him the flexibility and the wide discretion that my hon. Friend rightly seeks to revise the code and keep it up to date with developments as and when required.

Once again, I commend my hon. Friend for his desire to ensure that the code of practice, which enables professionals to understand their duties and children and young people and their parents to understand their rights, is kept as up to date as possible. I accept that the current code of practice is clearly out of date; as my hon. Friend said, it has not been revised since 2001. In the spirit of my hon. Friend's efforts to be helpful, I have considered the wording of his amendment carefully, but I do not feel that it is necessary to revise subsection (2) for the clause to have the effect that we both seek. The fact that the new code will be approved by Parliament using the negative procedure, as the Select Committee on Education recommended in its pre-legislative scrutiny, will make it easier to keep the code up to date, as it will not be necessary to secure valuable parliamentary time to debate and approve a revised code. On that basis, and with those assurances, I hope my hon. Friend will withdraw his amendment.

Mr Buckland: I am grateful to my hon. Friend. He has assured me that he will not take the phrase "from time to time" to mean 12 years. Although he will eventually move on, as long as his successors adhere to that principle, I am content.

Mrs Hodgson: It will be me.

Mr Buckland: Whoever they may be. I wish the hon. Lady well, but there are other forces at work that may prevent her from achieving her ambition immediately. If the Department can assure me that it will move away from a 12-year period, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 66 ordered to stand part of the Bill.

Clause 67

MAKING AND APPROVAL OF CODE

Mr Buckland: I beg to move amendment 208, in clause 67, page 46, line 1, leave out subsection (2) and insert—

'(2) The Secretary of State must consult those parties listed in section 66, subsection (1), about the draft and must consider any representations made by them.'.

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

Amendment 180, in clause 67, page 46, line 1, leave out 'such persons as the Secretary of State sees fit' and insert 'publicly, for a period of not less than 90 days'.

Amendment 181, in clause 67, page 46, line 2, leave out 'by them' and insert

'as part of that consultation'.

Mr Buckland: Amendment 208 seeks to tighten and tidy up the wording in subsection (2). As drafted, the Bill states,

"The Secretary of State must consult such persons as the Secretary of State thinks fit about the draft"

code of practice,

"and must consider any representations made by them."

Clause 66(1)(a) to (l), which we have just agreed should stand part of the Bill, provides a wide list of people who are to be issued with a code of practice—local authorities, governing bodies, pupil referral units, management committees, NHS commissioning boards, clinical commissioning groups, trusts, foundation trusts and local health boards, to name but a few. It is a helpful, clear and comprehensive list, and I believe it would be sensible to incorporate it into clause 67(2) by laying a duty on the Secretary of State to consult the parties listed in clause 66(1). That would make it clear that the consultation will be comprehensive and aimed at the right bodies. The amendment would help my hon. Friend the Minister and others in the Department by making sure that nobody is missed out, however inadvertently, by the Department. We are all human, and we can all make mistakes. Let us make sure that we do not, by tidying up the clause in a way that I hope assists my hon. Friend the Minister.

Mrs Hodgson: Whereas the hon. Gentleman seeks to ensure that the main stakeholders are consulted as the code of practice is drawn up, our amendments seek to widen consultation still further to ensure that the public, and parents in particular, have their say at every stage of the code's development. We certainly agree that leaving it to the Secretary of State to decide whom he should consult is deeply unsatisfactory. Given what we know about the current Secretary of State, who can be particularly selective when it comes to taking advice, I am concerned that the voices of the people whose lives will be most affected by the document will never be heard. Of course we must consult the stakeholders that the hon. Member for South Swindon has specified. We expect them to deliver what is prescribed in the code and to abide by it, so they should have input into it. I do not think that my amendments would necessarily preclude the consultation of those parties, but they would include anyone else who wants to have a say.

I imagine that there will be many responses to such a consultation, especially if the volume of submissions garnered by the Green Paper consultation is anything to go by. In particular, concern about what will replace School Action and School Action Plus will inspire many parents to seek out a means of contributing to the Government's proposal. Given the importance of the code of practice, I would be grateful if the Minister committed to holding a proper public consultation on the form that it will take, rather than leaving the current or a future Secretary of State to decide on a whim who gets to have a say and who does not.

Mr Timpson: I understand that my hon. Friend the Member for South Swindon and the hon. Member for Washington and Sunderland West want to ensure that any code of practice that is laid before Parliament has been subject to proper consultation. Amendment 208 would place a duty on the Secretary of State to consult the people and organisations that must have regard to the code of practice, and amendments 180 and 181 would prescribe that the consultation on the code of practice be public and that the consultation period be 90 days.

Clause 67(2) will ensure that the Secretary of State carries out sensible and proper consultation on the code of practice. I assure the Committee that we will consult all those who will be required to have regard to the code, those who will use it and those who will be affected by any changes in it. The consultation will go wider than the list of bodies in clause 66(1), because we will consult parents and young people as well as the local authorities, educational institutions and health bodies listed there. The amendment would limit consultation to the bodies listed, which would be too restrictive.

We will of course give people ample time to comment and we will observe Cabinet Office guidance on Government consultations. The Government intend to publish a draft of the new nought-to-25 SEN code of practice for public consultation in the autumn of this year. If we did not consult appropriately, there would be every reason for the House or the other place to resolve not to approve the code. Having the indicative draft available to the Committee has, in many respects, set that further consultation in train already. Such a level of detail as the amendment proposes is not appropriate for primary legislation, and as I have given clear assurances that we will consult appropriately on the code of practice, I urge my hon. Friend to withdraw the amendment.

Mr Buckland: I am grateful to the Minister and the hon. Lady, because the debate has allowed me to think even more carefully about the ambit of the amendment. I accept that we do not want, by dint of applying a prescriptive list, to leave out service users, parents, carers and the wider community who, as we all acknowledge, are often real experts on the provision of SEN or health and social care. In that spirit, being willing to accept its limitations and flaws, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Buckland: I beg to move amendment 209, in clause 67, page 46, line 3, leave out subsections (3) to (8) and insert—

'(3) A code, or revision of a code, does not come into operation until the Secretary of State by order so provides.

(4) The power conferred by subsection (3) shall be made by statutory instrument.

(5) An order bringing a code or revision of a code, into operation may not be made unless a draft order has been laid before and approved by resolution of each House of Parliament.

(6) When an order or draft of an order is laid, the code or revision of a code to which is relates must also be laid.

(7) No order or draft of an order may be laid until the consultation required by subsection (2) has taken place.'.

The amendment concerns the procedure by which the code of practice should be approved. I accept that I am at risk of sounding self-contradictory, because I have spoken about the need for a regular review, and I understand the realities of parliamentary time and the burdens that the lengthier affirmative procedure places on this place and on the Department. Having said that, we must air and debate these issues as carefully as possible in this Committee to enable us to reach a considered conclusion about the most appropriate course of action.

The negative procedure has practical attractions, and it allows for speedy change after a full and proper consultation with the appropriate stakeholders. However, it has drawbacks, as a full and comprehensive debate in this place will not be held in any effective or meaningful way. That naturally causes a legitimate concern. It should cause us all, as legislators, to pause before glibly going ahead with accepting yet another negative procedure.

The amendment has, I think, been drafted carefully and comprehensively, and it is very much in line with the procedure that it supports. What I am saying is not self-contradictory because I am not asking or advocating for an annual review of the code of practice, for example; I seek a review that is far more reflective of the changes in provision and changes in the real lives of families, children and young people, which may cause parts of the code to become redundant. That would be on a more sporadic basis than an annual change. For that reason, we should not worry too much about pressure on parliamentary time.

These matters are important. The code of practice—I warmly welcome the Minister's decision to publish it as a draft statutory instrument—will be the key document behind the success or otherwise of the reforms. It is crucial that every opportunity is afforded to having a proper debate and scrutiny of such a fundamental document. We owe that to the families, children and young people whom we represent.

I look forward to hearing the Minister's line of argument. I will listen carefully to him before considering the progress or otherwise of the amendment.

Mrs Hodgson: I congratulate the hon. Member for South Swindon once again on tabling the amendment and on his thoughtful contribution. The Opposition support his amendment. Just as I believe that the importance of the code of practice necessitates wide public consultation, I think that it necessitates proper parliamentary scrutiny before the code comes into effect, as the hon. Gentleman believes.

I know that the Minister will say that he is following the advice of the Select Committee in the current drafting of the clause, and I welcome the fact that he has moved from his original position of not subjecting the code of practice to any parliamentary scrutiny at all. I have some sympathy with his argument that the code should be flexible, to a degree, to ensure that it keeps pace with the structure of the organisations it affects and so on, but it should never be altered simply at the whim of a Secretary of State. Members of Parliament should be able to scrutinise it on behalf of their constituents, whom it will ultimately affect.

Having come around to that way of thinking, I hope that the Minister will come around still further and agree to accept the amendment. After all, much less significant matters have been decided in the way that is proposed. If the Minister is not minded to do so, the hon. Member for South Swindon will have our support should he press the amendment to a vote.

Mr Timpson: I am grateful to my hon. Friend the Member for South Swindon for his consideration of the clause and for tabling the amendment. I understand that he wants to ensure that Parliament is given the opportunity to scrutinise new or updated versions of the code of practice. Clearly, the new special educational needs code of practice will be a crucial document for children and young people, parents and practitioners, as it will set out in detail what organisations will have to do to support children and young people with SEN, and what parents and young people can expect.

My hon. Friend's remarks showed that he appreciated that a careful balance must be struck between proper consultation and parliamentary scrutiny, and being able to keep the SEN code of practice up to date through the flexibility of which the hon. Member for Washington and Sunderland West spoke. As I have said, the current SEN code of practice has not been updated since 2001 and does not reflect the changes to education, health and social care that have taken place since then.

12.15 pm

As the hon. Lady acknowledged, the issue was given careful consideration by the Education Committee during the pre-legislative scrutiny process, and the Bill delivers in full its recommendation that the draft should be subject to consultation and approved by Parliament under the negative procedure. The use of that procedure would bring the code into line with other statutory codes, such as the admissions code under the School Standards and Framework Act 1998, and we think that that would provide the appropriate level of parliamentary scrutiny. As I said in our discussions on clause 66, that procedure means that the code can be updated when needed without necessarily having to secure parliamentary time to debate the matter, while, importantly, it retains the possibility for hon. Members and those in the other place to debate the matter if they seek to resolve not to approve the code.

I have considered the matter carefully and listened to the remarks made, over and above those made by the Select Committee. I believe that we have struck the right balance in ensuring that we do not fall into the pattern of the old code of remaining out of date and without flexibility, but maintain, under the negative procedure, the flexibility to keep the document, as my hon. Friend

has said, a living document, as opposed to an historical document, which is not helpful to parents or practitioners. The negative procedure provides an insurance policy and, on that basis, I urge my hon. Friend to withdraw his amendment.

Mr Buckland: My hon. Friend has outlined what I hope was my frank acknowledgment of the contradictions and the balances that need to be struck. He was right to point out that under the negative procedure there is an option for hon. Members to pray against such a draft statutory instrument and to draw attention to the issue. That has not been done for a long time, but it is good to remind hon. Members of their power when it comes to negative resolutions. I am keen to make sure that the code remains a document that is not fossilised, and in the spirit of my hon. Friend's observations and in full cognisance of the balancing act that needs to be struck, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 67 ordered to stand part of the Bill.

Clause 68 ordered to stand part of the Bill.

Clause 69

PART DOES NOT APPLY TO DETAINED CHILDREN AND YOUNG PEOPLE

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

The Chair: With this it will be convenient to discuss new clause 22—*Application of Part 3 to detained children and young people—*

'(1) This section applies to children and young people detained in custody in pursuance of—

(a) an order made by a court, or

(b) an order of recall made by the Secretary of State.

(2) Where a child or young person under the age of 18 to whom subsection (1) applies has an EHC plan immediately prior to commencing his or her custodial sentence, the local authority responsible for that child or young person must determine which elements of provision described in the said plan may be delivered during that sentence.

(3) Where a child or young person under the age of 18 to whom subsection (1) applies has an EHC plan immediately prior to commencing his or her custodial sentence—

(a) if that sentence is greater than 13 weeks in minimum length, the responsible local authority may cease the plan;

(b) if the sentence is not more than 13 weeks in minimum length, the responsible local authority may consider whether it would be advantageous to continue to deliver any parts of the child or young person's EHC plan during his or her detention.

(4) In the course of their considerations under subsections (2) and (3), the responsible local authority must consult—

(a) the child or young person concerned, and their family;

(b) the institution in which the child or young person will be detained;

(c) any organisations delivering education or training within or on behalf of the institution in which the child or young person will be detained, and;

(d) any professionals or agencies other than the local authority which currently provide services under the terms of the child or young person's EHC plan.

(5) In the course of their considerations under subsections (2) and (3), the responsible local authority must have regard to—

(a) the nature of the crime for which the child or young person has been detained;

(b) the age of the child or young person;

(c) the previous educational outcomes of the child or young person;

(d) the views of those consulted by virtue of subsection (4), and;

(e) the level and appropriateness of education or training delivered within or on behalf of the institution in which the child or young person will be detained.'.

Mrs Hodgson: As this debate is the last to which I intend to contribute on this part of the Bill, I wish to take the opportunity to thank the Minister for the collegiate and helpful way in which he has handled our many important discussions on it. There have been a lot of them, and they might have taken longer than some members of the Committee would have liked, but our debates have been extremely worth while and of huge importance. This legislation is vital; it is a once-in-a-generation opportunity that will affect millions of children in the years to come, and it is imperative that we get it right.

While I—and, dare I say, other members of the Committee on both sides—have been disappointed that some of our key amendments have not been accepted, we certainly appreciate and recognise the lengths that the Minister has gone to in agreeing concessions when he has been able to do so and in providing us with assurances when he has not. I pay tribute to him for his endeavours on behalf of all the children and young people with special educational needs, and in the hope that he will look favourably on the arguments that the hon. Member for South Swindon and I will make in respect of the new clause.

I appreciate that there is not a simple solution to the matter, and that there is a degree of crossover between the Minister's remit and that of his colleagues in the Ministry of Justice. However, we now have the opportunity to rationalise a failing system. That there are so many young people in our young offenders institutes and adult prisons is largely due to the failure of our education system to give them a better, or at least different, start in life.

If someone asks five-year-olds about their ambitions in life and what they want to be when they grow up, they are likely to give answers such as footballer, hairdresser, vet, doctor, nurse and even astronaut. I know that to be true, because I have done it and I have got it on DVD. I am happy to show it to anyone in the Committee who would like to see it. I have never heard a five-year-old say that they want to be a petty criminal or someone who steals to fund an addiction or someone who gets drunk, fights and vandalises property. I have certainly never heard them say they want to become a serious criminal.

However, during the school years, ambitions can fall by the wayside if a learning difficulty or other developmental delay or issue, such as communication problems, holds a young person back. That is especially true if that difficulty is not picked up and support is not put in place. Even where it is picked up and a statement is put

[Mrs Hodgson]

in place, that might not be enough to prevent a young person from turning to crime and ending up in our criminal justice system.

We know that that is a problem, because young people who had a statement are over-represented in the youth justice system. Some 18% of young offenders have had a statement, compared with 2% to 3% of the general population. In addition, a host of other statistics show just how many young people arrive in the youth justice system with undiagnosed learning and/or communication difficulties. Lord Ramsbotham is the expert on this, but I believe that about 80% of those in young offenders institutions have literacy problems or dyslexia to some degree, and that more than 70% are thought to have speech, language and communication needs.

I do not think that anyone would argue that those young people guilty of crimes—particularly, serious ones—should not face the full consequences of their actions, even if we can trace their problems back to SEN. However, whether or not we continue support for them while they serve a custodial sentence, if we know they have special educational needs, speaks of what we want from our youth justice system. Do we want the sentence just to punish and deter, or do we want it to rehabilitate and reduce reoffending? The answer is probably a balance of those functions, but the balance has to be tipped firmly towards the latter.

When nearly three quarters of young people released from custody reoffend within one year, what has the system achieved? The Ministry of Justice is looking at how best to focus on education to reduce reoffending, which I welcome, but the clause will close one important avenue that we might want to explore. If we accept the clause, children who have an EHC plan will not be entitled to the specific educational support set out in their plan while in custody, and children who have unidentified SENs will not be eligible for an EHC assessment while in custody. That seems completely nonsensical, if the Government are serious about reducing reoffending through education. It is also overly prescriptive, as it holds back innovative local authorities from contributing to reducing reoffending in their communities by staying involved in the education of a child or young person while they are in custody. We therefore do not support the clause.

I try to be helpful to the Minister, and in that spirit we have proposed a possible solution. New clause 22 would replace the blanket ban on local authorities maintaining certain elements of special educational provision for a young person in custody with a more nuanced process that would empower councils to make decisions in the best interests of that young person and, ultimately, the community they live in. The new clause would allow consideration to be given to their age, the length of their sentence and the provision that may be made available while they are in a certain institution. It would not force a local authority to continue provision for a young person who was locked up for a long time; it would simply give them the option to do so, for example where a child is in custody for a few weeks for a less serious crime. We could then have continuity.

I have had a universally positive response to new clause 22 from campaign groups and organisations. Also, the Minister will remember that the weight of opinion that we heard from the experts in the evidence sessions opposed the clause as currently drafted. No one is arguing that it will be viable to continue all aspects of provision for all young people who find themselves in custody, but there must be a happy medium between that and the Government's position shown in clause 69.

That happy medium may, for instance, involve the use of virtual academies to provide continuity for qualifications and provision in circumstances where a young person may be moved between institutions, into halfway houses or back home afterwards, but perhaps even then is not able to return to mainstream school. I met recently with the people behind the Nasai Virtual Academy and was very impressed to hear about the real successes that they had had with young people in such situations, and the qualifications that they had helped them to go on to achieve. I would recommend that the Minister meet them, if he has not already, to discuss the work that they could do and how it could help.

I hope the Minister agrees that clause 69 represents a serious weakness in the Bill as currently drafted, and if he will not accept my new clause at this stage, I will be looking for concrete assurances that he and his officials will take clause 69 away and amend it before the Lords stages.

Mr Buckland: I rise briefly to speak to clause 69, which, as my hon. Friend the Minister knows, causes me dismay. I understand that it is there by necessity, but it is not there because of a lack of will on the part of his Department—I know that, too. I understand that the challenge of ensuring that the Ministry of Justice is fully working in tandem with his Department is not insignificant. I look to my hon. Friend to do everything in his power to work closely with the Under-Secretary of State for Justice, my hon. Friend the Member for Kenilworth and Southam (Jeremy Wright), to ensure that by the time the Bill reaches its further stages, clause 69 has either gone or been amended in a meaningful way.

I commend the hon. Member for Washington and Sunderland West for trying, through new clause 22, to alleviate the situation. I can see that her new clause deals with children and young people who already have an EHC plan, but there is another, wider issue. I speak from my professional experience, having represented many young people in the criminal justice system. Very often, they get into that system without any diagnosis whatever. There they are, at the age of 16, 17 or 18, and suddenly we find out that they are autistic—they are on the spectrum—or have other diagnosed disorders. Clear clinical evidence is obtained as a result either of their incarceration or because of an expert report that has been commissioned to assist in the sentencing process.

It is deeply depressing to find that time and time again young people are in that position. With the best will in the world, new clause 22 does not deal with that situation, which is one that we must address if we are to get the legislation absolutely right. There are limitations in what is on the table today, whatever side of the House we occupy. However, I want to adopt a lot of the hon. Lady's comments. In particular, I was very pleased to hear her cite Lord Ramsbotham, with whom I serve on the all-party group on speech and language difficulties. I adopt the statistics that she mentioned.

12.30 pm

Let us move on from the wherefore and deal as briefly as possible with the why. As I have said, in many cases there is a failure to diagnose at a proper stage. That failure means that the already overburdened criminal justice system is finding it difficult to cope. I know that the Government are excluding children and young people in custody from these reforms because the provision outlined in the EHC plan is specific to the child or young person's local authority and school, and the average youth custody sentence of 79 days gives insufficient time in which to conduct the 28-week EHC assessment. I accept that they are obstacles, but they are not insurmountable. For those children who already have EHC plans, there are elements that can and should be continued in custody, which is the thrust of new clause 22. As I have already said, there is no reason why an EHC assessment could not be initiated while the young person is in custody, as long as we have the involvement of their home local authority and school. The process could then continue into the community. In other words, there should be—I have used the word a lot—a "synthesis." It begins in custody, but it is not determined by what I accept are the average short sentences that can make that synthesis difficult.

The Government have already sought to improve the current situation, and I pay tribute to the Minister for making changes since the pre-legislative scrutiny. They include requiring local authorities to consult with their local youth offending team about whether local SEN provision is sufficient, which is in clause 27, and requiring local authorities to review a child's EHC plan after custody, which is in clause 47. I absolutely welcome those changes, which are a step in the right direction, but they are still not enough. Put together with clause 69, they appear mutually contradictory, which is a real concern.

I have been listening carefully to the Minister, and I hope that he can give me some real reassurance and an indication today that he is working as hard as he can to ensure that we do not fail that small but significant cohort of young people currently in the criminal justice system, whose needs either are not being met or have never been met. It is nothing short of a scandal and it is something that he will want to do something about.

Mr Timpson: Before discussing clause 69 and new clause 22, I will begin by echoing the kind remarks of the hon. Member for Washington and Sunderland West. Her passion and knowledge of the subject are, in many respects, extremely infectious, so I appreciate her thoughtful, considered and well-informed contributions.

Clause 69 replicates the provision already set out in section 312A of the Education Act 1996 and the issues at stake are practical. The SEN reforms are designed to support and safeguard pupils who are essentially in wider society and within steady state provision. Detained young people are frequently in custody for short periods —an average of 78 days—and they can move between institutions even during that time. It would therefore be impractical to place duties on local authorities that are impossible for them to deliver.

I will provide some specific examples. Where young people in custody have EHC plans, those plans will name specific provision and support provided by local services and in local schools and colleges. For obvious reasons, children are rarely detained in their home local authority, so little of their existing plan will be directly transferable to the secure estate. Some elements of SEN provision simply cannot apply in custody, such as being able to select a preferred school or college or personal budget.

However, I reassure my hon. Friend the Member for South Swindon that the Government are committed to supporting young offenders, including those with special educational needs, to turn their lives around through education. I hope that this debate and the findings of the Ministry of Justice's consultation on young offenders will provide valuable lessons that we can draw from to try to improve the education in our secure youth estate.

I am sympathetic to what my hon. Friend and the hon. Member for Washington and Sunderland West are trying to achieve through the new clause. The hon. Lady mentioned ensuring that we get the balance right between punishing those who find themselves in custody and using custody as an opportunity to rehabilitate them back into the community when they have served that time, so that that time in custody is not wasted. Education is a key component of that, giving them the building blocks to make a success of their future outside prison. As I said earlier, the Government are committed to helping young offenders turn their lives around, not just after they leave but while they are in prison. There is, of course, always more that we can do to improve that.

Provisions already exist that are arguably stronger than those set out in the proposed new clause, as they apply regardless of the crime the young person has committed or the amount of time that they are in custody. Section 562C of the Education Act 1996 already places duties on host local authorities to use their best endeavours to secure the provisions set in a statement of special educational needs for detained children and young people under 18, and in future an education, health and care plan for detained children and young people aged under 18.

Where it is not possible or appropriate to secure the exact provision set out in the plan, for some of the reasons I have already given, the host local authority has a duty to secure the special educational provision that corresponds as closely as practicable to that set out in the EHC plan.

There may also be cases where a plan was due to be reviewed before the young person was detained, and the provision in the EHC plan is no longer appropriate. In those cases, the local authority must secure special educational provision appropriate for the child or young person. Host local authorities must work closely with the young person's home local authority to ensure that appropriate support is in place. There are already information-sharing powers and duties in place to allow for that in the indicative code of practice, to include sections on how we expect local authorities to support that group of young people.

The code will also set out how local authorities should work with each other, young people, professionals, youth offending and probation teams, as they fulfil their duties. There is not normally enough time for a full education, health and care plan assessment and for the provision to be put in place while a young person is in custody. However, I would like to assure the hon. Member

[Mr Timpson]

for Washington and Sunderland West and my hon. Friend the Member for South Swindon that assessments do take place in custody. Education providers in young offenders institutions are required to have a work force trained to identify and support a young person's individual learning needs, and procedures to identify and support any learning difficulties that a young person may have.

All young people who show signs of having a learning difficulty or disability are screened on entering custody. If they are identified as having a special educational need, a full diagnostic assessment should take place and the outcomes of that assessment be used to inform the young person's learning plan.

Health assessments also take place in custody. The comprehensive health assessment has been developed to improve those assessments. It is an evidence-based tool that assesses for physical and mental health issues and neurological disorders.

Be that as it may, I share hon. Members' concerns and, like them, I want to improve outcomes for young people with special educational needs in custody. I agree that we can always do more. The hon. Member for Washington and Sunderland West and my hon. Friend have already noted that the Ministry of Justice is currently consulting on the secure youth estate. The Green Paper, "Transforming Youth Custody: Putting education at the heart of detention", importantly includes a question on how we can use education, health and care plans to support young people in custody. It is right to invite views on how best to meet the needs of young people in custody, including those with a special educational need.

I take up the challenge from my hon. Friend to continue to work closely with the Secretary of State for Justice as he takes his important work forward, as well as the Minister responsible for prisons and rehabilitation, the Under-Secretary of State for Justice, my hon. Friend the hon. Member for Kenilworth and Southam, to see what more we can do to support young people in custody with SEN. I believe I have a meeting scheduled in the next few weeks with that Minister for the purpose of doing exactly that. I know that he is also very committed to trying to improve education, not just in the secure youth estate generally but specifically for children and young people with special educational needs.

I hope that reassures hon. Members that, given the current duties of local authorities and the proposals for reform likely to follow from the Green Paper, new clause 22 is not necessary at this juncture. By virtue of the Green Paper, I want to continue to explore what more we can do to improve the education of young people with SEN in custody. With that assurance, and the ongoing commitment that I have given, I urge hon. Members to withdraw the proposed new clause and support clause 69.

Mrs Hodgson: I have listened carefully to the Minister, but we cannot accept the clause as it stands. He mentioned that there are various complexities in an education, health and care plan such that it would not work when a child is incarcerated in the youth justice system—or, given that we are talking about children and young people aged from nought to 25, in an adult prison—and gave the example of naming an education institution. That is why I mentioned the Nisai Virtual Academy: if that was named, a child could still use it while incarcerated as it is virtual. I hope that he will look at that option; perhaps he could meet people from the academy to find out whether it could be added to the pot of solutions to help with the redrafting of the clause, should he feel that necessary.

Notwithstanding the assurances that the Minister has given, I wish to divide the Committee on this matter. I do so in the hope that he will go away and look at the issue again, to see if a compromise can be reached, using new and innovative providers such as the Nisai Virtual Academy, to ensure that those young people can carry on their education while incarcerated, especially if that is only for a short time. As he acknowledged, that time inside could be the first time that anybody has ever taken seriously the fact that a child might have an unidentified special educational need; continuing a child's education would allow any such needs to start to be met. I hope that the Minister understands why I feel the need to divide on the matter, and that he will look at it again as the Bill continues its progress through the House.

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

The Committee divided: Ayes 9, Noes 7.

Division No. 4]

AYES

Barwell, Gavin	Milton, Anne
Buckland, Mr Robert	Nokes, Caroline
Elphicke, Charlie	Swinson, Jo
Leadsom, Andrea	Timpson, Mr Edward
Lee, Jessica	

NOES

Esterson, Bill	Powell, Lucy
Hodgson, Mrs Sharon	Reed, Mr Steve
Jones, Graham	Sawford, Andy
Nandy, Lisa	

Question accordingly agreed to.

Clause 69 ordered to stand part of the Bill.

Clause 70

DISAPPLICATION OF CHAPTER 1 OF PART 4 OF EA 1996 IN RELATION TO CHILDREN IN ENGLAND

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

The Chair: With this it will be convenient to discuss new clause 36—*Inclusive and accessible education, health and social care provision—*

'In exercising a function under Part 3 of this Act, a local authority and NHS bodies in England must promote and secure inclusive and accessible education, health and social care provision to support children, young people and their families.'.

Mr Buckland: I will speak briefly to new clause 36, which relates to the principle of inclusion, and the need to promote and secure inclusive and accessible education

and health and social care provision to support children and young people and their families. The new clause would ensure that there was a proper and necessary cultural shift away from providing expensive specialist services by default rather than universal services, which are, of their very nature, inclusive and accessible for disabled children and young people.

Joint commissioning, which the Government are championing and which is already happening in local authorities such as mine, which is a beacon of best practice, is bringing about a cultural shift. However, there are still far too many examples of poor practice and the legislation should function to ensure that all authorities are up to the mark and brought firmly into the 21st century.

12.45 pm

There is a wider debate about the use of words such as "inclusive" and "accessible" education. Inclusivity and accessibility are sometimes equated with motherhood and apple pie, but we are talking about a practical reality on the ground that ensures that the range of needs of the children and young people we have been talking about over the past several weeks are reflected in the services. Such needs will range from acute needs that require specialist provision to needs that can be well accommodated within the mainstream, whether that is by way of the creation of special resource units attached to mainstream schools, or one-to-one or group assistants in class.

The measure is designed to try to cover all scenarios of provision and to make sure that disabled children and young people with special needs are not ghettoised or put into a false compartment, but that they are fully able to access the mainstream where appropriate and be part of our mainstream society. That is surely our ambition for the children and young people that we care so much about. In that spirit, I propose this new clause and I look forward to hearing the Minister's thoughts on how we achieve what must be a laudable goal.

Mr Timpson: Chapter 1 of part 4 of the Education Act 1996 covers the existing arrangements for pupils with special educational needs in England and Wales. The new provisions in part 3 of the Bill will apply to children and young people with special educational needs in England, replacing the 1996 provisions. It is necessary to disapply the existing provisions in relation to England. The clause does that. Chapter 1 of part 4 is not being repealed as it needs to continue to apply to children with special educational needs in Wales.

New clause 36 would require local authorities and NHS bodies, in exercising their functions under part 3 of the Bill, to promote and secure inclusive and accessible services for children, young people and families. Having listened to my hon. Friend the Member for South Swindon, I presume that the intention of the new clause is to require provision to be secured that is close to home for children and young people and their families. I hope to persuade my hon. Friend that placing a specific duty on local authorities and local NHS bodies requiring them to do that is not necessary.

There are already duties in place to ensure that appropriate provision is made for children and young people with special educational needs, and that support is available to their parents. Local authorities are required under section 14 of the 1996 Act to secure that sufficient schools are available for their area, and that that includes provision that is suitable for children's special educational needs. They have a parallel duty under section 15ZA of the 1996 Act in relation to education and training provision for young people over compulsory school age.

There is a general presumption in part 3 of the Bill of inclusion in mainstream education settings coupled with stronger rights for young people with education, health and care plans, and for the parents of children with such plans to request a particular school or post-16 institution, including maintained schools, academies and free schools, further education colleges, and independent and non-maintained specialist schools and colleges approved under clause 41.

We also have a general duty in section 17 of the Children Act 1989 that provides the means to support a wide range of children, including disabled children, many of whom will have SEN. Children being supported include those who may be at risk of having their physical, intellectual, emotional, social or behavioural development impaired, for a wide range of reasons going far beyond SEN: for example, homelessness or those suffering neglect.

Local authorities and clinical commissioning groups must undertake joint strategic needs assessments of the health and social care needs of their population to inform a local health and well-being strategy. This strategy sets the overall direction for commissioning of all health care and social care provision undertaken jointly and separately by the local authority and the CCGs in the local area.

The new joint commissioning requirements in respect of children and young people with SEN build on these arrangements and add the explicit dimension of education provision for children and young people. All education, health and care services reasonably required by the learning difficulties and disabilities that result in the children and young people having SEN must be commissioned jointly within the framework set by the legislation. These duties ensure that provision is made across education, health and social care for children and young people with special educational needs and support is provided for their parents.

Requiring local authorities to secure provision close to home in every case could mean that children and young people do not get appropriate support, or that provision is made that does not take account of the wishes of the child's parents or of the young person himself or herself. I know how important it is for families to have provision that is made locally where at all possible. Local authorities aim to provide services close to home, but clearly that may not always be practical. For example, where a child or a young person has a very complex need and requires specialist support it may be available in only a very few places.

Clause 27, which requires local authorities to keep special educational provision and social care provision under review, and clause 30, which requires them to involve children, young people and parents in developing and reviewing their local offer, will also ensure a continuing dialogue between local authorities and their partners and keep a focus on the need for local provision. They could also, over time, support greater collaboration between local authorities to improve the availability of services across local areas, as we are seeing in some of

[Mr Timpson]

the pathfinders as they continue to develop. I hope that, with those assurances, my hon. Friend will not press his new clause.

Mr Buckland: My hon. Friend is right to allude to the clear wish of many service users, children, young people and their families to keep services close. Scope's "Keep us close" campaign, on the basis of evidence it had gathered, reminded us how important that is for so many families. He is right to say that it will not apply in every case and I alluded to that in my remarks. I listened carefully as he set out the framework. This may well be an issue that we will return to later. My amendment was a probing amendment. It opened an important debate and I look forward to further discussion on this. I know he will keep the matter under careful consideration in the weeks and months ahead.

Question put and agreed to.

Clause 70 accordingly ordered to stand part of the Bill.

Clause 71 ordered to stand part of the Bill.

Schedule 3

Special educational needs: consequential amendments

Mr Timpson: I beg to move amendment 227, in schedule 3, page 138, line 39, at end insert—

A1 (1) Section 6 (nursery schools and special schools) is amended as follows.

(2) Omit subsection (2).

(3) In the title, omit "and special schools".

A2 (1) Section 13 (general responsibility for education) is amended as follows.

(2) In subsection (3)(b) for "but under 25 and are subject to learning difficulty assessment" substitute "and for whom an EHC plan is maintained".

(3) Omit subsections (4) and (5).

A3 In section 13A (duty to promote high standards and fulfilment of potential), in subsection (2)(b) for "but under 25 who are subject to learning difficulty assessment" substitute "and for whom an EHC plan is maintained".

A4 (1) Section 15ZA (duty in respect of education and training for persons over compulsory school age: England) is amended as follows.

(2) In subsection (1) for "but under 25 and are subject to learning difficulty assessment" substitute "and for whom an EHC plan is maintained".

(3) In subsection (3)(b) after "learning difficulties" insert "or disabilities".

(4) In subsections (6) and (7) after "learning difficulty" insert "or disability".

(5) For subsection (9) substitute—

"(9) The duty in subsection (1) does not apply in relation to persons in a local authority's area who are subject to a detention order."

A5 In section 15A (powers in respect of education and training for 16 to 18 year olds), in subsection (3) for the words from "a local authority" to the end substitute "—

(a) a local authority in England must in particular have regard to the needs of persons with learning difficulties or disabilities (within the meaning of section 15ZA(6) and (7));

(b) a local authority in Wales must in particular have regard to the needs of persons with learning difficulties (within the meaning of section 41(5) and (6) of the Learning and Skills Act 2000)."

A6 In section 15B (functions in respect of education for persons aged over 19), in subsection (3) for the words from "a local authority" to the end substitute "—

(a) a local authority in England must in particular have regard to the needs of persons with learning difficulties or disabilities (within the meaning of section 15ZA(6) and (7));

(b) a local authority in Wales must in particular have regard to the needs of persons with learning difficulties (within the meaning of section 41(5) and (6) of the Learning and Skills Act 2000)."

A7 In section 18A (provision of education for persons subject to youth detention), in subsection (2)—

(a) in paragraph (b) omit "or learning difficulties (within the meaning of section 15ZA(6) and (7))", and

(b) after that paragraph insert—

"(ba) in the case of a local authority in England, any learning difficulties or disabilities (within the meaning of section 15ZA(6) and (7)) the persons may have;

(bb) in the case of a local authority in Wales, any learning difficulties (within the meaning of section 41(5) and (6) of the Learning and Skills Act 2000) the persons may have;".'.

The Chair: With this it will be convenient to discuss Government amendments 228 to 239 and 264.

Mr Timpson: The amendments relate to schedule 3 of the Bill and make further amendments to the Education Act 1996 as a consequence of the provisions of the Bill. They ensure that the special educational needs provisions in part 4 of Act apply only to Wales. For England, part 3 of the Bill will replace part 4 of the 1996 Act, but part 4 will remain for Wales, so needs to be amended so that it refers only to Wales. The amendments also relate to the repeal of provisions in the Learning and Skills Act 2000 and the Education and Skills Act 2008 for learning difficulty assessments made for young people aged 16 and over with learning difficulties and disabilities. In the main they replace references to learning difficulty assessments with references to education, health and care plans. These are necessary changes to ensure the proper implementation of the reforms in part 3 of the Bill and I urge the Committee to approve them.

Mr Buckland: I shall be brief. As this will be my last contribution on this part of the Bill, may I place on record my thanks to my hon. Friend for the careful consideration he has given to all our debates? May I also thank the Special Educational Consortium, Every Disabled Child Matters and other third sector organisations which have been of great assistance to me in preparing for these debates?

Mrs Hodgson: I wish to join the hon. Gentleman in congratulating and thanking those organisations. It was remiss of me not to do so in my closing statement on this part of the Bill. I am pleased he has done so and I should like to echo what he said.

Mr Buckland: I am very grateful. I want to ask about transitional arrangements for those with an existing statement. Will my hon. Friend the Minister set out the Department's thinking on the transition from the current SEN system to the new system? Will children and young people who currently have a statement be able to

keep that for the life of the statement, or will they have to transfer to an EHC plan within a particular time scale? Must EHC plans be based on a new assessment, or can existing assessments be used to create a plan? It is still not clear whether all children and young people who currently have a statement of SEN will be automatically entitled to an EHC plan or whether some may face reassessment. Will my hon. Friend shed some light on that?

The time taken to make the transition between statements to EHC plans is likely to vary from area to area. Will there be local discretion? Above all, will my hon. Friend offer a commitment to the families and young people concerned that they will not lose the support set out in their current statements of SEN in the months and years following the passage of the Bill into law?

Andy Sawford (Corby) (Lab/Co-op): I wish to say two brief things. First, it will be vital that the resources are in place at a local level to deliver the Minister's ambitions in terms of schedule 3. It is also important that, as a Committee, we put on record our thanks to the hon. Member for South Swindon, who has spoken with a great deal of expertise on this part of the Bill, as well as, of course, my hon. Friend the Member for Washington and Sunderland West, who has led the debate for the Opposition also with a great deal of expertise.

Mr Timpson: I repeat the remarks made by hon. Members about the significant and important contribution of my hon. Friend the Member for South Swindon. He has done great service to the many excellent organisations out there who, day after day, work tirelessly on behalf of families with young people or children with a special educational need that they are trying to deal with within their family and make sure that that does not get in the way of their children reaching their full potential. Since the Green Paper and beyond, many of those organisations have played an integral role in scrutinising the Bill. It is, I suspect, one of the most scrutinised Bills that we have seen; it has certainly felt on occasions as though it has been scrutinised to within an inch of its life, but it is all the better for that.

I reassure my hon. Friend that I am fully committed to ensuring that arrangements are put in place for a smooth transition from the current system to the new one. In our policy statement published in March, we set out that we are ambitious for all children and young people with special educational needs and their families to benefit from the arrangements set out in the Bill as soon as possible. I want to be absolutely sure, however, that the move to education, health and care plans happens at a pace that allows for a smooth transition for the children, young people and families involved. To achieve that, while maintaining the quality of existing services, we believe that a phased approach will be necessary.

I am committed to identifying an approach to transition that minimises unnecessary burdens on families, importantly; is responsive to the wishes of children, young people and their parents; and is as fair as possible to the children and young people involved while being achievable for local authorities and others involved in the assessment. Through discussions that we have already had with key interested parties, we intend to continue to identify our preferred approach to the transition; I will set that out in a draft order, which will be subject to formal consultation, later this year. From the point at which the legislation comes into force, my ambition is for all new assessments undertaken to be for the new education, health and care plans and I will listen carefully to advice before taking a final view on this matter.

I know that there has been concern that once schedule 3 comes into force, existing statements could lose their legal status until replaced by an education, health and care plan. I am happy to give a guarantee that transitional arrangements will retain the current legal rights associated with existing statements and learning difficulty assessments until they are replaced by EHC plans. I hope that that reassures my hon. Friend.

Amendment 227 agreed to.

Amendments made: 228, in schedule 3, page 139, leave out lines 5 to 8.

Amendment 229, in schedule 3, page 139, line 8, at end insert—

'2A (1) Section 312 (meaning of "special educational needs" and "special educational provision" etc) is amended as follows.

(2) In subsections (1) and (2), after "child" insert "in the area of a local authority in Wales".

(3) In subsection (3A)—

(a) in paragraph (a)—

(i) omit "15ZA", and

(ii) for ", 15B and 507B" substitute "and 15B", and

(b) in paragraph (b), before "determining" substitute "a local authority in Wales".

(4) In subsection (4), after ""special educational provision"" insert ", in relation to a child in the area of a local authority in Wales,".'.

Amendment 230, in schedule 3, page 139, line 9, leave out paragraph 3 and insert—

'3 (1) Section 313 (code of practice) is amended as follows.

(2) In subsections (1) and (4) for "Secretary of State" substitute "Welsh Ministers".

(3) In subsection (5)—

(a) after "means" insert "the Special Educational Needs Tribunal for Wales.", and

(b) omit paragraphs (a) and (b).

3A (1) Section 314 (making and approval of code) is amended as follows.

(2) In subsection (1)—

(a) for "Secretary of State proposes" substitute "Welsh Ministers propose", and

(b) for "he" substitute "they".

(3) In subsection (2)—

(a) for "Secretary of State" substitute "Welsh Ministers",

(b) for "he thinks" substitute "they think", and

(c) for "them" substitute "those persons".

(4) For subsection (3) substitute—

"(3) If the Welsh Ministers determine to proceed with the draft (either in its original form or with such modifications as they think fit) they shall lay it before the National Assembly for Wales."

(5) In subsection (4)—

(a) for "each house, the Secretary of State" substitute "the National Assembly for Wales, the Welsh Ministers", and

(b) for "the Secretary of State may" substitute "the Welsh Ministers may".'.

Amendment 231, in schedule 3, page 139, line 14, at end insert—

'( ) In subsection (2) —

(a) in paragraph (a), for sub-paragraph (ii) substitute—

(ii) the governing body of the school or, if the school is in England, its head teacher,", and

(b) in paragraph (c), for sub-paragraph (ii) substitute—

(ii) the governing body of the school or, if the school is in England, its head teacher,".'.

Amendment 232, in schedule 3, page 139, line 16, leave out 'National Assembly for Wales' and insert 'Welsh Ministers'.

Amendment 233, in schedule 3, page 139, line 18, leave out sub-paragraph (3) and insert—

'( ) In subsection (10)—

(a) omit ", in relation to Wales,", and

(b) for "National Assembly for Wales" substitute "Welsh Ministers".'.

Amendment 234, in schedule 3, page 139, line 18, at end insert—

'4A In section 317 (duties of governing body or local authority in relation to pupils with special educational needs), in subsection (5)—

(a) after "foundation special school shall" insert "include special needs information in the report prepared under section 30(1) of the Education Act 2002 (governors' report).", and

(b) omit paragraphs (a) and (b).

4B (1) Section 318 (provision of goods and services in connection with special educational needs) is amended as follows.

(2) Omit subsections (3) and (3A).

(3) In subsection (3B) omit "in Wales" (in the first place it occurs).

(4) In consequence of the repeal made by sub-paragraph (2)—

(a) in Schedule 30 to the School Standards and Framework Act 1998 omit paragraph 75(4),

(b) in the Education Act 2002, in section 194 omit subsection (2)(a), and

(c) in Schedule 2 to the Childcare Act 2006, omit paragraph 21.

4C In section 326 (appeal against contents of statement), in subsection (4)(c) for the words from "in the case" to "in the proceedings" substitute "in the proceedings the child has proposed the school".

4D (1) Section 326A (unopposed appeals) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) the parent of a child, or a child, has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local authority, and".

(3) In subsection (6)—

(a) after "regulations made" insert "by the Welsh Ministers", and

(b) omit paragraphs (a) and (b).

4E (1) Section 328A (appeal against determination of local authority in England not to amend statement following review) is repealed.

(2) In consequence of the repeal made by sub-paragraph (1), section 2 of the Children, Schools and Families Act 2010 is repealed.

4F (1) Section 329A (review or assessment of educational needs at request of responsible body) is amended as follows.

(2) In subsection (14)—

(a) after ""Relevant early years education"" insert "has the same meaning as it has (in relation to Wales) in section 123 of the School Standards and Framework Act 1998 except that it does not include early years education provided by a local authority at a maintained nursery school.", and

(b) omit paragraphs (a) and (b).

(3) In subsection (15)—

(a) omit ", in relation to Wales,", and

(b) for "National Assembly for Wales" substitute "Welsh Ministers".

(4) In consequence of the amendments made by sub-paragraph (2), in paragraph 22 of Schedule 2 to the Childcare Act 2006, omit sub-paragraph (4).

(5) Until the coming into force in relation to Wales of the amendments made by paragraph 22(2) and (3) of Schedule 2 to the Childcare Act 2006, section 329A of EA 1996 has effect as if for subsection (14) (as amended by sub-paragraph (2)) there were substituted—

"(14) "Relevant nursery education" has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local authority at a maintained nursery school."

4G (1) Section 332ZA (right of a child to appeal to the Welsh Tribunal) is amended as follows.

(2) In subsection (1) omit "Welsh".

(3) In the title omit "Welsh".

4H In section 332ZB (notice and service of documents on a child in relation to an appeal by the child), in subsection (1) omit "in Wales".

4I (1) Section 332ZC (case friends—Wales) is amended as follows.

(2) In subsection (1), in paragraph (a) omit "in Wales".

(3) In subsection (3), in paragraph (a) omit "Welsh".

(4) In the title, omit "—Wales".

4J (1) Section 332A (advice and information for parents—England) is repealed.

(2) In consequence of the repeal made by sub-paragraph (1), section 2 of the Special Educational Needs and Disability Act 2001 is repealed.

(3) The repeals made by sub-paragraphs (1) and (2) do not affect the application for the time being of section 332A to certain local authorities in Wales by virtue of article 4(a) of the Education (Wales) Measure 2009 (Commencement No 3 and Transitional Provisions) Order 2012 (SI 2012/320).

4K (1) Section 332AA (advice and information— Wales) is amended as follows.

(2) In subsection (1) omit "in Wales".

(3) In the title, omit "— Wales".

4L (1) Section 332B (resolution of disputes—England) is repealed.

(2) In consequence of the repeal made by sub-paragraph (1), section 3 of the Special Educational Needs and Disability Act 2001 is repealed.

(3) The repeals made by sub-paragraphs (1) and (2) do not affect the application for the time being of section 332B to certain local authorities in Wales by virtue of article 4(b) of the Education (Wales) Measure 2009 (Commencement No 3 and Transitional Provisions) Order 2012 (SI 2012/320).

4M (1) Section 332BA (resolution of disputes—Wales) is amended as follows.

(2) In subsections (1) and (2) omit "in Wales".

(3) In the title, omit "—Wales".

4N (1) Section 332BB (independent advocacy services—Wales) is amended as follows.

(2) In subsections (1) and (5) omit "in Wales".

(3) In the title, omit "—Wales".

4O (1) Sections 332C to 332E (information about children in England with special educational needs) are repealed, and the cross-heading which precedes section 332C is omitted.

(2) In consequence of the repeals made by sub-paragraph (1), section 1 of the Special Educational Needs (Information) Act 2008 is repealed.

4P In the cross-heading which precedes section 333 (Special Educational Needs Tribunal) after "Tribunal" insert "for Wales".

4Q (1) Section 333 (constitution of Welsh Tribunal) is amended as follows.

(2) Omit subsection (1ZB).

(3) In the following provisions, omit "Welsh"—

(a) subsection (1),

(b) in subsection (2), paragraphs (a), (b) and (c),

(c) in subsection (5), paragraph (a), and paragraph (b) (in the first place it occurs), and

(d) subsection (6) (in the second place it occurs).

(4) In the title, omit "Welsh".

4R In section 335 (remuneration and expenses), in subsection (1) and (2) omit "Welsh" (in each case, in the second place it occurs).

4S (1) Section 336 (Tribunal procedure) is amended as follows.

(1) In the following provisions omit "Welsh"—

(a) subsection (1) (in the second place it occurs),

(b) in subsection (2), paragraphs (b), (o) and (p),

(c) subsection (2A),

(d) subsection (3) (in the second place it occurs), and

(e) subsection (4) (in the first place it occurs).

(2) Omit subsection (5A).

(3) In subsection (6) omit "or (5A)".

4T (1) Section 336ZB (appeals from the Welsh Tribunal to the Upper Tribunal) is amended as follows.

(2) In the following provisions, omit "Welsh"—

(a) subsection (1) (in both places it occurs),

(b) subsection (2), and

(c) subsection (3).

(3) In the title, omit "Welsh".

4U In section 336A (compliance with orders), in subsection (2)—

(a) after "made" insert "by the Welsh Ministers with the agreement of the Secretary of State.", and

(b) omit paragraphs (a) and (b).'.

Amendment 235, in schedule 3, page 139, line 29, at end insert—

'(1) Section 348 (provision of special education at non-maintained schools) is amended as follows.

(2) In subsection (1) after paragraph (a) (and before the "and" which follows it) insert—

"(aa) the child is in the area of a local authority in Wales,".

(3) In the title, at the end insert "—Wales".'.

Amendment 236, in schedule 3, page 140, line 33, at end insert—

'11A (1) Section 483A (city colleges and academies: special educational needs) is amended as follows.

(2) In subsection (2), in paragraph (a) for "a statement is maintained under section 324" substitute "an EHC plan or a statement under section 324 is maintained".

(3) In subsection (3), in paragraph (a) for "the statement" substitute "the EHC plan".

(4) In subsection (4), in paragraphs (a) and (b) after "specified in" insert "the plan or".

11B In section 507B (local authorities in England: functions in respect of leisure-time activities etc for persons aged 13 to 19 and certain persons aged 20 to 24), in subsection (2)(b) after "learning difficulty" insert "or disability".

11C In section 508F (local authorities in England: provision of transport etc for adult learners), in subsection (9) in the definition of "relevant young adult" for "who is aged under 25 and is subject to learning difficulty assessment" substitute "for whom an EHC plan is maintained".

11D In the title of section 508I (complaints about transport arrangements etc for young adults subject to learning difficulty assessment: England), for "adults subject to learning difficulty assessment" substitute "adult for whom EHC plan is maintained".

11E (1) Section 509AB (local authorities in England: further provision about transport policy statements for persons of sixth form age) is amended as follows.

(2) In subsection (1) after "difficulties" insert "or disabilities".

(3) In subsection (2)(b) after "difficulties" (in each place it occurs) insert "or disabilities".

11F In section 509AC (interpretation of sections 509AA and 509AB), in subsection (4) after "learning difficulties" insert "or disabilities".

11G (1) Section 514A (provision of boarding accommodation for persons subject to learning difficulty assessment) is amended as follows.

(2) In subsection (1)—

(a) after "who is" insert "over compulsory school age and for whom an EHC plan is maintained.", and

(b) omit paragraphs (a) and (b).

(3) In the title, for "persons subject to learning difficulty assessment" substitute "person for whom an EHC plan is maintained".

11H In section 517 (payment of fees at schools not maintained by a local authority), in subsection (1), for "or Part IV (special education needs)" substitute ", Part 4 (special education needs) or Part 3 of the Children and Families Act 2013 (children and young people in England with special educational needs)".

11I (1) Section 532A (direct payments: persons with special educational needs or subject to learning difficulty assessment) is amended as follows.

(2) In subsection (1)—

(a) after "("the beneficiary")" insert "for whom the authority maintain an EHC plan.", and

(b) omit paragraphs (a) and (b).

(3) In subsection (2)—

(c) for paragraph (a) substitute—

"(a) special educational provision specified in the EHC plan;", and

(d) omit paragraph (b).

(4) In the title, omit "or subject to learning difficulty assessment".

11J In section 532B (direct payments: pilot schemes), in subsection (9) for paragraph (a) substitute—

"(a) section43 of the Children and Families Act 2013 (duty to secure special educational provision in accordance with EHC plan);".

11K In section 560A (work experience for persons over compulsory school age), in subsection (1)(b) for "but under 25 and are subject to learning difficulty assessment" substitute "and for whom an EHC plan is maintained".

11L (1) Section 562C (detained persons with special educational needs) is amended as follows.

(2) In subsection (1) after "local authority" insert "in England were maintaining an EHC plan for a detained person, or a local authority in Wales".

(3) In subsection (2) after "must" insert "maintain the plan or".

(4) In subsection (4), in paragraph (a) after "specified in" insert "the plan or".

11M (1) Section 562G (information to be provided where statement of special educational needs previously maintained) is amended as follows.

(2) In subsection (1) after "local authority" insert "in England were maintaining an EHC plan for the person, or a local authority in Wales".

(3) In subsection (3)—

(a) after "maintaining" insert "the plan or", and

(b) after "copy of" insert "the plan or".

(4) In subsection (4) for "a statement for the person under section 324," substitute "an EHC plan or a statement under section 324 for the person,".

(5) In subsection (5)—

(a) after "maintaining" insert "the plan or", and

(b) after "copy of" insert "the plan or".

(6) In subsection (7), in paragraph (b) after "maintaining" insert "the EHC plan or".

(7) In subsection (8)— In subsection (9) after "a copy of any" insert "plan or".

(a) after "maintaining" insert "the plan or", and

(b) in paragraph (a), for "a statement was being maintained for the person by a local authority under section 324" substitute "an EHC plan or a statement under section 324 was being maintained for the person by a local authority".

11N (1) Section 562H (release of detained person appearing to host authority to require assessment) is amended as follows.

(2) For subsection (2) substitute—

"(2) Subsection (3) applies where it appears to the host authority that—

(a) if the home authority are a local authority in England, the detained person will, on release, be a child within the meaning given in section 579(1);

(b) if the home authority are a local authority in Wales, the detained person will, on release, be a child within the meaning given in section 312(5)."

(3) In subsection (5), in paragraph (a) after "learning difficulty" insert "or disability".'.

Amendment 237, in schedule 3, page 141, line 3, at end insert—

'"special educational provision"—

(a) in relation to a person in the area of a local authority in England, has the meaning given by section21(1) and (2) of the Children and Families Act 2013;

(b) in relation to a child in the area of a local authority in Wales, has the meaning given by section 312(4);",

() after subsection (1) insert—

"(1A) For the purposes of this Act a person is subject to learning difficulty assessment if—

(a) an assessment under section 140 of the Learning and Skills Act 2000 (learning difficulty assessments: Wales) has been conducted in respect of the person, or

(b) arrangements for such an assessment to be conducted in respect of the person have been made or are required to be made.", and

() before subsection (4) insert—

"(3A) References in this Act to a person who is "in the area" of a local authority in England do not include a person who is wholly or mainly resident in the area of a local authority in Wales.

(3B) References in this Act to a person who is "in the area" of a local authority in Wales do not include a person who is wholly or mainly resident in the area of a local authority in England."'.

Amendment 238, in schedule 3, page 141, line 6, at end insert—

'() after the entry for "interest in land" insert—

"in the area of a local authority in England	section 579(3A)
in the area of a local authority in Wales	section 579(3B)",

() for the entry for "learning difficulty" substitute—

"learning difficulty (in relation to a child in the area of a local authority in Wales)	section 312(2) and (3) (subject to subsection (3A))",'.

Amendment 239, in schedule 3, page 141, leave out lines 7 to 11 and insert—

'() in the entry for "special educational needs", in the second column for "section 312(1)" substitute "section 579(1)",

'() in the entry for "special educational provision", in the second column for "section 312(4)" substitute "section 579(1)",

() in the entry for "special school", in the second column for "sections 6(2) and" substitute "section", and

() in the entry for "subject to learning difficulty assessment", in the second column for "section 13(4)" substitute "section 579(1A)".'.

Amendment 264, in schedule 3, page 141, line 11, at end insert—

'13A In Schedule 35B (meaning of "eligible child" for purposes of section 508B), in paragraph 15(3)—

(a) in paragraph (a) for "statement maintained for the child under section 324" substitute "EHC plan maintained for the child", and

(b) in paragraph (b) for "statement" substitute "plan".

13B (1) In Schedule 36A (education functions), the table in paragraph 2 is amended as follows.

(2) In the entry for the Disabled Persons (Services, Consultation and Representation) Act 1986, in the second column after "child with" insert "an EHC plan or".

(3) In the entry for the Learning and Skills Act 2000, omit the entry for section 139A.'.—*(Mr Timpson.)*

Schedule 3, as amended, agreed to.

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

1 pm

Adjourned till this day at Two o'clock.