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Children and Families Bill Committee Stage Report

Bill No 5 of 2013-14

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This is a report on the House of Commons Committee Stage of the *Children and Families Bill*. It complements Research Paper 13/11 prepared for the Commons Second Reading and has been written to inform the Report Stage debate.

The Bill would reform legislation relating to adoption and children in care; aspects of the family justice system; children and young people with special educational needs; the Office of the Children's Commissioner for England; statutory rights to leave and pay for parents and adopters; time off work for ante-natal care; and the right to request flexible working.

The Bill was carried over from session 2012-13. The Bill discussed in this paper is Bill 131 of that session, as originally presented and considered in Public Bill Committee.

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Research Paper 13/32

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Summary

The *Children and Families Bill* makes provision to reform legislation relating to:

- adoption and children in care;
- family justice;
- children and young people with special educational needs;
- the Office of the Children's Commissioner for England;
- statutory rights to leave and pay for parents and adopters;
- time off work for ante-natal care; and
- the right to request flexible working.

The Bill had its Second Reading in the Commons on 25 February 2013.

In committee, part 1 of the Bill (clauses 1-9), relating to adoption and children in care, was broadly supported in principle, although Opposition Members raised concerns with several aspects of the manner in which the proposals were being approached in legislation. However, none of the amendments raised were pressed to a vote.

Opposition Members moved several amendments relating to the reforms to family justice in part 2 of the Bill (clauses 10-18), relating to the operation of the reforms rather than their principle. Only one amendment, designed to ensure that courts specifically consider the situation of siblings in considering a child's care plan, was put to a vote, and negatived.

Part 3 (clauses 19-72) of the Bill makes provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. There was general support for the introduction of Education, Health and Care (EHC) Plans and joint working between agencies; however, Members wanted stronger requirements on health and social services. In response, the Government introduced a series of amendments to impose new duties on health commissioners to deliver the health care provision specified in EHC plans. In addition, the amendments clarified which commissioning bodies would be involved in joint commissioning. Other Government amendments to part 3 of the Bill were minor, technical or consequential amendments. No other amendments were made to part 3 of the Bill, and there were few divisions. However, many probing amendments were tabled. While there was support for many aspects of the proposed changes, Members sought more details about how the provisions would work in practice, and were concerned about the effect of the changes on particular groups. The Minister often sought to reassure Members that their amendments were not necessary or would be addressed by regulations and/or the new SEN code of practice or that there would be further consideration of a matter in the light of the experience of the pathfinders.

Opposition Members voiced strong opposition to the measures proposed in part 4 of the Bill (clauses 73-76), introduced childminder agencies and reformed local authority duties relating to childcare. The Committee divided on two clauses (73 and 75) and also on two new clauses relating to staff:child ratios in childminding settings. The amendments and new clauses were defeated.

There was broad support for the measures to reform the Office of the Children's Commissioner for England (clauses 77-86), although there was a lengthy discussion, and

several amendments moved by Opposition Members, over how far that power should extend. None of the amendments were pressed to a vote.

There was general support in Committee for the shared parental leave and flexible working provisions in the Bill (clauses 87-104). The Government tabled technical amendments, all of which were agreed to without division. Amendments moved by the Opposition sought to extend the rights to parental leave and pay, and retain the right of appeal against an employer's refusal of a request for flexible working. All these were withdrawn.

1 Adoption and Looked After Children

1.1 Introduction

Part 1 of the Bill, **clauses 1 to 9**, make provisions relating to adoption and children in care. The Bill would require local authorities to consider a 'fostering for adoption' placement when placing a child for adoption, and remove explicit duties to consider a child's religious persuasion, racial origin and cultural and linguistic background when placing them for adoption. It would provide the Secretary of State with a power to direct local authorities to outsource their adoption functions.

The Bill would place new duties on local authorities to offer personal budgets and provide prospective adopters with information on their entitlements to support, and allow prospective adopters to search and inspect prescribed information about children who are being considered for adoption.

The Bill would allow local authorities to refuse contact between a child in care and the child's birth family if it would safeguard the child's welfare, and allow a court to make an order to permit or prohibit contact between a child who has been adopted or is being placed for adoption and their birth family.

The Bill would also require every local authority in England to appoint at least one officer employed by the authority to be responsible for the educational achievement of looked after children.

1.2 Second Reading debate

The Second Reading debate was introduced by the Parliamentary Under-Secretary of State for Education, Edward Timpson, who set out the Government's intentions for the Bill, drawing particular attention to the Government's desire to speed up the adoption process.[1]

Responding for the Opposition, shadow Education Secretary, Stephen Twigg, raised concerns about the Bill's proposal to remove the statutory requirement for the ethnicity of a child being placed for adoption to be considered in determining that placement.[2] Mr Twigg also questioned the possible impact of the reforms relating to parental involvement in a child's life on the 'paramountcy principle' that the welfare of a child should be the paramount consideration in all cases involving children;[3] Backbench Conservative Member Tim Loughton, the former Parliamentary Under-Secretary of State for Children and Families, stated that the clause on parental involvement had been worded to avoid these concerns.[4]

1.3 Committee Stage

Adoption

Lisa Nandy, the shadow Children's Minister, moved an amendment to **clause 1**, which would impose a duty on local authorities to, when considering placing a child for adoption, consider placing the child in a 'fostering for adoption' placement. The amendment, and several others discussed alongside it, tabled by Lisa Nandy and Sharon Hodgson, were, Lisa Nandy said, "designed to ensure that we do not tilt the playing field against the right placements and long-term outcomes for individual children. They would ensure that all placement options are considered, not just one,"[5] and aimed at putting stronger emphasis on children in care's contact with their birth families. The amendments were withdrawn after the Minister provided

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1 HC Deb 25 Feb 2013 c49
2 HC Deb 25 Feb 2013 c65
3 HC Deb 25 Feb 2013 c67
4 Ibid.
5 PBC, 5th sitting, 12 March 2013 c159

assurances that it will still be a requirement that preference is given to arrangements with the birth family.[6]

Clause 2 would remove the requirement on adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when making an adoption placement. Lisa Nandy moved an amendment to add consideration of a child's religious persuasion, racial origin and cultural and linguistic background to the 'welfare checklist' used in making adoption placements in England.[7] The amendment was tabled out of concerns, raised by Lisa Nandy, that the removal of these considerations from legislation would mean they were not considered at all when placements are being considered. The Minister opposed the amendment on the grounds that ethnicity should not be considered more important than a child's other characteristics.[8] Lisa Nandy withdrew the amendment, but expressed disappointment at the Government's position.[9]

Clause 3 would introduce a power for the Secretary of State to direct local authorities to make arrangements for their functions relating to adoption to be carried out by another local authority or by one or more voluntary adoption agencies. Lisa Nandy moved an amendment which stipulated that where the Secretary of State issues a direction to remove adoption functions from a local authority, he must set out reasons; that the direction should not come into effect prior to a review by the Secretary of State on application by the local authority concerned; and that the direction could be withdrawn entirely or in part if the Secretary of State was satisfied that the authority was taking steps to remedy the reasons for issuing the direction.[10] The Minister stated that the amendment was unnecessary, as the Secretary of State has to act fairly and reasonably in office, and authorities that did not believe they had been treated fairly had the remedy of judicial review available.[11]

Lisa Nandy withdrew the amendment, and acknowledged that the Government will set out what would constitute a fair process, but remained unconvinced that more safeguards could not be written into the Bill.[12]

Clauses 4 and 5 would place new duties on local authorities to consider requests for personal budgets and also to give prospective adopters information about their entitlements to support. These were discussed alongside a number of amendments from Opposition Members to extend these arrangements to other forms of care, and also a review of the under-occupancy reforms to Housing Benefit on foster and other carers.[13] The amendments were withdrawn.

Clause 6 allows for prescribed information about children who are being considered for adoption by an English local authority to be placed on the Adoption and Children Act register where the authority is considering adoption as an option for them, and enables prospective adopters to be able to search and inspect the register to identify a child they might want to adopt. Lisa Nandy moved an amendment to remove the clause's provision about children being put on the register prior to the decision "that adoption is the right course of action for them." Lisa Nandy also raised concerns that the clause as previously worded placed speed above the child's welfare.[14]

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6 PBC, 6th sitting, 12 March 2013 c196-197
7 PBC, 6th sitting, 12 March 2013 c199
8 PBC, 6th sitting, 12 March 2013 c207
9 PBC, 6th sitting, 12 March 2013 c208
10 PBC, 6th sitting, 12 March 2013 c208
11 PBC, 6th sitting, 12 March 2013 c215
12 PBC, 6th sitting, 12 March 2013 c216
13 PBC, 6th sitting, 12 March 2013 c218-220
14 PBC, 7th sitting, 14 March 2013 c239

In response, the Minister stressed the benefits of allowing prospective adopters to play a more active role in identifying children, and stated that the "regulations that we make will set out the detail of how approved adopters can access the register and what information they will have access to...I can assure colleagues now that the information available to approved adopters will not enable them to identify individual children."[15] The Minister further stated that draft regulations would be available by the time the Bill was considered in the House of Lords.[16] The amendment was subsequently withdrawn.

The Minister moved an amendment to **Schedule 1** to clarify that the reforms to the adoption register apply only to England. The Minister noted that the Scottish Government will introduce legislation in the Scottish Parliament to put that country's adoption register on a statutory footing, and that the Welsh Assembly Government plan to set up their own register as well. The amendment was agreed.[17]

Contact issues

Clause 7 would allow local authorities to refuse contact between a child in its care and the child's parents, guardians, or other specified persons with whom it would normally permit contact, if that contact would not safeguard and promote the child's welfare. Lisa Nandy and Sharon Hodgson moved an amendment which added siblings to the list of people with whom a local authority is required to allow a child in their care reasonable contact, where that contact is consistent with safeguarding and promoting the child's welfare. The Minister sought to assure Members that existing provisions in the *Children Act 1989* placed a duty on local authorities to "endeavour to promote contact" between all looked-after children, not just those in the care of the local authority, and any relative, including siblings.[18] The Minister also referred to additional provisions in regulations (*The Care Planning, Placement and Case Review (England) Regulations 2010*) designed to ensure that local authorities consider and review contact arrangements with siblings.[19] Lisa Nandy withdrew the amendment "in the expectation that [the Minister] will continue to consider how we can ensure that fewer children are needlessly separated from their siblings in the care system."[20]

Minor, consequential Government amendments to **clause 8** were agreed without debate.[21] Clause 8 was agreed to stand part of the Bill with no further amendments raised.

Education of Looked-After Children

Clause 9 would require local authorities in England to appoint an officer, employed by the authority, to make sure that the duty to promote the educational achievements of looked-after children is properly discharged. Such officers are often referred to as virtual head teachers. In effect, the clause would put the role of the virtual head teacher on a statutory footing. The Opposition supported the clause but wanted to explore whether virtual head teachers could have responsibility and involvement in how the pupil premium is spent, and how the clause would relate to academies and free schools. Clarification was also sought that the virtual head teacher's remit would go across authorities. Amendment 2, moved by Bill Esterson (and subsequently withdrawn), sought to make the virtual head teacher responsible for the way the pupil premium for looked-after children is spent. Amendment (18) tabled by Lisa Nandy and Sharon Hodgson sought to ensure that the remit of the virtual head teacher would apply to looked-after children in all schools receiving public funding, including academies,

15 PBC, 7th sitting, 14 March 2013 c241
16 Ibid.
17 PBC, 7th sitting, 14 March 2013 c244
18 PBC, 7th sitting, 14 March 2013 c246
19 Ibid.
20 Ibid.
21 PBC, 7th sitting, 14 March 2013 c249

and that the virtual head teacher would have responsibility for allocating the pupil premium for looked-after children.

Responding, the Minister said that the duty in clause 9 would apply in the same way whether the child was at a local authority maintained school or an academy. He clarified that the remit of the virtual head teacher goes across all looked-after children in their local authority area, but that it does not go across local authority areas. He referred to regional virtual head teacher networks, and said that such arrangements needed to be built on, so that as children move from one authority to another they are tracked properly.

On the use of the pupil premium for looked-after children, the Minister said that the wording in the 2013-14 pupil premium terms and conditions grant letter had been strengthened. This said that local authorities should ensure that virtual school heads work in partnership with designated teachers in schools on how the pupil premium should be used to the benefit of looked-after children. In relation to academies, the Minister noted that the academy trust would be required to publish information relating to the amount of pupil premium allocation it receives, what it intends to spend it on, and what it spent it on in the previous year. The academy would also publish information on the effect of pupil premium expenditure on educational attainment. He added that there were safeguards and conditions in place to monitor how the pupil premium is spent on looked-after children.[22]

2 Family Justice

2.1 Introduction

Part 2, **clauses 10 to 18**, makes provision for reform of the family justice system. The Bill would introduce a duty for courts to take into account that after separation both parents should continue to be involved in a child's life, provided that is consistent with the child's welfare; introduce a new child arrangements order to replace existing residence and contact orders; introduce a 26-week time limit for care and supervision proceedings and focus timetabling decisions for care proceedings on the child's welfare, and focus court consideration of a child's care plan on the permanent aspects of the plan.

2.2 Second Reading debate

Introducing the Bill's provisions on family justice reform, the Minister drew attention to the Bill's family justice reforms and to the introduction of time limits to care cases, the reforms to mediation services and the use of expert evidence in family courts.[23] Responding for the Opposition, Stephen Twigg stated that reform of the family justice system was "surely right,"[24] and agreed with the Parliamentary Under-Secretary of State that it takes too long for children in care to find a permanent placement.[25]

2.3 Committee Stage

Mediation

Lisa Nandy moved an amendment to **Clause 10** which would have enabled the court to hear a case without parents having first attended a family mediation information and assessment meeting (MIAM), if the court considered attendance at a MIAM to be unreasonable. Exemptions to the requirement to attend a MIAM would be set out in the Family Procedure

22 PBC 14 March 2013 cc252-60
23 HC Deb 25 Feb 2013 c54-55
24 HC Deb 25 Feb 2013 c61
25 Ibid.

Rules and she considered that other exemptions should be made when appropriate. She was concerned that members of the Committee had not seen a draft of the proposed rules.[26]

Edward Timpson said that the family procedure rules committee (FPRC), which would make court rules under the powers in the clause, would be invited broadly to replicate the exemptions applicable under the existing protocol. It was intended that the domestic violence exemption would be widened, using the criteria which apply to obtaining legal aid. He gave the Committee a commitment about exemptions:

> we intend to invite the committee to make rules under the clause that enumerate domestic violence as one of the grounds for exemption. We intend that the other grounds for exemption that will be specified in rules will also include, as at present: urgency, where there is a risk to the life, liberty or physical safety of the applicant or their family, or when any delay would cause a risk or significant harm to a child; miscarriage of justice; and when social services are involved.[27]

The Minister also commented on the timing of the new rules:

> we intend that the MIAM provision will come into effect as soon as possible following Royal Assent. The FPRC would need to have drafted the rules by early 2014, or by autumn this year if, as we anticipate, it intends to consult on them. The FPRC would then take into account the current MIAM exemptions and their operation through consultation. Although whether or not to consult is the FPRC's decision, I would, given the importance of the matter, expect my officials to be asked for a view. I will ask them to stress the desirability of consulting.[28]

The amendment was withdrawn.

Lisa Nandy moved a further amendment (later withdrawn) relating to the quality of mediators. She considered that all mediators ought to have certain minimum training.[29] The Minister said the Government agreed that only trained family mediators should carry out a MIAM and had recently asked the President of the Family Division to revise the existing pre-application protocol from April 2013, to make it explicit that the family mediator conducting the MIAM must be approved by the Family Mediation Council.[30]

Parental Involvement

Clause 11 would introduce a duty for courts to take into account that both parents, after separation, should continue to be involved in a child's life, provided that is consistent with the child's welfare. An Opposition amendment aimed to clarify that "involvement" in this context would mean any kind of direct or indirect involvement that promotes the welfare of the child, but should not be taken to mean any particular division of a child's time. Lisa Nandy also moved New Clause 13 which added "the quality of the relationship that the child has with each of his parents, both currently and in the foreseeable future" to the definition of the 'welfare checklist' for cases involving children set out in section 1 of the *Children Act 1989*.[31]

In responding the Minister noted that the amendment was designed to make explicit the fact that "involvement" does not mean a particular division of a child's time, and stated that:

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26 PBC Deb 14 March 2013 cc260-1
27 PBC Deb 14 March 2013 cc262
28 PBC Deb 14 March 2013 c269
29 PBC Deb 14 March 2013 cc263-6
30 PBC Deb 14 March 2013 c269-70
31 PBC, 8th sitting, 14 March 2013 c270

> We have used the word "involvement" in clause 11 as the simplest, most neutral means of expressing the full spectrum of ways in which a child can have a relationship with their parents, and our debate has demonstrated how difficult it is to try to define precisely what involvement means. If we try to do that, as my hon. Friend the Member for South Swindon said, we are in danger of fettering discretion. Section 8 orders provide no strict definition of contact; they give a wider definition that is not as detailed and prescribed as the one proposed in amendment 23. The courts will use their discretion in each case to make decisions about the type and level of involvement following consideration of all the evidence. Ultimately, the involvement a parent may have in their child's life will be determined by the welfare principle in section 1 of the 1989 Act and, where the decision is about contested section 8 orders, the facts in the welfare checklist in that Act.[32]

The Minister had earlier stated, referring to New Clause 13, that the proposition to add a provision of this kind to the welfare checklist had been considered in the consultation on parental involvement that had informed Clause 11, and had been "the preferred option of less than a quarter of those who responded, whereas just over half chose the approach of a presumption [in favour of parental involvement provided it is consistent with the child's welfare], which [the Government] have adopted in the Bill."[33]

Lisa Nandy withdrew the amendment, to provide an opportunity for the measure to be further considered.[34]

Child Arrangements Orders

Clause 12 would introduce a new child arrangements order to replace existing residence and contact orders. Lisa Nandy moved amendments aimed at clarifying the ways in which the new orders will be understood by foreign jurisdictions in international contact cases.[35] In responding, the Minister noted that "information, through the Ministry of Justice, would be disseminated to other states, so that there is a clear understanding of the implications of our legislative changes."[36] The amendments were withdrawn.

Expert Evidence

Lisa Nandy moved an amendment to leave out from **Clause 13** sub-section (5), (the sub-clause would require the court to give permission for expert evidence to be put before the court in children proceedings). The amendment was considered with another amendment and a new clause.[37] She said that she supported the thrust of what the Government was trying to achieve but wanted some assurances from the Minister that the test would not be applied too strictly. She also wanted to ensure that if needed, experts were commissioned early and that social workers should be supported.

The Minister spoke of the court's existing case management powers; and about what was being done to improve training and support for social workers. The amendment was withdrawn.

Care Proceedings: Time Limits

Clause 14 would introduce a 26-week time limit for care and supervision proceedings. An Opposition amendment was aimed at giving courts additional flexibility to extend the time

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32 PBC, 8th sitting, 14 March 2013 c292
33 PBC, 8th sitting, 14 March 2013 c290
34 PBC, 8th sitting, 14 March 2013 c296
35 PBC, 8th sitting, 14 March 2013 c296
36 PBC, 8th sitting, 14 March 2013 c299
37 PBC Deb 14 March 2013 cc299-306

limit where the court considered it necessary to do so.[38] Lucy Powell spoke to amendment 33, tabled in her name, which inserted into the clause that cases may be extended if an extension is necessary for the court to promote the child's welfare.[39] The Minister stated that timetabling of a case is a matter for the court to deal with, and that "decisions to extend the time limit will not usually require an additional hearing; they will be dealt with, as far as possible, during the hearings already scheduled for the case."[40] The amendment was withdrawn.

Care Plans

Clause 15 would make it explicit in law that, when the court considers a care plan, it should focus on those issues that are essential to its decision about whether to make a care order. Lisa Nandy moved an amendment which sought "to ensure that the child's and birth family's wishes are taken into account when a fundamental change is made to the care plan."[41] The Minister responded that legislation and guidance already requires local authorities to consult children, their parents or other relevant people, before making any decision regarding a child, and that includes any fundamental change to the child's care plan, meaning that the amendment was not required.[42] The amendment was withdrawn.

Lisa Nandy moved two further amendments to Clause 15. The first (31), added sibling placements to the permanence provisions that must be considered by a court deciding whether to make an order under Clause 15. Lisa Nandy said that "Amendment 31 is designed to ensure that courts look specifically at the situation of siblings, which is vital to children's long-term interests, and do not interpret the change in legislation to mean that they cannot look at wider aspects of children's care plans."[43]

The second amendment (32) amended Clause 15 to provide that the remainder of the care plan, additional to the permanence provisions, would be considered if it was necessary to assess the permanence provisions, taking into account the circumstances involved and the promotion of the child's welfare.[44]

The Minister responded regarding Amendment 31:

> Where a child and his or her siblings are being accommodated by the local authority, the authority should ensure that the placement of the child enables the child and his or her siblings to live together where that is reasonably practicable and consistent with the child's welfare. That is consistent with the longer and more detailed debate about sibling contact we had when we began our scrutiny of the Bill. Clearly, in certain cases it may be necessary for the court to consider the local authority arrangements for the child to live with his or her siblings. I referred earlier to the range of cases that I was involved in, in which there were all sorts of complex sibling relationships, and the court, out of necessity, to ensure that the welfare of the children was paramount, had carefully to consider the sibling contact arrangements in the care plan. That flexibility remains, and there is nothing to prevent the court from carrying out more detailed analysis and scrutiny of any aspects of the care plan if it feels that that is in the best

38 PBC, 9th sitting, 19 March 2013 c309-310
39 PBC, 9th sitting, 19 March 2013 c312
40 PBC, 9th sitting, 19 March 2013 c316
41 PBC, 9th sitting, 19 March 2013 c318
42 PBC, 9th sitting, 19 March 2013 c319
43 PBC, 9th sitting, 19 March 2013 c321
44 PBC, 9th sitting, 19 March 2013 c320

> interests of the child. Given that flexibility, there is no reason to add any explicit reference to sibling placements.[45]

In responding to Amendment 32, the Minister stated that "the clause already allows the court to consider the full section 31A plan should it need to. When deciding whether to make a care order, the child's welfare will be the court's paramount consideration, and in making such a decision, should the court specifically need to consider an aspect of the care plan other than the permanence provisions, it will be able to."[46]

Lisa Nandy welcomed the Minister's response but stated that she was still concerned about sibling placements and their importance to children, and in particular a child's sense of permanence.[47] She therefore pressed Amendment 31 to a vote. The Committee divided, with 8 Aye votes and 12 Noes. The Question was accordingly negatived, and Clause 15 was ordered to stand part of the Bill.

Clauses 16-18 were ordered to stand part of the Bill without debate.

3 Special Educational Needs

3.1 Introduction

Part 3, **clauses 19 to 72**, of the Bill, as presented, make provision for identifying children and young people with special educational needs (SEN), assessing their needs and making provision for them. The provisions extend to England and Wales, but most of the provisions will operate mainly or exclusively in England.

Overview of the proposed new statutory framework for SEN

In England, the current dual system of SEN statements for children and Learning Difficulty Assessments for 16 to 25 year olds would be replaced by a new single system of birth-to-25 assessments and Education, Health and Care Plans (EHC Plans). This would give extended rights to young people in further education and training comparable with current statutory protections associated with SEN statements. There would be new requirements for local authorities and health services to plan and commission education, health and social care services jointly, and for co-operation between local authorities and a wide range of partners, including schools and colleges. Local authorities would be required to publish a 'local offer' of the support available for children and young people with SEN, and to involve children, their parents and young people in reviewing and developing the local offer.

The current right of parents of children with SEN statements to express a preference for a school would be extended to young people, and the range of institutions for which a preference could be expressed would be widened to include academies, further education and sixth form colleges, and independent special schools and independent special colleges approved for this purpose by the Secretary of State. Parents of children and young people who have an EHC Plan would be offered a personal budget to enable them to have greater control over the support they need.

The current right of appeal to the First-tier Tribunal would be extended to young people with SEN up to the age of 25. If a parent or young person wishes to appeal to the First-tier Tribunal against decisions made by the local authority in relation to assessments and EHC Plans there would be a requirement for them to consider mediation first; however, whether to enter into mediation would be voluntary. The Secretary of State would be empowered to

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45 PBC, 9th sitting, 19 March 2013 c322-323
46 PBC, 9th sitting, 19 March 2013 c323
47 PBC, 9th sitting, 19 March 2013 c324

establish pilot schemes to enable children to make appeals in their own right to the First-tier Tribunal.

Provision is made for the detailed requirements of particular provisions to be set out in regulations, and a statutory code of practice would provide guidance on the new framework for SEN.

The Bill follows consultation on the proposals, and pre-legislative scrutiny of draft provisions carried out by the Education Committee. Responding to concerns, the Government made significant changes to the draft legislation, and gave various assurances, including the assurance that it would provide as much detail as possible on the proposed regulations and the new code of practice during the Committee Stage of the Bill. Library Research Paper 13/11, written for the second reading debate, provides further background.

The Bill's main clauses on SEN

Clause 19 sets out the general principles that local authorities, in exercising their functions under Part 3 of the Bill, would be required to have regard to the views, wishes, and feelings of the child and their parents, or the young person, and to enable them to participate in as fully informed way as possible in decision-making, with a focus on achieving the best possible educational and other outcomes.

Clauses 20 to 24 cover the definitions of special educational needs, and special educational provision, healthcare provision and social care provision, and set out duties to identify children and young people with SEN.

Clauses 25 to 32 make provision for local integration of education, health and care provision, joint commissioning arrangements, the duty to keep education and care provision under review, duties relating to co-operation between local authorities and partners and requirements on other bodies to co-operate in the delivery of their duties. **Clause 30** makes provision for a 'local offer' of provision for children and young people with SEN. Under **clause 32** local authorities would be required to ensure there is advice and information available locally for parents and young people.

Clauses 33 to 35 relate to inclusion in mainstream education.

Clauses 36 to 49 make provision for education, health and care needs assessments and EHC Plans. When preparing a draft Plan, the local authority would be required to consult with the child's parents or the young person. Parents or young people would have the opportunity to request that a particular school, further education college, or other institution be named in the Plan. **Clause 38(3)** lists the types of institutions that may be requested. **Clause 41** empowers the Secretary of State to approve independent schools that are specially organised to make special educational provision for children with special educational needs, and special post-16 institutions. Provision is made for reviews of an individual's Plan and for re-assessments. **Clause 45** sets out the circumstances in which a local authority may stop maintaining a Plan. Under **clause 46** local authorities have the power to maintain a Plan for a young person until the end of the academic year in which they become 25. **Clause 47** makes provision where a child or young person, who previously had a Plan, is released from custodial sentence.

Clause 48 requires a local authority to prepare a personal budget if asked to do so for a child or young person for whom it maintains an EHC Plan or for whom it has decided to make a Plan.

Clauses 50 to 55 relate to appeals, mediation and dispute resolution.

Clauses 56 to 65 replace and extend various provisions contained in the *Education Act 1996*. These include powers to arrange special educational provision otherwise than in a school, college or provider of relevant early years education; to supply goods and services to institutions that are likely to be attended by children and young people with an EHC Plan; requirements for Special Educational Needs Co-ordinators (SENCOs); and, matters relating to the collection and publication of special needs information.

Clauses 66 and 67 relate to the code of practice on SEN and set out the procedure for making and approving a code of practice.

Clauses 68 to 72 and **Schedule 3** contain supplementary provisions relating to parents and young people lacking mental capacity, detained children and young people, consequential amendments contained in Schedule 3, definitions, and general provisions including commencement, extent etc.

3.2 Second Reading debate

The Bill was given a second reading on 25 February 2013 without a division. Stephen Twigg, Shadow Education Secretary, noted aspects of the proposals that Labour supported, including the change from SEN statements to EHC Plans, the extension of the arrangements to young people up to age 25, and the encouragement of joint working between different agencies in drawing up EHC Plans. He also welcomed changes that had been made to the draft provisions for access to independent special schools and colleges, and the extension of EHC Plans to young people in apprenticeships.

However, he said that what was striking about the Bill was not so much what it contained but what it did not. He said that the Bill as presented would need to be changed to meet the high expectations of the legislation. In particular, he said that the Opposition would press for stronger requirements on health and social services throughout the Bill, as well as strengthening the arrangements for those in post-19 education. Mr Twigg highlighted the Education Committee's comments relating to disabled children, and called on the Government to make provision for disabled children and young people, whether or not they have SEN, to be covered by EHC Plans. Commenting on the proposed new SEN code of practice, he observed that the Bill would require it to be subject to the negative resolution procedure but, he argued, it should be subject to the affirmative procedure given the importance of its contents. He asked when the Code would be published.[48]

Responding, Edward Timpson, the Parliamentary Under-Secretary of State for Education said that a draft indicative Code of practice on the proposed new system would be published in time for the committee stage.[49] The draft indicative Code and indicative draft regulations (along with other background information) were published on the DFE Children & Families Bill website.

While there was support for many aspects of the proposed changes, there were calls for more information, a strengthening of the provisions, and clarification of the arrangements for particular groups, such as those with autism, and the blind and partially sighted. Graham Stuart, chair of the Education Committee, asked what would be available for pupils with low to moderate SEN, particularly those with speech, language and communication needs. Mr Graham asked the Government to look again at the position of disabled children without SEN[50] Other issues raised included: the local offer and the need for a common framework to underpin it; health and social care provision; joint-commissioning; post-16 provision, and in

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48 HC Deb 25 February 2013, cc 63-4
49 HC Deb 25 February 2013, c64
50 HC Deb 25 February 2013, c83 and 84

particular support for 19 to 25 year olds who drop out of education; and the position of those in youth custody.

3.3 Committee Stage

The following notes the main changes made to the SEN provisions during the PBC, the matters on which the Committee divided, and the main areas of debate. It does not cover every issue raised or every amendment tabled. All the references to clauses are to those contained in the Bill (Bill 131), as presented, and considered in Committee.

The detailed scrutiny of **clauses 19 to 72** and **schedule 3** took place during the ninth to sixteenth sittings. Edward Timpson, the Parliamentary Under-Secretary of State for Education, gave the Government's views, and Sharon Hodgson, Shadow Minister of State for Children and Families, led for the Opposition.

At the opening sitting of the PBC on 5 March 2013, Edward Timpson said that the Government intended to amend the Bill to address concerns about the lack of accountability of health bodies to secure services specified in EHC Plans. A DFE Press notice dated 5 March 2013 noted the proposed changes that would be made to the Bill to provide the new health duty: *Children and young people with special educational needs to benefit from new legal health duty*. The Minister explained that the new duty would mean that clinical commissioning groups (i.e. GPs who plan local health services) would by law have to secure services in EHC Plans for children and young adults. He noted that this would include specialist services like physiotherapy, and speech and language therapy.

3.4 Government amendments

New duties on health commissioners

The Government introduced a series of amendments to impose a new duty on health commissioners to deliver the health care provision specified in EHC plans. In addition, the amendments clarified the scope of joint commissioning and what the responsible commissioning bodies are. The first series of changes were made in the 10th and 11th sittings of the PBC on 19 and 21 March 2013, and were contained in Government amendments 55 and 56[51], and 57 to 61.[52] The amendments related to **clause 21** (defining special educational provision, health care provision and social care provision), **clause 26** (joint-commissioning arrangements), and **clause 28** (co-operating generally: local authority functions).

The Minister said that amendments 55 and 56 were technical, and amended the definition of the health care provision that may be included in EHC Plans. He explained that

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

51 PBC 19 March 2013 cc 370-73

52 PBC 19 March 2013 cc 387-392 and c400; PBC 21 March 2013 cc 415 and 421

> therefore confident that the duty on health commissioners will make a real difference to the lives of children, young people and parents.[53]

The Minister explained Government amendments 57, 58, 59, 60 and 61 as follows.

> **Mr Timpson**: Government amendments 57, 58, 59, 60 and 61 support the new duty on health commissioners to arrange the provision of health care services in education, health and care plans. I have spoken previously about the importance of that duty and the positive impact it will have on children, young people and their parents. The amendments on joint commissioning are crucial to ensuring that the duty on health commissioners operates effectively from a strategic planning and commissioning perspective, as well as ensuring that the individual needs of children and young people are met. That is at the heart of these reforms and, as the chief executive of the Council for Disabled Children said in her evidence to this Committee:
>
> > "We were really pleased to get the joint commissioning duty as outlined in the Bill…Now having a duty on health cements that down from a general to an individual level."—[Official Report, Children and Families Public Bill Committee, 5 March 2013; c. 46, Q102.]
>
> Amendments 57 and 59 clarify which commissioning bodies are involved in joint commissioning. Amendment 57 leaves out the words "clinical commissioning groups" and replaces them with "commissioning bodies". Amendment 59 inserts new text to define commissioning bodies. The local authority's partner commissioning bodies are defined to include the NHS Commissioning Board[54], as well as the individual clinical commissioning groups. I put on record my huge gratitude to Ministers in the Department of Health. They have worked closely with my Department to ensure the clear and concise drafting of this part of the Bill, so that it accurately reflects what we want to achieve right across the commissioning duties of health bodies. That will cover circumstances in which the board is responsible for commissioning services directly, such as low-incidence, high-need specialist services, and particular groups for whom it has commissioning responsibility, such as the children of members of the armed forces.
>
> Each clinical commissioning group that is under a duty to arrange the provision of services and facilities under the National Health Service Act 2006 will be a partner commissioning body. We have added a power to provide in regulations that a clinical commissioning group is not to be treated as a partner in certain circumstances. That allows us to reflect the limited set of circumstances in which a clinical commissioning group has a statutory duty to commission services that are not relevant for joint arrangements, such as the commissioning of emergency care services.
>
> Amendments 60 and 61 update the co-operation duties to make them consistent with the amended joint commissioning provisions. Amendment 60 updates the general co-operation duties so that the definition of partner clinical commissioning groups is consistent with the definition, as amended by amendment 59. Amendment 61 adds a new provision to the general co-operation duties. That will make it consistent with the regulation-making powers in the joint commissioning clause, as amended by amendment 59.
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> Amendment 58 clarifies the range of children and young people to be covered by the joint commissioning arrangements. Joint commissioning must include arrangements for considering and agreeing the education, health and care provision reasonably required

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53 PBC 19 March 2013, cc372

54 This is now called NHS England

> by children with the learning difficulties and disabilities that result in their having special educational needs. The amendment is consistent with the amendment made to clause 37 on education, health and care plans.[55]

A further series of Government amendments relating to the new 'health duty' of health commissioners was agreed to. The Minister explained Government amendment 62 to **clause 37** (Education, Health and Care Plans) as follows.

> Members will no doubt recall that when I introduced amendments 55 and 56, I talked about my intention to introduce a duty on health commissioners to arrange for the health care provision specified in the EHC plan, and I explained how the amendment addresses parents' long-standing concerns about the lack of accountability on health bodies for the provision specified in statements of special educational needs. I explained that, in my view, the creation of a new EHC Plan and the new joint commissioning requirement has provided a unique opportunity to address that concern.
>
> The duty on health commissioners has been warmly welcomed. Amendment 62 is one of a series of Government amendments relating to that duty. It amends clause 37(2), which sets out what an EHC plan may specify. The health and social care provision to be specified in the plan is provision that is reasonably required by the learning difficulties and disabilities that result in the child or young person having special educational needs. The amendment is consistent with amendment 58, which relates to the provision that the joint commissioning arrangements must include.
>
> The amendment also makes it clear that local authorities and health commissioners may include additional health or social care provision in plans if it makes sense to do so. For example, if a child with a plan for their significant dyslexia developed an unrelated illness, it might make sense for them, their parents and the professionals supporting them to co-ordinate their care through the plan. That is a common-sense, child-centred approach.[56]

The purpose of Government amendments 63, 64, and 65 to 67 to **clause 42** (duty to secure special educational provision in accordance with the EHC Plan) was outlined as follows.

> **Mr Timpson**: The Government amendments are designed to support the new duty on health commissioners to arrange the provision of the health care services in EHC plans. We discussed this in detail in a previous sitting and earlier this morning. Amendment 63 makes clear the circumstances in which the duty applies, when a local authority maintains an EHC plan for a child or young person. Amendment 64 provides that where a plan specifies health care, the responsible commissioning body must arrange that provision.
>
> Amendments 65 and 66 make clear when a duty on health commissioners does not apply. That happens when parents or young people have made suitable alternative arrangements to cover all or part of the health care provision specified in the plan. That means that the duty can be disapplied wholly or partially. That is consistent with arrangements where parents or young people make alternative arrangements for special educational provision specified in a plan. Amendment 67 clarifies that "specified" means specified in the plan for the child or young person.[57]

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55 PBC 19 March 2013, cc387-8
56 PBC 16 April 2013, cc 495-6
57 PBC 16 April 2013 cc 509-518

Appeals

Government amendment 221 to **clause 50** (appeals) provides for fines to be imposed up to a level three on the standard scale - £1,000 – if someone fails to comply with a summons issued by a First-tier Tribunal.[58]

Supply of goods and services

Government amendment 222 to **clause 59** (supply of goods and services) was described as a minor and technical amendment designed to remove an ambiguity as to who could supply goods and services. It makes clear that a local authority may supply goods and services to a Welsh local authority to assist in making SEN provision for an English child who is receiving relevant early years' education in Wales.[59]

Special Educational Needs: Consequential Amendments

Several Government amendments (227 to 239 and 264) were made to **Schedule 3** of the Bill (Special Educational Needs: Consequential Amendments). The Minister explained their purpose as follows.

> **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.[60]

Robert Buckland (Conservative) asked the Minister to set out the DFE's thinking on the transition from the current SEN system to the new system. The Minister said that he was fully committed to ensuring that there was a smooth transition. He said that he was aware that there had been concern that once Schedule 3 comes into force, existing statements could lose their legal status until replaced by an EHC Plan; however, he said he was 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'.[61]

Schedule 3, as amended, was agreed.[62]

3.5 Divisions

Few amendments relating to the SEN clauses were pressed to a division in PBC.

Amendment 143 to **clause 48** (Personal budgets), tabled by Sharon Hodgson, was pressed to a division and was negatived.[63] The amendment had sought to ensure that the provisions relating to personal budgets would not be brought into force unless the Order was made

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58 PBC 16 April 2013 cc 546-551
59 PBC 16 April 2013 cc 554-555
60 PBC 18 April 2013 c606
61 PBC 18 April 2013 cc 607-8
62 PBC 18 April 2013 c614
63 PBC 16 April 2013 cc538-42

subject to the affirmative resolution procedure, and that before making an Order a report would be laid before Parliament detailing the findings from the pathfinder authorities, and would have to include coverage of certain matters (listed in the proposed amendment). Sharon Hodgson explained that the Opposition did not want to vote against the clause itself but wanted to be sure that after the extended pilot period and the evaluations, concerns would be addressed before the arrangements were introduced across the country. The Minister resisted the amendment, and said that the Government would continue to develop the regulations as the Bill progressed through Parliament, taking account of the implementation lessons of the pilot scheme, and would address issues as they arose. He also said that the Government would consider whether to amend the clause in the light of the changes to impose a duty on health commissioners, and would bring forward an amendment at Report stage, if necessary.[64]

There were two other divisions during consideration of the SEN part of the Bill. One was in relation to a discussion about whether the Committee should adjourn on 21 March 2013. The purpose was to explore whether there would be sufficient time for appropriate scrutiny of the parts of the Bill not yet reached. After reassurances from the Minister that he would be happy to extend the future sittings, the Committee agreed to adjourn that sitting.[65] Programme Motion (No 2) provided for the PBC to finish on 25 April 2013 (not on the 23 April, as originally intended).

Another division was on whether **clause 69** (Part does not apply to detained children and young people) should stand part of the Bill. The Minister explained that the SEN reforms are designed to support those with SEN in the wider society, and that it would not be practical to impose duties on local authorities that they could not deliver in relation to children and young people who were in custody; however, he stressed that the Government was committed to supporting young offenders, including those with SEN, and he went on to outline how that would be achieved. Sharon Hodgson unsuccessfully sought to introduce new clause 22 to apply Part 3 of the Bill to detained children and young people. There was a division on clause 69 stand part of the Bill. The Committee voted by 9 votes to 7 for clause 69 to stand part of the Bill.[66]

3.6 Non-Government amendments discussed

During the PBC the only amendments made to the SEN provisions in the Bill were Government amendments; however, many amendments were tabled including those that were withdrawn after discussion. The Minister sought to reassure Members that their proposals were not necessary or would be addressed by regulations and/or the new SEN code or that there would be further consideration of a matter in the light of the experience of the pathfinders. On some issues the Minister said that he would reflect further.

The following notes some of the main issues raised; however, it is not intended to be a comprehensive account of all the amendments tabled nor a verbatim account of what was said on particular amendments. Unless otherwise stated, amendments that were moved were withdrawn after discussion. References to the relevant debate are included. Government amendments are not covered below as they are dealt with in the section above.

Local authority functions: general principles

Moving amendment 68 to **clause 19**, Sharon Hodgson welcomed the Government's amendments to strengthen the Bill's requirements relating to health provision. However, she said that there was an omission in not requiring NHS bodies to abide by the overarching

64 PBC 16 April c540
65 PBC 21 March 2013 c488
66 PBC 18 April 2013 c602

principles set out in clause 19 as to how they should discharge their duties under part 3 of the Bill. There followed a wide-ranging debate including discussion about the role and funding of educational psychologists. Addressing Sharon Hodgson's amendment, the Minister said that it was unnecessary to place additional, parallel responsibilities on NHS bodies because duties already require them to apply similar principles when delivering health services. In addition, he noted that under clause 25 of the Bill local authorities would have a duty to integrate special educational provision with health and social care in a way that would promote the well-being – including social and emotional well-being – of children and young people; and that the joint commissioning duty would require local authorities and their health partners to consider and agree the provision reasonably required by children and young people. The Minister also said that these matters were covered by the indicative code of practice. Sharon Hodgson withdrew amendment 68.[67]

Sharon Hodgson moved amendment 69 to clause 19 which sought to ensure that the well-being of children and young people would be central to the SEN reforms. The Minister agreed with the aim but said that the matter would be addressed by clause 25, which would require local authorities to consider well-being in promoting the integrated delivery of education, health and social care services. In addition, he said clause 65 would provide for the collection of information that would assist the Secretary of State in improving the well-being of children and young people with SEN. Although Sharon Hodgson was disappointed that the Minister did not accept her argument, she withdrew the amendment.[68]

Definition of special educational needs

Opposition amendments 71 and 72 proposed that the definition of special educational needs in **clause 20** be broadened to reflect the wider definition of disability in section 6 of the *Equality Act 2010*, and to specifically include a reference to long-term health conditions that affect the ability to access the same learning opportunities as others. In addition, Sharon Hodgson tabled new clause 19, which sought to place a specific duty on the governing bodies of mainstream schools to produce and implement a medical conditions policy that would define how they would support the needs of children with specific health conditions. There were several other amendments in the group that related to disabled children and young people, and these sought to amend clauses 26 and 27 (about joint commissioning and keeping provision under review), and clause 36 (about eligibility for an EHC needs assessment).[69]

The Minister explained why, in his view, the amendments were unnecessary. Amongst other things, he highlighted existing duties placed on schools in relation to disabled pupils through the *Equality Act*; noted that the code of practice would bring together all the duties for disabled children; and pointed to existing guidance for schools on supporting children with medical needs. He also referred to Government amendments to make clear that joint commissioning arrangements must include arrangements for considering and agreeing the needs that are reasonably required to be met where there are learning difficulties and disabilities that result in children and young people having SEN.[70] Sharon Hodgson said that bringing children with disabilities, who do not have SEN, within the scope of the Bill would not result in additional burdens or costs. While she recognised that the code of practice would bring together in one place the existing duties for such children, she believed that it was desirable to have that in the Bill; however, she said that she accepted the Minster's assurances 'for now', and withdrew amendment 71.[71]

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67 PBC 19 March 2013 cc324-337
68 PBC 19 March 2013 cc337-346
69 PBC 19 March 2013 cc 347-48
70 PBC 19 March 2013 cc347-362
71 PBC 19 March 2013 cc361-2

The Minister was also not persuaded by new clause 29, tabled by Annette Brooke, which sought to ensure that local authorities identify, and think strategically about the needs of blind and partially sighted children and young people. He stressed that the proposed SEN framework would require local authorities to plan for, and meet, the needs of children with SEN, including blind or visually impaired children and young people; however, he said that he would reflect further on the matter.[72]

Definitions of special educational provision, healthcare provision and social care provision

Robert Buckland (Conservative) moved amendment 189 to **clause 21**. The purpose of the amendment was to include in the definition of special educational provision such provision that is additional to, or different from, that made by private, voluntary and independent early years settings as well as home-based early years provision. He explained that the purpose was to ensure that children with visual impairment who have SEN are included in arrangements for EHC Plans. Other amendments in the group related to early years provision, and included a probing amendment about Special Educational Needs Co-ordinators (SENCOs) in early years provision.[73]

Identifying children and young people with special educational needs

Various probing amendments were tabled in relation to **clause 22**. Robert Buckland moved amendment 195 which sought to ensure that local authorities identify children and young people with SEN as soon as possible. The Minister said that the benefits of early identification were widely recognised. He referred to extracts from the indicative code of practice, and to work currently being undertaken to move to integrated checks of two-year-olds carried out by early years' practitioners, and the health visitor checks.[74]

Duties of health bodies to bring certain children to the local authority's attention

Robert Buckland moved amendment 206 to **clause 24**. He explained that clause 24 would place a new duty on health services to inform the relevant local authority if a child under compulsory school age may have SEN, and that his amendment would extend that duty to apply to all children or young people who may have special educational needs, regardless of age. He said that he was particularly concerned about deaf children. Responding, the Minister referred to the single integrated checks, and sought to assure Members that the provisions in the Bill would support the identification of children's SEN, and make the amendment unnecessary.[75]

Promoting integration

Amendment 187, moved by Robert Buckland sought to amend **clause 25** to ensure that children and young people living outside the local authority area, but for whom the local authority is still responsible, benefit from the promotion of integration between special educational provision, healthcare provision and social care provision where this would promote the well-being of children and young people. Another amendment (198), tabled by Annette Brooke, sought to add to the definition of well-being in order to underline the importance of communication, literacy and language skills in the development and well-being of children. The Minister sought to reassure Members that the amendments were not needed as he thought the matters were already covered.[76]

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72 PBC 19 March 2013 c361
73 PBC 19 March 2013 cc 362-369
74 PBC 19 March 2013 cc 373-378
75 PBC 19 March 2013 cc 378-380
76 PBC 19 March 2013 cc 382-5

Joint commissioning arrangements

Various amendments were proposed to the joint commissioning arrangements contained in **clause 26**. (N.B. Government amendments are covered in the section above). The Opposition tabled amendment 74 which proposed extending the remit of joint commissioning to any other provision deemed necessary to meet the special educational, health or social care needs of a child or young person. The Minister said that the joint commissioning duty in the Bill had been drawn up to concentrate on children and young people with SEN, but that there were existing general requirements to carry out joint strategic needs assessments, and to commission on that basis, which cover wider health and social care services. He said that there was nothing that precluded joint commissioning arrangements to cover other services.[77]

Amendment 47, tabled by Robert Buckland, sought to amend clause 26 so that the joint commissioning arrangements would cover disabled children who do not have SEN. The Minister emphasised that the focus of the Bill was to address problems in the SEN system. He said that arrangements would still be in place for children without SEN to have their needs considered. He observed that disabled children without an EHC Plan would still receive services to meet their health and care needs under other legislation, namely, section 17 of the *Children Act 2004*, section 3 of the *National Health Service Act 2006* and the *Equality Act 2010*.[78]

Annette Brooke raised the relationship between the local offer and the joint commissioning arrangements (amendment 199). The Minister said that the intended relationship is that 'the local offer should reflect the services arranged through the joint commissioning arrangements by providing information on the services covered under those arrangements.' He said that the relationship had been clearly explained in section 4.4 of the indicative code of practice.[79]

Robert Buckland moved amendment 204 to add to clause 26 a requirement on local authorities to consider, when they are procuring services, how they can encourage a diversity of education provision and non-discrimination between maintained and non-maintained schools. The Minister said that he shared the aims of the amendment, and he outlined the measures in place to encourage a diverse range of schools for children with special educational needs.[80]

Various other probing amendments to clause 26 were tabled including amendments that sought to clarify the links between joint-commissioning and health and well-being boards; to highlight the importance of providing services for children and young people with low-incidence SEN[81]; and to ensure that the planning and commissioning of services are transparent.[82]

Review of education and care provision

Sharon Hodgson moved amendment 78 to **clause 27** to extend local authorities' duties so that they not only keep under review education and social care provision but also health care provision. The Minster said that since local authorities are not directly responsible for health provision the amendment would impose a duty of review on them when they had neither the duties nor powers to secure such provision. However, he said that this did not mean that

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77 PBC 19 March 2013 c390
78 PBC 19 March 2013 c391
79 PBC 19 March 2013 c391
80 PBC 19 March 2013 cc 396-7
81 The term 'low incidence' is used to describe needs that occur less frequently and may require a more specialised response - for example, severe multi-sensory impairments and profound and multiple learning difficulties
82 PBC 19 March 2013 cc 392-400

health care provision for children and young people with SEN should not be subject to regular review. He noted that the Bill already made provision for joint commissioning arrangements. Before withdrawing her amendment, Sharon Hodgson said that although she took on board the point that local authorities are not responsible for health provision, nevertheless, she felt that there should be something in the Bill to address the issue she had raised.[83]

(Government amendments relating to health commissioners are covered in the section above.)

Other amendments proposed to clause 27 included:

Amendment 80, moved by Sharon Hodgson, which sought to place a requirement on local authorities to include independent special schools and independent specialist providers in their review of provision outside their area, when those institutions had been approved by the Secretary of State under clause 41. The Minister considered that this was not necessary, and the amendment was withdrawn.[84]

Amendment 193, tabled by Robert Buckland, sought to include the governing bodies, proprietors or principals of independent special schools and special post-16 institutions, approved by the Secretary of State under clause 41, in the list of people and organisations that the local authority must consult when reviewing its provision.[85]

A group of amendments (50, 81, 82, and 83) were concerned with ensuring that provision, and funding for provision, would be sufficient. Some Members highlighted provision for deaf children and young people, and those with low incidence SEN.[86]

Co-operating generally: local authority functions

Various amendments were proposed to **clause 28**. (Government amendments 60 and 61 are covered in the section above). Sharon Hodgson sought to require early years free entitlement providers to co-operate with local authorities (amendment 84). The Minister said it was important for local authorities to work with early years providers to meet the needs of young children with SEN but, he noted that the early years sector is large and that many providers are in the voluntary and private sector. He believed that the extra burden the amendment would place on some providers might be difficult for them to manage. He noted that where an early years provider provides special educational provision for a child or young person for whom the local authority is responsible, they would be required to co-operate with the local authority, as they would become a partner with the local authority under clause 28. A blanket provision, he said, would not serve the interests of children with SEN.[87]

Amendment 34 tabled by Robert Buckland sought to explore whether the local government ombudsman (LGO) and the health service ombudsman could act as a single point of redress for complaints against all the bodies listed in clause 28(2). The list includes independent schools, youth offending teams, post-16 institutions and NHS bodies. Robert Buckland referred to a letter dated 20 March 2013 in which the LGO referred to its lack of jurisdiction over education providers. The Minister commended the effort to simplify complaints processes but he thought the amendment was unnecessary as, he said, the ombudsmen already had jurisdiction over some of the bodies listed in the clause, and he concluded that it would be better to maintain the current arrangements for complaints rather than add to them.

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83 PBC 21 March 2013 cc 403-5
84 PBC 21 March 2013 c 405-8
85 PBC 21 March 2013 c 405-8
86 PBC 21 March 2013 cc 408-415
87 PBC 21 March 2013 cc415-7

However, he said that he would consider the LGO's letter. With that assurance, Mr Buckland withdrew the amendment.[88]

Co-operating generally: governing body functions

Sharon Hodgson moved amendment 85 to include academies and free schools in **clause 29,** which is about co-operation between local authorities and individual bodies when those bodies are carrying out their functions under the Bill. The Minister confirmed that academy schools, including free schools, were already captured in clause 29(2)(a) by virtue of being mainstream schools as defined in clause 72(2). The Minister also explained that children and young people placed in non-maintained special schools, and the specialist institutions approved under clause 41, do not have the range of functions of other institutions listed in clause 29(2) around which co-operation can take place. However, he said, children and young people placed in non-maintained special schools and the specialist institutions approved under clause 41 would have EHC Plans, and local authorities would co-operate with those institutions on the placement and support of those children and young people.[89]

Clause 31, which supplements the duties in clauses 28 and 29, requires health service partners, other local authorities and youth offending teams to co-operate when asked by a local authority for help in carrying out its duties toward children and young people with SEN. Sharon Hodgson tabled amendment 102 to **clause 31** to create a formal route of redress that local authorities could pursue with the Secretary of State for Health if health bodies refuse to co-operate on an individual case. The Minister observed that the Bill already makes significant provision for the local resolution of problems, and provides that local authorities and their partners must have procedures to ensure that disputes between parties in relation to the commissioning of services for children and young people are resolved as quickly as possible.[90]

The local offer for children and young people with SEN

Sharon Hodgson moved amendment 87 and tabled a similar amendment (88), to **clause 30**. These sought to require each local authority to publish in its local offer information about provision that is available rather than, as the Bill stands, provision that it expects to be available. Responding, the Minister said that the local offer would range far more widely than the services provided by the local authority itself. It would, he said, encompass academies and free schools, independent special schools, post-16 institutions and health services, as well as services available in other local authorities, such as maintained special school places. However, the local authority would not have control of all those services, and, he added: 'That is why the word is "expects", rather than "is"—it reflects ambition, not weakness.' The Minister urged Members to look at the indicative draft regulations regarding the local offer, particularly Schedule 1 of regulation 3, which, he said, sets out in some detail the information to be published by local authorities in their local offer.[91]

Another group of Opposition amendments related to the families of children and young people with SEN. Mrs Hodgson stressed that she wanted local authorities to understand that their obligations were to the wider family, not just the child in isolation. The Minister said that the needs of wider family members would be addressed by the provisions, and, amongst other things, he referred to paragraph 14 of Schedule 1 to the indicative local offer regulations that would require local authorities to provide information about sources of

88 PBC 21 March 2013 cc 418-21
89 PBC 21 March 2013 c422
90 PBC 21 March 2013 c447
91 PBC 21 March 2013 c426

information, advice and support available in their area for children, young people and their families.[92]

Amendment 51, moved by Robert Buckland sought to include information to help children and young people retain employment and access benefits. The Minister referred to what the indicative code of practice says about the local offer, including providing information about, for example, job coaches, supported internships, apprenticeships, traineeships and support from employment agencies. He noted that the code also says that local authorities should provide some signposting about where young people can obtain advice and information about the financial support they can have not only when they seek employment, but after they are employed. Responding to concerns raised by Sharon Hodgson, the Minister also noted that the indicative code sets out some information that he would expect to be included in the local offer under support to help children and young people prepare for community participation. However, he said that the code is only indicative at this stage, and that there is scope to improve it.[93]

Several amendments related to the information to be included in the local offer, the structure and guidance of the local offer, and the introduction of minimum standards. For example, Robert Buckland's amendment 52 sought to provide for regulations to underpin a national framework for the local offer, and Opposition amendment 100 sought to require the Secretary of State to lay draft regulations setting out minimum levels of special educational provision, health care provision and social care provision. Responding, the Minister noted that the indicative regulations and code of practice set out in some detail what, he said, would amount to a common framework for the offer, in terms of content, consultation, review, publication and complaints.[94]

Another amendment (185) related to how the local offer would cover planning for transition between different phases of education into adulthood, and sought to include information on additional services for children with high incidence and low severity needs.[95]

A probing amendment (215), moved by Mr Buckland, related to the question of whether the responsible agencies would be under a duty to deliver the service set out in the local offer.

Advice and Information for parents and young people

Several amendments sought to place various requirements in the Bill about the way in which advice and information under **clause 32** should be provided. For example, Robert Buckland moved amendment 36 to ensure that advice and information provided would be in an appropriately accessible form. He noted that he was vice-chair of the all-party group on speech and language difficulties. The Minister felt that it was not necessary to amend the Bill to achieve the objective. He intended the draft code of practice to say more about how advice and information for young people should be delivered, in the light of the experience of the pathfinders.[96]

Children and young people with Education, Health and Care Plans

Sharon Hodgson moved probing amendment 107 to **clause 33**, to explore the issue of inclusion in mainstream education, and to look at the grounds on which it can be argued that children with SEN should not be educated in mainstream schools. She felt that there should

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92 PBC 21 March 2013 c429-30
93 PBC 21 March 2013 cc 433-436
94 PBC 21 March 2013 cc 442
95 PBC 21 March 2013 cc 437
96 PBC 21 March 2013 cc 451-55

be a mix of mainstream and special schools; however, she was concerned that some schools, particularly those focused primarily on league tables and EBacc subjects, were still reluctant to admit children with SEN. She explained that her amendment would mean that the needs and preferences of the child or young person and their parents would be the only considerations in deciding whether that child or young person should be educated in a mainstream school. There was a wide-ranging debate on inclusion issues including: the need to provide the necessary funding for inclusion in mainstream schools; exactly what is meant by inclusion; providing appropriate curriculum; and, the importance of the mainstream and special education sectors working together.

The Minister noted that 'inclusion' is not referred to in the legislation. The vast majority of children with SEN, he said, are taught in mainstream settings, and he referred to what the indicative code of practice states about the different needs of children and young people and the range of settings in which they can be educated, including mainstream and special schools and colleges. The indicative code stated that alongside the general principle of inclusion, parents of children with an EHC Plan and young people with a Plan would have the right to seek a place at a special school, special post-16 institution or specialist college. He referred to provisions in the Bill that seek to provide as wide a choice as possible.[97]

Children and young people with SEN but no Education Health and Care Plan

Sharon Hodgson explained that the two Opposition amendments (108 and 109) to **clause 34** sought to ensure that the voices of parents and young people are heard when the local authority is looking to place a child or young person who does not have Education Health and Care Plan. The Minister explained why he thought the amendments were unnecessary.[98]

Assessment of Education, Health and Care Needs

A group of amendments sought to add to the list of people who would have the right to request a statutory assessment under **clause 36**. Under the clause a child's parent, a young person or a person acting on behalf of a school or post-16 institution could request a statutory assessment. Sharon Hodgson moved amendment 112 to add to this list a person acting on behalf of an early years setting or a children's centre, and a qualified healthcare professional. The Minister said that the amendment was not necessary as clause 23 already enables any person or organisation to make a referral to the local authority for an assessment.[99]

Another group of amendments to clause 36 sought to ensure that there would be clear time limits for the assessment process. The Minister said that the current protections would be maintained through regulations.[100]

A further group of amendments aimed to ensure that the needs of the family would be taken into account in the assessment process, so as to promote children's and young people's well-being. Responding, the Minister pointed to the general duty under section 17 of the *Children Act 1989*, and he gave examples of the kinds of support provided under that provision. He said that EHC Plans should be holistic and describe the range of services that

97 PBC 21 March 2013 cc 467-8
98 PBC 21 March 2013 cc 469-70
99 PBC 21 March 2013 cc 471-74
100 PBC 21 March 2013 cc 474-77

are needed to meet the needs of a child or young person, but that the ultimate focus of the Plans must be the child or young person.[101]

Other Opposition amendments to clause 36 sought to ensure that parents would have a right to request an internal review or appeal when a local authority decides not to conduct an assessment. The Minister said that the indicative regulations would require the local authority to provide notice of a right of appeal. He noted that requesting an internal review is not an existing right, and it was not something that he thought was necessary to add to the Bill as it would, he said, create an extra level of bureaucracy.[102]

Another group of amendments related to young people aged over 18 with SEN, who request an assessment for an EHC Plan, or have their existing Plan reviewed or reassessed. Responding, the Minister outlined how the reforms would work for young people aged 18 and over.[103]

Robert Buckland moved amendment 43 to explore whether a statutory EHC assessment could trigger an assessment for social care under the *Children Act 1989*. Responding, the Minister said that the powers in clause 36 already enable regulations to provide that EHC needs assessments may be combined with other assessments—that is subsection (11)(h)—and that information, obtained under a section 17 assessment for example, could be used for the purposes of an EHC needs assessment. Therefore he concluded that there was no need for an EHC needs assessment to trigger another assessment. He then spoke at some length about section 17 of the *Children Act 1989*, and said that the Bill and the indicative regulations made clear that assessment should be co-ordinated across education, health and care.[104]

(Government amendment 62 to **clause 37** relating to EHC Plans is covered in the section above on Government amendments.)

Preparation of Education, Health and Care Plans: Draft Plans

Robert Buckland moved amendment 44 to ensure that young people would continue to be entitled to an EHC Plan if they attend university or higher education. Responding, the Minister explained that, in his view, it would not be reasonable to extend the scope of the clause because local authorities do not commission places in higher education institutions, which are entirely independent. However, he outlined how students with SEN in higher education would be supported.[105]

Finalising Education, Health and Care Plans: request for a particular school or institution

Sharon Hodgson moved amendment 129 to **clause 39** to generate a debate about the reasons for schools to be able to refuse to accept a child or young person with SEN, and to suggest that the decision should be taken away from them and given to the professions involved in drawing up the child's EHC Plan. She reiterated her concern about some schools unfairly rejecting children with SEN because they think the children would be too much trouble. Another amendment (130) sought to ensure that where the parents' preferred school is not named by the local authority another school can only be named on the Plan if the young person or their parents agree. The Minister noted that there would be occasions when the attendance of a child at a particular school or other institution would significantly affect the education of others. He said that parents and young people would be consulted all

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101 PBC 21 March 2013 cc 477-79
102 PBC 21 March 2013 cc 479-80
103 PBC 21 March 2013 cc 480-85
104 PBC 16 April 2013 cc 491-95
105 PBC 16 April 2013 cc 496-501

the way through the assessment process and placement so that they would not learn of a placement only at the end of that process. However, he said that he would look at how to ensure that that takes place, and that where the school named is not necessarily the one that the parents expected, that they have sufficient time to consider and make the appropriate arrangements either to challenge that decision or to negotiate with the local authority an arrangement that satisfies them.[106]

Finalising Education, Health and Care Plans: no request for a particular school or institution

Sharon Hodgson moved amendment 131 to **clause 40** which sought to ensure that where a young person or parent had not indicated a particular preference, the local authority would have to consider a range of factors when deciding the school or institution to be named. The factors would include: where the child or young person is ordinarily resident, and the accessibility of the school or institution; the suitability of the school or institution; the quality of teaching within the school; and any other preferences stated by the child or young person and their families. The Minister said that local authorities should and do try to secure provision for children and young people with SEN as close to where they live as possible, but that in some instances it may not be possible, particularly if the child or young person has a high-level low incidence need. He said that it was right that the decision about the school or other institution to be named in the Plan should rest with the local authority, and he noted that if the child's parent or the young person did not agree they could appeal to the tribunal.[107]

Independent special schools and special post-16 institutions: approval

Clause 41 sets out sets out how the Secretary of State can approve independent special schools and independent specialist colleges with the consent of their proprietor, so that they can be the subject of a request to be named in an EHC Plan as it is drawn up. Various amendments were tabled to explore exactly how the arrangements would work. The Minister did not think the amendments were necessary, and noted that the indicative regulations prescribe what type of institution may be approved, the criteria it must meet, and the circumstances in which approval may be withdrawn.[108]

Duty to secure special educational provision in accordance with an Education, Health and Care Plan

Several Government amendments (63, 64 and 65 to 67) were made to **clause 42** to support the new duty on health commissioners to arrange the provision of the health care services in Plans. These are noted in the section on Government amendments above.

Other proposals discussed included new clause 16 that related to social care, which was tabled by Mr Buckland; and new clause 17 that related to continuity of provision when a child moves, tabled by Caroline Nokes (Conservative).[109]

Schools and other institutions named in an Education, Health and Care Plan: duty to admit

As part of the debate on **clause 43** stand part of the Bill, new clause 7, tabled by Dr Julian Lewis and Caroline Nokes, was discussed. The aim of new clause 7 was to ensure that where institutions in the further education sector in England admit a young person aged under 19 who has an EHC Plan, the institution must deliver the special educational provision

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106 PBC 16 April 2013 cc 501-3
107 PBC 16 April 2013 cc 504-5
108 PBC 16 April 2013 cc 505-9
109 PBC 16 April 2013 cc 509-18

required on at least four days in every week in which provision is delivered. Responding, the Minister referred to the indicative code of practice and what it says about the need to provide a full package of provision and support.[110]

Reviews and re-assessments

Robert Buckland moved amendment 45 to **clause 44** which sought to ensure that young people with SEN who had fallen out of education but who needed to return to it may do so, where that is appropriate. The Minister explained the arrangements for re-assessments of young people with SEN aged 16 to 25. He said that the Bill, the draft regulations and the code of practice were clear that reviews and assessments should be carried out for young people with SEN who become NEET (i.e. not in education, employment or training).[111]

Ceasing to maintain an Education, Health and Care Plan

Several amendments related to the provisions for ceasing an EHC Plan contained in **clause 45**. Robert Buckland moved amendment 46 to provide an opportunity to debate the extension of Plans for young people until the age of 25. He stressed that while it was understood that the extension would not be a blanket approach, automatically covering everybody, it was, he said, important to send a clear message not only to those responsible for provision but to the young people and families themselves, that there would be an obligation on those authorities that have made Plans to maintain them unless certain circumstances, outlined in clause 45(1)(a) and (b), applied. Other amendments in the group related to the process of ceasing Plans.

Responding to the debate, the Minister emphasised that there would not be a statutory entitlement to education up to the age of 25 for young people with SEN because that would not be in the best interests of many young people with SEN who, like their peers, would want to complete their education and progress into work. He said it was vital for EHC Plans to focus on outcomes, and to set out how young people would be supported through education into adulthood. Transition planning would be an integral part of the process. In particular, he noted that that when a child or young person is expected to leave education within the following two years, the regular review of the Plan would consider what provision would be required to assist in preparing for adulthood. Local authorities would have to set that out in the Plan, along with the related agreed outcomes, and would have to consider whether those outcomes had been met before they ceased to maintain the Plan.[112]

Maintaining an EHC Plan after a person's 25th birthday

Sharon Hodgson moved amendment 217 to provide extra flexibility in **clause 46** when determining the end point of the educational support that local authorities provide to a young person where a programme of study, supported internship or apprenticeship does not conform to the academic year. The Minister said that when it comes to making the relevant regulations he would look at the range of programmes of study that a young person may undertake and consider whether the academic year could be defined flexibly for different purposes.[113]

Sharon Hodgson also spoke to new clause 24, which aimed to ensure that apprenticeship frameworks would not adversely affect the ability of young people with SEN or disabilities to participate in apprenticeship schemes, provided that they have the capabilities required to do so. The Minister said that this was already the case; however, he acknowledged concern

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110 PBC 16 April 2013 cc 518-21
111 PBC 16 April 2013 cc 522-24
112 PBC 16 April 2013 cc 522-24
113 PBC 16 April 2013 cc 535

about the level of participation, and noted measures being taken to improve the options for young people with SEN and disabilities.[114]

Personal Budgets

Caroline Nokes moved amendment 223 in **clause 48** to probe the Government's thinking on the level of support that would be available for parents and other carers managing personal budgets. The amendment would have required local authorities to offer the support of a key worker dedicated to the child or young person for this purpose. The Minister recognised the importance of key workers supporting families; however, he was wary of specifying such support in the Bill because, he said, that would require a detailed definition of the work of a key worker, and that might constrain local models of provision. He said that regulations made under clause 48 would require local authorities to provide information, advice and support in relation to the take-up and management of personal budgets. In drawing up the regulations there would be careful consideration of feedback from the pathfinders and the evaluation of the pilot scheme. He said that he would consider whether to put any further specific guidance in the code of practice to support the availability of key workers. He noted that pathfinders had successfully developed 'targeted independent navigators' to help families with more complex needs through the whole new system, and that he would look at ways to make those and 'one-stop shops' more readily available across the country.[115]

As noted earlier, amendment 143 to **clause 48**, moved by Sharon Hodgson, was pressed to a division and was negatived.[116] The amendment sought to ensure that the provisions relating to personal budgets would not be brought into force unless the Order was made subject to the affirmative resolution procedure, and that before making an Order a report would be laid before Parliament detailing the findings from the pathfinder authorities, which would have to include coverage of certain matters (as listed in the amendment). Mrs Hodgson explained that the Opposition did not want to vote against the clause itself but wanted to be sure that concerns were addressed, after the extended pilot period and evaluations, before the arrangements were rolled out across the country. The Minister resisted the amendment, and said that the Government would continue to develop the regulations as the Bill progressed through Parliament, taking account of the implementation lessons of the pilot scheme and would address issues as they arose. He also said that the Government would consider whether to amend the clause in the light of the changes to impose a duty on health commissioners, and would bring forward an amendment at Report stage, if necessary.[117]

Appeals

The Opposition tabled two amendments (144 and 145) to **clause 50** to add to the right of appeal to the First-tier tribunal on SEN & disability where a local authority fails to inform parents and young people of its decision not to secure an EHC assessment within a prescribed period. Moving amendment 144, Sharon Hodgson said that one of the biggest frustrations that parents can face is being 'fobbed off' time and again waiting for a local authority to make a decision, all the time knowing that, because there is no actual decision to appeal against, there is not very much the parents can do. The Minister referred to the draft regulations that propose, as is currently the case, a six-week time limit for local authorities to tell parents and young people whether they will carry out an assessment or not. He noted that parents do not currently have the right to appeal to the tribunal if a local authority does not comply with the six-week deadline. He believed that the amendment would not be effective. The tribunal, he said, aims to reduce the time it takes to turn around SEN appeals,

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[114] PBC 16 April 2013 cc 535-6
[115] PBC 16 April 2013 cc536-38
[116] PBC 16 April 2013 cc538-42
[117] PBC 16 April 2013 c540

but an appeal on the grounds that a time limit had not been met would nevertheless need to be registered with the tribunal; the paperwork would then have to be assembled and a date set for the hearing. He thought that such a process would not be suitable for appeals about failure to comply with a time limit, as it would be likely that the local authority would have notified the parent or young person of its decision by the time the appeal was heard. In contrast, he said, an appeal to the Secretary of State and an initial inquiry to the local authority would be more effective ways of getting the local authority to carry out its duty.[118]

Robert Buckland moved amendment 35 in **clause 50** to probe whether the first-tier tribunal could be given additional powers to hear appeals on the content of the health care and social care elements of EHC Plans. He argued that since there would be a single Plan that cut across education, health and social care, it was logical to create a single point of appeal for the content of those Plans. He noted that it was sometimes difficult to disentangle health from education, and vice versa. The Minister outlined the various means of redress that would be available for parents and young people to appeal against the provision in a Plan. He noted that the indicative draft of the new SEN code of practice has a chapter on redress that provides a single point of reference on the various complaints processes. Mr Roberts withdrew the amendment, after stressing that he did not think there was enough clarity about complaints processes for health care and social care.[119]

As noted earlier, there was a Government amendment to clause 50 relating to fines.[120]

Opposition new clause 20 sought to require the Secretary of State to collect information on cases referred to the tribunal. Sharon Hodgson explained that the purpose of the new clause was to make local authorities more accountable. She thought it would give an indication of level of dissatisfaction with the system and could encourage local authorities to try harder to reach satisfactory outcomes at an earlier stage. The Minister did not agree that the new clause would provide a useful addition to the body of evidence already available. He referred to data currently published by the Ministry of Justice.[121] (A Written Ministerial Statement on 24 April 2013 corrected some of the information given to the PBC on this.[122])

Mediation

Sharon Hodgson moved amendment 146 to **clause 51**. The purpose of the amendment was to ensure that all paperwork produced by a mediation adviser would be available to parents, the local authority and the First-tier tribunal. The Minister said he understood that the purpose of the amendment was to ensure that all parties should be aware of what took place at the mediation stage; however, he explained in some detail why he thought the amendment would not work, and it would increase bureaucracy. Sharon Hodgson did not agree and, before withdrawing the amendment, said that she would reflect further and perhaps revisit the matter on Report.[123]

Special Educational provision otherwise than in schools, post-16 institutions etc.

Amendment 155 to **clause 56** was moved by Sharon Hodgson to seek clarification about the scope allowed to local authorities by the wording of subsection (2), under which a local authority could arrange for special educational provision to be made for a child outside school or college if it is 'satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.' She asked what 'inappropriate' meant in

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118 PBC 16 April 2013 cc 542-3
119 PBC 16 April 2013 cc 543-6
120 PBC 16 April 2013 cc 546-51
121 PBC 16 April 2013 cc 546-51
122 Written Ministerial Statement 24 April 2013 c54WS
123 PBC 16 April 2013 cc 551-3

this context. She was concerned that a local authority might believe that it was appropriate for a child to be kept at home and receive special educational provision there because it would be much cheaper and easier for it to administer, and not necessarily because that offered the child or young person the best outcomes or the best option for their family. However, she recognised that there would be cases where that arrangement would be the best option. The amendment sought to ensure that when deciding whether to make provision outside a school or college the local authority would be required to act in the best interests of the child or young person. The Minister agreed with the motives behind the amendment; however, he felt there was already scope in the Bill for taking into account the interests of the child and young person. He said that the indicative code of practice included a marker for home education, which is one of the alternative settings in which it may, in some cases, be appropriate for a child or young person to be educated. He concluded that there was 'an ability to develop that as the code is drawn up' and, on that basis, he urged Mrs Hodgson to withdraw her amendment, which she did.[124]

Access to schools, post-16 institutions and other institutions

Clause 60 would allow a local authority to access premises to monitor the education or training provided as part of an EHC Plan. Sharon Hodgson explained that the Association of Colleges had concerns that unannounced checks by local authority officers could disrupt the education of a child or young person. She moved amendment 161 to clause 60 to provide that generally the local authority should contact the governing body of an institution before making a visit. The Minster observed that a Home Office draft code of practice on powers of entry (on which there had been recent consultation which was being considered) provided a framework for the consistent use of powers of entry across Government and local authorities. It proposed reasonable notice, usually not less than 48 hours, but also made provision for unannounced visits where pre-notification would defeat the purpose of inspection. The Minister said that the amendment would 'go against the intention behind the clause to ensure that there is a back-stop to protect the best interests of a vulnerable group of children and young people.' On the basis that there would be 48 hours notice where possible, she withdrew the amendment.[125]

Use of best endeavours to secure special educational provision

Several amendments including a new clause were tabled to **clause 61**, which requires governing bodies, proprietors or management committees of the institutions listed (including mainstream schools, academies and pupil referral units and FE institutions) to use their best endeavours to secure the special educational provision needed for a pupil or student. The underlying aim of the amendments was to ensure that children and young people with SEN but without an EHC Plan would receive the support they needed.

The lead amendment (162) sought to make all educational settings report on what they were doing when requested to so by the local authority, the family of the child or young person, the First-tier tribunal or the Education Funding Agency (EFA). Amendment 163 sought to ensure that the appropriate authorities would have regard to advice issued by the Secretary of State, Ofsted, the local authority, or the EFA. Amendment 216 sought to preserve the current School Action and School Action Plus approach to SEN, rather than the single category proposed by the Government. Finally, new clause 23 sought to prescribe certain matters in relation to how mainstream schools and post-16 institutions use their best endeavours to support children and young people with SEN, and to require them to publish a document explaining how they have done so. Responding to this wide-ranging debate, the Minister concluded that provisions in the Bill and the indicative code of practice would provide a

[124] PBC 16 April 2013 cc 553-4
[125] PBC 16 April 2013 cc 555-7

strong framework that schools and other bodies could adapt to their own circumstances to provide strong and personalised support for each child and young person.[126]

SEN Co-ordinators

A group of amendments sought to amend **clause 62**, which requires governing bodies of mainstream schools and maintained nursery schools to ensure that there is a member of staff designated as a SEN Co-ordinator (SENCO). The lead amendment (164), moved by Sharon Hodgson, sought to place a requirement in the clause for SENCOs to be qualified teachers. The Minister thought that regulations, rather than the Bill, would be the best place for detailed requirements relating to the role and qualifications of SENCOs, which, he observed, was the current provision. Other amendments in the group included an amendment and new clause designed to ensure that all new teachers and SENCOs would have undertaken mandatory training in SEN, including dyslexia. Responding, the Minister noted the Government's commitment to improving the quality of teacher training to enable teachers better to identify all areas of SEN and disabilities, and he outlined various measures taken, including work with key dyslexia organisations to ensure that specialist resources stay up-to-date and are widely used by teachers.[127]

Informing parents and young people

Clause 63 applies where a child or young person does not have an EHC Plan, and requires the appropriate authority (e.g. governing body of a school) to tell the child's parent or the young person when SEN provision is being made. Sharon Hodgson spoke to several amendments she had tabled to clause 63, explaining that this was more a means of probing why post-16 institutions were not included in clauses 63 and 64 given that school sixth forms were. The Minister said that he was aware that the two clauses would not place the same duties on the FE sector as they do on schools and pupil referral units. However, he noted that the Bill would place important new duties on FE colleges, which would significantly extend the rights of young people as part of the new 0-25 system. He said that the Government had maintained the current duty on schools because that is where special educational needs are most commonly identified in the first instance.[128]

Another amendment (168), moved by Mrs Hodgson, sought to place requirements on how educational settings should inform a parent or young person that special educational provision is being made. The Minister said that he supported the intention behind the amendment but said that the indicative code of practice made clear how that could be fulfilled.[129]

SEN information report

Sharon Hodgson moved amendment 171 to **clause 64,** which sets out the basic requirements on schools to publish SEN information. Her amendment sought to extend the clause to cover policies to promote the understanding of disability amongst other pupils. Another amendment (202), tabled by Annette Brooke, sought to widen the scope of the clause to include the provision of information on the progress made by children and young people with SEN in language, literacy, communication and numeracy. The Minister stressed the importance of a school's SEN information report as a tool to help parents and young people get the information that they need; however, he said that the process must happen efficiently and without placing undue burdens on schools. He referred to the indicative draft of the regulations for clause 64, which would require schools to publish information about

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[126] PBC 16 April 2013 cc 557-65
[127] PBC 16 April 2013 cc 565-74
[128] PBC 16 April 2013 cc 574-6
[129] PBC 16 April 2013 cc 576-8

arrangements for assessing the progress of pupils with SEN, including pupils with speech, language and communication needs, and those with literacy difficulties. He added that local authorities would be expected to set out in their local offer the provision that they expect schools to make from their own resources to support children and young people with SEN. He intended the local offer to also set out where parents and others could find further information about provision made by individual schools. He said that the regulations for the local offer would be aligned with the regulations made under clause 64 with that in mind.[130]

Provision and publication of special needs information

Clause 65 would place a duty on the Secretary of State to exercise his information-gathering powers to secure from schools and local authorities SEN information about children and young people under 19. Sharon Hodgson moved an amendment (172) to extend the provision to those aged up to 25. She said that since the Bill was creating a 0 to 25 system it would be an anomaly to collect the information only for those 19 and under. The Minister explained that there was already scope to seek and publish data on those up to the age of 25 so he believed the amendment was not needed. Sharon Hodgson did not press the amendment to a division but said that she thought there was merit in bringing such information together in one report, and under one reporting mechanism.[131]

Another amendment (174), moved by Sharon Hodgson, sought to make provision in clause 65 for information published to include local and regional breakdowns of data. The Minister referred to current arrangements for publishing information by region and local authority; however, he said that he was happy to consider increasing the amount of data by region and local authority. In the light of the Minister's assurances, Sharon Hodgson withdrew her amendment.[132]

During the clause 65 stand part debate, Opposition new clause 26 was discussed. The new clause sought to require the Secretary of State to publish a report each year on the effect of the reforms contained in Part 3 of the Bill. The Minister noted that the Secretary of State for Education already publishes an annual report analysing information about children and young people under 19 with SEN in schools. He also said that the extended evaluation of the pathfinder programme would use a broad range of measures to determine the effect of the reforms, and that the Government had already given a commitment to the House in relation to post-legislative scrutiny. He expected the Department for Education to provide a formal memorandum to Parliament setting out a preliminary assessment of the legislation's impact.[133]

The Code of Practice

Robert Buckland moved amendment 45 to **clause 66** to provide that the code of practice would be kept up to date. The Minister observed that the existing code had not been revised since 2001, and while he commended the desire to ensure that the code should be kept as up to date as possible, he believed that clause 66(2) would achieve this. Robert Buckland withdrew his amendment.[134]

Another amendment (208) relating to **clause 67,** on the making and approval of the code of practice, was moved by Robert Buckland. He explained that he wished to tighten up the words to ensure that the Secretary of State would carry out a wide consultation with the bodies listed in clause 66 and consider the representations made. Other amendments in the group sought to prescribe that the consultation would be public and that the consultation

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130 PBC 18 April 2013 cc 581-3
131 PBC 18 April 2013 cc 583-4
132 PBC 18 April 2013 cc 585-7
133 PBC 18 April 2013 cc 588-9
134 PBC 18 April 2013 cc 589-90

period would be 90 days. The Minister said that clause 67(2) would ensure that the Secretary of State carries out sensible and proper consultation on the code of practice. He said that there would be consultation with all those who would be required to have regard to the code, those who would use it and those who would be affected by any changes. That consultation, he said, would go wider than the list of bodies in clause 66(1), and the amendment would limit consultation to the bodies listed, which would be too restrictive. He also said that people would be given ample time to comment, and that Cabinet Office guidance on Government consultations would be observed.[135]

There was also discussion about the procedure by which the code of practice would be approved. Robert Buckland moved amendment 209 to provide for the draft order bringing in a code or revision to be subject to the affirmative rather than negative procedure. The Minister thought that the Government had struck the right balance with the negative procedure since it would allow more flexibility to keep it up to date and ensure parliamentary scrutiny of new or updated versions.[136]

Detained children and young people

Clause 69, which replicates existing provision contained in the *Education Act 1996*, provides that Part 3 of the Bill would not apply if a child or young person was detained in custody. In the clause stand part debate, Opposition new clause 22 sought to apply Part 3 to detained children and young people. The Minister explained that the SEN reforms are designed to support those with SEN in the wider society, and that it would not be practical to impose duties on local authorities which they could not deliver in relation to children and young people who were in custody. However, he stressed that the Government was committed to supporting young offenders, including those with SEN, and he outlined how that would be achieved. As noted earlier, Sharon Hodgson pressed the matter to a division and the Committee voted by 9 votes to 7 for clause 69 to stand part of the Bill.[137]

Disapplication of chapter 1 of Part 4 of the Education Act 1996 in relation to children in Wales

The Minister explained that the new provisions in Part 3 of the Bill would apply to children and young people with SEN in England, replacing the 1996 provisions. It was therefore necessary to disapply the existing provisions in relation to England, and that clause 70 would do that. However, Chapter 1 of Part 4 of the 1996 Act would not be repealed as it would need to continue to apply to children with SEN in Wales.

In the **clause 70** stand part debate, new clause 36, tabled by Robert Buckland as a probing amendment, was discussed. New clause 36 would have required 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. The Minister said that he presumed the intention of the new clause was to require provision to be secured that would be close to home for children and young people and their families. However, he argued that placing a specific duty on local authorities and local NHS bodies requiring them to do that was not necessary.[138]

The PBC's consideration of Part 3 of the Bill finished when **clause 72** (Interpretation of Part 3) was ordered to stand part of the Bill at the start of the 16th sitting on 18 April 2013.

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135 PBC 18 April 2013 cc 591-2
136 PBC 18 April 2013 cc 593-5
137 PBC 18 April c602
138 PBC 18 April 2013 cc 602-5

4 Childcare

4.1 Introduction

Part 4 of the Bill, **clauses 73 to 76**, make provisions relating to childcare. The Bill would enable the creation of new childminder agencies, allow Ofsted to charge for early re-inspection at the request of a childcare provider, remove the existing duty on local authorities to assess the sufficiency of childcare provision in their area, and remove the duties on schools in England to consult local authorities, parents and staff, and to have regard to advice and guidance given by the local authority or the Secretary of State, before offering facilities or services (such as school-based childcare) to the community.

4.2 Second Reading debate

The Minister, Edward Timpson, introduced the Bill's reforms of the early years and child care system, and the Bill's aim, in introducing childminder agencies and reducing requirements on local authorities, to improve the flexibility in the child care system.[139] Responding for the Opposition, Stephen Twigg expressed support for the development of the childcare workforce, but stated that the plans were currently short on detail.[140]

4.3 Committee Stage:

Childminder Agencies

The shadow Education Minister, Sharon Hodgson, moved an amendment to **clause 73**, which would introduce provisions to enable the creation of new childminder agencies. The amendment would require that there would be at least three months of consultation before enabling the clause. Sharon Hodgson spoke critically of the lack of consultation that had taken place before introducing the Government's childminding reforms, and Labour Members Lucy Powell and Andy Sawford also raised the lack of consultation.[141] The Parliamentary Under-Secretary of State for Education, Jo Swinson, responded that clause 73 was enabling legislation, and that the Government intended to consult on the details of how the new agencies would operate.[142] She also referred to a policy statement on the new agencies published by the Government on 21 March.[143] Sharon Hodgson maintained that consultation should have taken place before legislation was proposed.[144] The amendment was pressed to a vote but was defeated by 10 votes to 5.

Government amendments relating to **Schedule 4** of the Bill, which provides a framework for the regulation of childminder agencies, were then considered.[145] The amendments were largely consequential, but the committee agreed amendment 247, which permitted childminders to register exempt provision with a childminder agency instead of the chief inspector, to ensure that the care is regarded by HMRC as registered and therefore eligible for tax credits. The Minister also moved amendment 242, which provides that a childminder should hold all relevant registrations with either a childminder agency or with the chief inspector, and not, for example, be registered with an agency in respect of early years provision but with the chief inspector in respect of later years provision.[146]

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139 HC Deb 25 Feb 2013 c59
140 HC Deb 25 Feb 2013 c68
141 PBC, 16th sitting, 18 April 2013 c617-622
142 PBC, 16th sitting, 18 April 2013 c622
143 Department for Education, *Children and Families Bill: Childminder Agencies Statement of Policy Intention*, 21 March 2013
144 PBC, 16th sitting, 18 April 2013 c626
145 Ibid.
146 PBC, 16th sitting, 18 April 2013 c652

Jo Swinson moved further amendments that made provision for HMRC and the Secretary of State for Work and Pensions to be made aware that child care is registered so that eligibility for any child care component of universal credit can be confirmed, in the same way as HMRC is currently notified for tax credits purposes.[147]

The committee divided over clause 73 standing part of the Bill. It was passed by 9 votes to 7 and the clause was ordered to stand part of the Bill.[148]

These Government amendments to Schedule 4 were agreed without debate, and the amended Schedule 4 ordered to stand part of the Bill.[149]

Staff:child ratios

In January 2013, the Government published the *More great childcare* policy document that included proposals to relax staff:child ratios in childcare and nursery settings.[150] This proposal has proved highly controversial. Although measures relating to the issue had not been part of the Bill as presented, the Opposition introduced New Clauses 38 and 39 on ratios, which were subsequently discussed in relation to clause 73.

New clause 38 set levels for staff:child ratios in Ofsted-registered childminder settings, and new clause 39, set levels for staff:child ratios in Ofsted-registered, non-domestic childcare settings.

Sharon Hodgson referred to opposition to the Government's proposals, both from childcare professionals and constituents,[151] as subsequently did Lucy Powell and Andy Sawford.[152] Andrea Leadsom noted that a consultation was underway on the subject and expressed regret that amendments had been tabled while that was in progress, and stated that the reforms were part of a package that included improving qualifications and standards in the childcare workforce, aimed at providing more flexibility.[153]

The Minister set out the reasoning behind the Government's proposals:

> The proposals to amend the adult-child ratios for children aged two and under would enable child care providers employing the highest-quality staff to offer more places, so it would give them more flexibility over pay if they chose to take up the more flexible ratios. The extra income generated would enable them to pay staff more. They would have a choice of paying staff more or employing additional staff as the nursery expanded. At the moment, they do not have that choice; if they take on more children, they can only take on more staff. The proposals will therefore provide additional flexibility. Of course, child care providers must still meet the welfare requirements and standards that are set out. The issue of quality is incredibly important, and achieving quality is the main aim of the Government's proposed changes.[154]

The Minister further stated that staff:child ratios were currently set out in secondary legislation, and that she did not believe the matter should be moved into primary legislation.[155]

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147 PBC, 16th sitting, 18 April 2013 c656
148 PBC, 16th sitting, 18 April 2013 c651
149 PBC, 16th sitting, 18 April 2013 c655-656
150 Department for Education, *More great childcare*, 29 January 2013
151 PBC, 16th sitting, 18 April 2013 c628-631
152 PBC, 16th sitting, 18 April 2013 c633-635 and c641
153 PBC, 16th sitting, 18 April 2013 c631-632
154 PBC, 16th sitting, 18 April 2013 c648
155 PBC, 16th sitting, 18 April 2013 c649

Sharon Hodgson expressed Labour's opposition to part 4 of the Bill as a whole and said that she would seek to divide the committee on New Clauses 38 and 39 at the appropriate time.[156] At the committee's final sitting, the committee divided on New Clauses 38 and 39; both were defeated by 10 votes to 6.[157]

Re-inspection of childcare providers

In the stand part debate on **clause 74**, which would introduce a power for Ofsted to charge for an early re-inspection at the request of a childcare provider, Andrea Leadsom spoke to new clause 34 (tabled in the names of Andrea Leadsom and Sharon Hodgson), which provided that Ofsted inspections of home-based childcare settings should include investigation of how the setting is meeting the attachment needs of children under two years of age, emphasising the importance of those needs being met for a person's lifelong development.[158] Sharon Hodgson also spoke in favour of the new clause.[159] The Minister expressed support for the issues raised by the new clause, but she did not believe primary legislation was the proper place to address them.[160]

On whether clause 74 should stand part of the Bill, Sharon Hodgson expressed support for the clause but raised concerns about possible costs, particularly for smaller providers and individual childminders. She also asked for more detail about how the re-inspections would work in practice.[161] The Minister said that the Department would provide directions for Ofsted on the circumstances in which a re-inspection would be required, and also that the Government would consider setting a difference for the re-inspection of different providers, but that the rules in this area would be set out in secondary legislation.[162] Clause 74 was ordered to stand part of the Bill.

Local authority duty to assess the sufficiency of childcare

In the stand part debate on **clause 75**, which would remove the duty on local authorities to assess the sufficiency of childcare provision in their area, Sharon Hodgson oppose the clause, arguing that the current reports were unlikely to be replaced by something better, and that the removal of the duty was a poor signal to local authorities about the importance of securing sufficient childcare, in particular in the context of reduced funding for early intervention services.[163]

The Minister said that the existing duty on local authorities was "bureaucratic and costly to prepare, as the regulations require them to include data on the supply of and demand for child care places to an incredibly fine level of detail,"[164] and that removing the duty would give local authorities:

> flexibility to determine the style, content and level of detail of their annual report, in contrast with the highly detailed, prescriptive legal duty that currently applies. That should prove to be a more effective way of collecting the right data and presenting local child care information in a way that elected Members and parents can understand

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156 PBC, 16th sitting, 18 April 2013 c651
157 PBC, 19th sitting, 25 April 2013 c787 and 790
158 PBC, 16th sitting, 18 April 2013 c657
159 PBC, 16th sitting, 18 April 2013 c659
160 PBC, 16th sitting, 18 April 2013 c661
161 PBC, 16th sitting, 18 April 2013 c658-9
162 PBC, 16th sitting, 18 April 2013 c660
163 PBC, 16th sitting, 18 April 2013 c663-664
164 PBC, 17th sitting, 23 April 2013 c667

> and use to hold local authorities to account for ensuring that there is high-quality, affordable child care in their area.[165]

The Minister also stated that restricted funding in local government further argued against keep the current assessments.[166]

Sharon Hodgson stated that the replacement reports envisaged by the Government were included in statutory guidance rather than in law, and were therefore open to change by the Secretary of State; Sharon Hodgson also noted that it was not clear what the councils' reports would contain.[167]

The Committee divided on the motion that the clause stand part of the Bill. It was agreed by 11 votes to 8, and clause 75 was ordered to stand part of the Bill.

5 Office of the Children's Commissioner for England

5.1 Introduction and Second Reading debate

Part 5 of the Bill, **clauses 77 to 86**, reforms the Office of the Children's Commissioner for England. The Bill would create a strengthened Office of the Children's Commissioner for England, with a statutory remit to 'promote and protect children's rights'. The Bill would require the Commissioner to have regard to the United Nations Convention on the Rights of the Child and sets out revised powers for the Children's Commissioner, including carrying out investigations and assessing the impact of policy on children's rights. The Bill would combine the existing functions of the Children's Rights Director in Ofsted within the Office of the Children's Commissioner.

The Government had proposed these measures following the Dunford Review's recommendations that the Office required reform to have the necessary impact.[168] The Opposition endorsed the strengthening of the role of the Office of the Children's Commissioner at Second Reading.[169]

5.2 Committee Stage

The Powers of the Commissioner

Lucy Powell moved amendments to **clause 77**. The clause would provide a statutory remit for the Children's Commissioner to promote and protect children's rights', that Commissioner must have regard to the UNCRC and set out revised powers for the Commissioner, including to carry out investigations and assess the impact of policy on children's rights. Lucy Powell said that her amendments were preventative. Amendment 265 would add to the clause that the Commissioner, as a primary function, may investigate the effectiveness of the safety and protection of children living at residential care premises which the Children's Commissioner is empowered to enter. Amendment 266 would require the Commissioner to consult, so far as possible, all children living at any premises that the Commissioner is investigating under this new function. Amendment 267 required the implementation of the recommendations of any reports under this new section, or written explanation as to why implementation was not possible.[170]

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165 PBC, 17th sitting, 23 April 2013 c668
166 Ibid.
167 PBC, 17th sitting, 23 April 2013 c670
168 HC Deb 25 Feb 2013 c60
169 Ibid.
170 Ibid.

Lucy Powell said that the amendments did not intend that the "commissioner's office should systematically visit all residential establishments or take on an abuse investigation function—that is already set out in law as the role of local authorities and the National Society for the Prevention of Cruelty to Children," but "to shine a spotlight on communities of children where early concern has been raised about their experience of safety and protection, whether this initially comes from other family members, peers, staff or the children themselves."[171]

The Parliamentary Under-Secretary of State for Education, Edward Timpson, stated that the Government had "sought to avoid placing too many specific requirements on the commissioner, allowing him or her the maximum flexibility,"[172] with exceptions being made for the children currently within the remit of the Children's Right's Director (i.e. living away from home or receiving social care).[173] The Minister emphasised the strategic nature of the Commissioner's office and that "if a child brings a case to the commissioner and the commissioner believes that a public policy issue that will affect other children is involved, it is open to him or her to investigate more closely."[174] He further stated that the Commissioner's powers of entry give the Commissioner access to children to ascertain their views and hear about their experiences, normally as part of an investigation into a specific matter, and that, in his view, an additional power was therefore not required.[175] He also stated that he believed the existing provisions in the Bill gave the Commissioner power to require appropriate persons to state in writing, and within a period determined by the Commissioner, what action they have taken or intend to take regarding the recommendations a Commissioner has made in a report.[176] The amendments were withdrawn.

Lisa Nandy spoke to an amendment to extend the remit of the Children's Commissioner specifically to give special consideration to trafficked and migrant children, and those in custody.[177] The Minister expressed his confidence in the work being done by the Home Office and other departments in this area, and said he would look at the situation to ensure that the necessary objectives were being achieved.[178] The amendment was withdrawn.

Lisa Nandy moved an amendment to give the Children's Commissioner for England an explicit power to investigate individual cases that raised questions of wider significance for children.[179] The Minister said that such a power was currently not provided to avoid the Commissioner becoming involved in supporting individuals in raising concerns that could be dealt with through existing complaint systems, and being swamped with a workload that would reduce the Office's impact elsewhere.[180] Lisa Nandy expressed concerns about possible interference in individual cases from Government departments that might hinder the Commissioner speaking to children in cases that might have strategic importance, and said she would like to return to the matter.[181] However, the amendment was withdrawn.

Steve Reed moved several amendments to clause 77 aimed at strengthening the voice of the child by requiring the Commissioner to have due regard to children's views as well as to seek them.[182] The Minister cited clauses in the Bill that required consultation of the view of

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171 PBC, 17th sitting, 23 April 2013 c673
172 PBC, 17th sitting, 23 April 2013 c676
173 PBC, 17th sitting, 23 April 2013 c677
174 PBC, 17th sitting, 23 April 2013 c678
175 Ibid.
176 Ibid.
177 PBC, 17th sitting, 23 April 2013 c674
178 PBC, 17th sitting, 23 April 2013 c679
179 PBC, 17th sitting, 23 April 2013 c680
180 PBC, 17th sitting, 23 April 2013 c682
181 Ibid.
182 PBC, 17th sitting, 23 April 2013 c684

children and stated that, in his understanding, this included the regard to children's views provided in the amendment.[183] Steve Reed withdrew the amendment.

Charlie Elphicke, in the stand part debate on clause 77, raised the issue of religious freedom, and sought assurances from the Parliamentary Under-Secretary of State that religious teaching and institutions would not be adversely affected by the Commissioner's role.[184] The Minister noted that the Commissioner must have regard to the UN Convention on the Rights of the Child, which includes the freedom to practice their religion, and that nothing in the Bill could affect faith schools as the Commissioner has no enforcement powers. The Commissioner can make recommendations to Government, but any changes would be for Government and Parliament to decide.[185]

Steve Reed moved New Clause 37, which sought to ensure as few constraints as possible were imposed on the Commissioner in carrying out his or her duties.[186] The Minister stated that the Bill provided the Commissioner with substantial powers and freedom, and that government had no power to interfere with the remit of the Commissioner or the carrying out of that remit, although the Office must operate within that remit.[187]

Lisa Nandy moved New Clause 48, a probing amendment that would allow the Welsh Children's Commissioner to have responsibility for all children in Wales, and not on devolved matters only, and sought to clarify confusion that may arise in relation to which areas the Commissioners in the devolved countries might have authority over.[188] The Minister stated that the four Commissioners within the UK have been able to address the issues concerned under the existing legislation by establishing an operational protocol to improve the co-ordination of their work.[189]

Clause 77 was ordered to stand part of the Bill.

Other provisions

Clauses 78 to 83 were ordered to stand part of the Bill without debate.

Steve Reed moved an amendment to **clause 84**. The amendment aimed to extend the requirement on the Children's Commissioner to have particular regard to specified groups of vulnerable children to children living in custody and separated children who are seeking asylum or have been trafficked when carrying out his or her functions.[190] The Minister stated that the Commissioner should have particular regard to groups of children who the Commissioner considers to be at particular risk of having their rights infringed, which would include the children protected by the amendment. The Minister also raised concerns about the difficulties of producing a list of the most vulnerable groups of children, and that the Government considered it best, in general, to allow the Children's Commissioner to determine where to target resources based on their view of the most pressing issues in society at any given time.[191] Steve Reed withdrew the amendment. Clauses 84 and **85** were ordered to stand part of the Bill.

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183 Ibid.
184 PBC, 17th sitting, 23 April 2013 c685
185 PBC, 17th sitting, 23 April 2013 c688
186 PBC, 17th sitting, 23 April 2013 c686
187 PBC, 17th sitting, 23 April 2013 c689-690
188 PBC, 17th sitting, 23 April 2013 c687-688
189 PBC, 17th sitting, 23 April 2013 c690
190 PBC, 17th sitting, 23 April 2013 c691
191 PBC, 17th sitting, 23 April 2013 c693

Lisa Nandy moved amendments to **Schedule 5**, which sets out minor and consequential amendments relating to the reform of the Office of the Children's Commissioner for England. The amendments provided a range of options for oversight of the appointment and dismissal of a Children's Commissioner. Lisa Nandy emphasised the importance of the independence of the Commissioner and the ways in which the office could be held accountable to Parliament, and also the importance of children's involvement in the Commissioner's selection.[192] The Minister stated that he was in favour of Parliament being involved in the Commissioner's appointment and had set out a note to that effect, although he was not in favour of including the arrangements in primary legislation, and also that reasonable steps would be taken to ensure that children are involved in the Commissioner's appointment, with legislation strengthened to ensure this was the case. With regard to dismissal of the Commissioner, he noted that a high threshold was in place, as a dismissal decision could be overturned following judicial review if it was found to have been made for inappropriate or unjustified reasons, or if proper process was not followed.[193] The amendment was withdrawn and Schedule 5 was ordered to stand part of the Bill.

6 Shared Parental Leave and Flexible Working

6.1 Introduction

Part 7 of the Bill (clauses 87-100) concerns leave and pay related to pregnancy and childcare, and takes forward proposals contained in the Government's response to the Modern Workplaces consultation.[194] It would implement a system of shared parental leave and pay, whereby a mother or "primary adopter" may bring their leave to an end and transfer to shared leave and pay, consisting of one-week blocks distributable between two parents.

The provisions in **Part 8** of the Bill (clauses 101-104) concern the right to request flexible working. They would extend this right to all employees. The right to request flexible working entitles employees to apply to their employers for a change to their hours, times or location of work. Currently, the right applies only to limited categories of employees with parental or caring responsibilities.

6.2 Second Reading debate

In comparison to debate on other parts of the Bill, there was relatively little debate about shared parental and flexible leave. The Parliamentary Under-Secretary of State for Education, Edward Timpson, suggested that this might be because there has been general agreement on the subject.[195]

The Minister said the introduction of shared parental leave would help create a family-friendly society,[196] support economic growth,[197] create a more motivated and flexible work force and widen the pool of talent in the labour market.[198] The Minister said shared parental leave would enable working couples to take leave together and better manage their caring responsibilities and work commitments.[199] He said the new right to time off to attend ante-natal appointments followed research indicating that a father's attendance at ultrasound scans increases his commitment to the pregnancy and helps early bonding.[200] The Parliamentary Under-Secretary of State for Business, Innovation and Skills, Jo Swinson,

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192 PBC, 17th sitting, 23 April 2013 c694-695
193 PBC, 17th sitting, 23 April 2013 c697
194 BIS, *Modern Workplaces Consultation - Government Response on Flexible Parental Leave*, November 2012
195 HC Deb 25 February 2013 c132
196 Ibid, c46
197 Ibid, c49
198 Ibid
199 Ibid, c60
200 Ibid

stated that the shared parental leave plans would remove the stereotype that males are the breadwinners and the role of women is to stay at home and look after children.[201] Regarding the Bill's provisions on flexible working, Jo Swinson said these would support family life by enabling workers to request changes to working patterns to accommodate a variety of caring arrangements.[202]

The Shadow Secretary of State for Education, Stephen Twigg, stated that hard-working families would welcome greater flexibility in parental leave arrangements.[203] All other Members who spoke during the debate supported the principle of shared parental leave and extending flexible working.

6.3 Committee Stage: Government amendments

Shared parental leave

Clause 87 provides for the introduction of a system of shared parental leave by way of regulations. The Minister, Jo Swinson, tabled a group of technical amendments to clause 87 refining the drafting and cross-referencing between sections. They were agreed to without division.[204]

Schedule 7 of the Bill contains consequential amendments. The Minister tabled a group of amendments to the Schedule concerning employment-related benefit schemes. The amendments would protect certain employees that take shared parental leave from suffering detriment in relation to such schemes (e.g. by losing accrued rights). The amendments mirror existing provisions for paternity leave, and were agreed to without division.[205]

Flexible working

The Bill applies to the whole of the UK. The Minister moved a technical amendment to **clause 110**, to extend provisions of the Bill to Northern Ireland, ensuring they are read uniformly throughout the UK. The amendment was agreed to without division.[206]

6.4 Other amendments discussed

Shared parental leave

Clause 87 provides that the Secretary of State may make regulations specifying that shared parental leave is available only to employees with a specified duration of employment. Lucy Powell tabled probing amendments to the clause, which would have removed this power, making shared parental leave a "day-one-right" for employees.[207] The Minister, opposed the amendments, saying a qualifying period provides employers with the certainty that new employees would not immediately be absent from work.[208]

The Shadow Minister for Children and Families, Lisa Nandy, tabled an amendment to clause 87 which would have provided that entitlement to shared parental leave could be transferred to other family members in exceptional circumstances, such as where a mother is incapacitated or dies in childbirth.[209] The Minister said that the Bill did not envisage such a

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201 Ibid, c132
202 Ibid
203 Ibid, c61
204 HC Deb 23 April 2013 c710-711
205 Ibid, cc732-735
206 HC Deb 23 April 2013 cc814-815
207 HC Deb 23 April 2013 c698
208 Ibid, c705
209 Ibid, c707

transfer, as the provisions are only aimed at working parents.[210] The Minister said that in the event of the child's death, if parental leave had already been triggered, it would continue.

The Bill envisions that shared parental leave will be divided between parents in blocks of one week or longer. Lisa Nandy tabled an amendment to clause 87 which would have enabled smaller blocks. She said:

> Amendment 331 would allow shared parental leave to be taken on a part-time basis rather than, as is currently proposed, in blocks of only a week. The original "Modern Workplaces" consultation proposed that parents might take the new form of leave in
>
> > "smaller chunks or on a part-time basis"
>
> if their employer agreed. However, the Bill currently provides only that shared parental leave must be taken in blocks of at least a week at a time, which reduces the flexibility available to parents and may reduce the likely take-up of more flexible arrangements.
>
> As the Fatherhood Institute has rightly pointed out, that rules out the possibility of a phased return to work for mothers. In order for both parents to take their shared parental leave in blocks, they will need to seek the agreement of both their employers. Many employers may find it difficult to agree to a week-on, week-off type of arrangement as providing cover will be difficult. Even if one employer agreed, the other might not, or might propose a different pattern. As the institute has pointed out, childcare arrangements do not easily lend themselves to weekly leave patterns.
>
> However, part-time leave and part-time pay may have significant benefits for families, particularly those on low incomes who would like to extend the time that they can spend at home, but cannot afford to have no income. As the Minister will know, maternity leave is currently 52 weeks long, but only 39 weeks are paid. Allowing part-time leave to be topped up by wages might allow low-income parents to transition gradually back to work.[211]

The Minister opposed the amendments, and stated that this problem can be addressed via other existing means, such as "keeping-in-touch-days", which allow parents to return to work for up to 10 days at a time without bringing leave to an end.[212]

Ms Nandy tabled amendments to clause 87 that would have entitled employees to return to the same or a similar job following shared parental leave. The Minister stated that provisions on the right to return to the same or a similar job, as well as on redundancy and dismissal, would be dealt with by way of secondary legislation.[213]

Clause 88 would provide for regulations to enable a birth mother or primary adopter to bring their maternity or adoption leave to an end, and switch over to shared parental leave. Lucy Powell moved amendments which sought to give mothers that have multiple children at birth additional pay and leave proportionate to the number of babies. The Minster opposed the amendments. The Minister said that, whilst coping with multiple babies is particularly challenging, increasing leave in these situations would draw a problematic distinction with parents facing other challenges, such as spending extended periods at neo-natal units. The

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[210] Ibid, c709
[211] Ibid, c711
[212] Ibid, cc711-714
[213] Ibid, cc714-719

Minister stated that the 52-week period of leave was long enough to cope with most eventualities.[214]

Clause 91 would enable rights to paternity pay and adoption pay to apply to approved adopters. Lucy Powell moved a group of amendments to the clause which sought to provide "kinship carers" (family and friends who take on the care of a child) with similar rights, with the aim of reducing the number of kinship carers who leave employment. The Minister accepted the important role of kinship carers but opposed the amendment. She said many such carers would qualify for unpaid parental leave of up to 18 weeks per child.[215] .

Lucy Powell tabled **new clauses 51 and 52**, which would have removed the 26-week qualifying period for paternity leave, extended the period of leave from two weeks to four weeks, and increased pay during this period to 90 per cent of average weekly pay.[216] Ms Powell said she tabled the new clauses to develop the conversation about how best to encourage fathers to take up paternity leave and shared parental leave:

> ...there are many important reasons why we want to encourage fathers to spend time with their child in the early months of its life. We will look at these issues in the coming months and years as we see the uptake. The idea was to enhance the uptake of paternity and shared parental leave, so that it is taken up by more than the small percentage that the Government hope will take it up.[217]

The Minister opposed the clauses:

> ...the costs are prohibitive for business. The cost of extending paternity leave by two weeks to create a month would be almost £10 million a year. In addition, the cost of a two-week extension to paternity pay would be £16.4 million, and that does not even go as far as the amendment, which would increase that pay to 90% of the father's earnings. I understand that that is important, in that it encourages fathers to take the leave, but the downside of the extra cost is that the lion's share ends up going to the highest earners.[218]

However, she went on to say that the regulation-making powers in the Bill would allow for such an increase in the future:

> I hope that the powers in the Bill will enable us to increase the number of weeks of paid paternity leave when the economy is in better shape and it is more affordable to do so. I absolutely hope that the powers will be used, because they will boost all the stuff that we are doing to raise awareness, and will get as many people as possible—fathers in particular—taking the leave. That will be a catalyst for progress, but this will, of course, be a decision for a future Government. We do not know what colour that Government will be, but importantly, the powers will mean that introducing an increase is straightforward and will not require further primary legislation.[219]

Clause 97 would create a new right for employees to take paid time off work to accompany a pregnant woman to an ante-natal appointment. The right would be available to husbands, civil partners, the biological parent of the expected child and intended parents in surrogacy situations. The right to leave would be limited to two appointments of up to six and a half hours. Speaking for the Opposition, Lisa Nandy tabled a group of amendments to the clause

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214 Ibid, cc720-723
215 Ibid, cc724-29
216 Ibid, c729
217 Ibid, c731
218 Ibid
219 Ibid

which would have removed this limit, providing instead for "reasonable" time off. The Minister stated that the limits provided certainty to employers, although employers are free to allow more leave than the statutory minimum.[220]

Flexible working

Employees currently have the right to request flexible working if they have parental or caring responsibilities.[221] **Clause 101** would remove this requirement, extending the right to all employees. Lucy Powell tabled an amendment to the clause intended to make the right to request flexible working a day-one right, rather than there being a 26-week qualifying period. Ms Swinson stated that the Government consulted on this idea during the *Modern Workplaces* consultation;[222] businesses had expressed concerns, preferring to have certainty about the terms and conditions they offer new employees.[223]

Section 80G of the *Employment Rights Act 1996* provides that, if an employer refuses a request for flexible working, employees have the right to appeal that refusal. **Clause 102** would replace this with a requirement that employers deal with applications "in a reasonable manner". Lisa Nandy moved an amendment to the clause which would have retained the right of appeal. She said:

> ...the Bill removes the current statutory process by which an employer must respond to an employee's flexible working request and replaces it with a requirement to respond "in a reasonable manner" and within a time frame of three months. The current process includes provision for an appeal by an employee, which provides a useful opportunity to discuss why an employer has not been able to accept the request and for the employee to propose possible compromises.
>
> The ACAS draft code of practice for the extended right to request flexible working, which is currently out to consultation, recognises that an appeal is important and states:
>
> > "If you reject the request you should allow your employee to appeal the decision. It can be helpful to allow an employee to speak with you about your decision as this may reveal new information or an omission in following a reasonable procedure when considering the application".
>
> It is important that the Bill and code are consistent in order to provide clarity to employers and certainty to employees that appeals are to be allowed. The amendment would make it clear in the Bill that appeals remain an important part of the process of considering flexible working requests.[224]

The Minister said that the current right of appeal was burdensome for employers, and that the Bill aimed to get employers and employees to have a conversation about the reasons for the refusal "without getting bogged down in the process and the number of weeks between the different steps". She said:

> I can give an example of where a formal appeal might not be appropriate. In a small company with two individuals working closely with each other every day, the discussions about the request are likely to have been full, exhaustive and detailed. To have an automatic appeal process on top of that would be rather burdensome and bureaucratic. We have no plans to change the reasons for refusing a request and no

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220 Ibid, cc735-741
221 Section 80F, *Employment Rights Act 1996*
222 Department for Business, Innovation & Skills, *Consultation on modern workplaces*, 16 May 2011
223 Ibid, cc741-745
224 Ibid, cc745-746

> plans to weaken the protections for employees. It is important that employees will still be able to bring a tribunal claim if they do not believe their employer has considered the request in a reasonable manner.[225]

Clause 103 would amend the rules which apply to the making of a complaint to an employment tribunal relating to a request for flexible working. For the Opposition, Lisa Nandy moved an amendment to the clause which would allow employees to challenge the substance of an employer's reasons for refusing a request. This would allow employment tribunals to assess the business case behind a refusal. Currently, employment tribunals may only consider whether the reason for refusal falls within one of eight permissible grounds (eg, inability to reorganise work among existing staff). The Minister opposed the amendment:

> The amendment would allow the employment tribunal to consider whether an employer's refusal of a request for contract variation based on an inability to reorganise the work among existing staff, for example, was reasonable, but it does not seem particularly reasonable to me that an employment tribunal should be able to probe an employer's decision-making process, arrive at a different conclusion from that reached by the employer and then make an award against the employer on that basis.[226]

Lisa Nandy moved **new clause 54** which would have enabled grandparents to take reasonable amounts of time off work to deal with family emergencies, e.g. caring for an ill grandchild. She explained that current emergency leave provisions are available to parents, but it is unclear whether this entitlement extends to grandparents. The Minister said that she recognised the role grandparents played in supporting parents, and that current legislation provides a right to time off to care for "dependants"; this could in certain situations include grandchildren. She said that the reference in legislation to "dependents" is deliberately broad, and that explicit reference to parents and grandparents would risk being seen as exhaustive, excluding other relatives and carers.[227]

Lucy Powell moved **new clause 57** which would have required the Advisory, Conciliation and Arbitration Service (ACAS) to produce guidance to employers on the role of women who wish to breastfeed their babies at work, including the amount of time it would be reasonable to allow for this, the facilities that should be provided and information on dealing with requests to breastfeed in the workplace. She said:

> ...statutory protection for breastfeeding on return to work is in place in at least 92 countries including the United States. The US requires employers to provide "reasonable" breastfeeding breaks and suitable facilities. The US introduced the right to breastfeed at work in very difficult economic circumstances in 2010, citing a number of business advantages, including higher staff retention rates and reduced time off for parents at later stages of a child's life; early return to work by mothers; higher productivity and loyalty; and positive PR for the business.
>
> The UK has no such right to breastfeed on return to work. The new clause does not go that far either, as many campaigners would like, but is a probing amendment to tease out the Government's thinking on this issue.[228]

The Minister said that:

> I think the suggestion that ACAS provide a guide is a brilliant one. We do not need to take powers in the Bill for that to happen; we already have statutory powers to produce

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225 Ibid, c746
226 Ibid, c751
227 HC Deb 25 April 2013 cc794-799
228 Ibid, c800

> that kind of guidance. I am keen to work with ACAS to publish guidance for employers along those lines.[229]

Lucy Powell said that the Opposition looked forward to working with the Minister to bring forward guidance and, on that basis, withdrew the clause.[230]

Lisa Nandy moved **new clause 58** which would have amended the public interest disclosure provisions of the *Employment Rights Act 1996,* providing explicit protection for those who whilstleblow about child protection concerns. The Parliamentary Under-Secretary of State for Education, Edward Timpson, said that any disclosure showing that a child has been, is being, or is likely to be abused or harmed, would be protected under current legislation.[231]

7 Debates on Other Issues

At the final sitting of the PBC several new clauses were discussed. They included the following.

Children and young people temporarily unable to attend mainstream school

New clause 25, moved by Sharon Hodgson, which related to children and young people of compulsory school age who are unable to attend school for a period of between one and 24 months. She noted that children and young people may miss out on education for a variety of reasons, including bullying, and ill health. Responding, the Minister emphasised the importance the Government attached to combating any form of bullying, and he referred to the existing duties on local authorities to arrange suitable full-time education for any child of compulsory school age who cannot attend school, whether because of illness, exclusion or any other reason. In addition, he noted section 17 of the *Children Act 1989* in relation to the provision of social care services for children with SEN whether they are in school or unable to attend school, and also statutory guidance about children who cannot attend school because of ill health. He said that the Government would continue to work with voluntary organisations that have a particular interest in this area, as well as schools, local authorities and providers of alternative provision, to ensure that all pupils achieve the best outcomes. With those assurances, Sharon Hodgson withdrew the new clause.[232]

Young carers

Several new clauses relating to young carers were discussed. These included new clause 30, which sought to place duties on local authorities to assess and meet the needs for care and support of children who care for adults or disabled children. Other new clauses tabled included: new clause 41, which also related to duties on local authorities to ensure the provision of sufficient support for young carers, and new clauses 42 on social care provision for young carers. In addition, new clauses 43, 44 and 45 sought to place various duties with respect to young carers on health bodies, schools, and further and higher educational institutions. The Minister said he was not yet convinced that changing the legislative framework would be the best way of improving local support for young carers; however, he said that he did not have a closed mind on the issue, and would reflect carefully on the arguments and the evidence he had received from the National Young Carers Coalition.[233]

Other new clauses debated

In addition to the new clauses noted above, there were debates on the following topics:

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229 Ibid, c802
230 Ibid, cc802-803
231 Ibid, cc803-807
232 PBC 25 April 2013 cc772-5
233 PBC 25 April 2013 cc776-87

- Creating a new offence of failing to prevent smoking in a private vehicle containing children under the age of 18;[234]
- Conducting a review on the benefits and risks to children, young people and their families of increased information sharing between front-line practitioners who provide services to them;[235]
- The provision of health services for children looked after by local authorities;[236]
- Information sharing about live births by NHS trusts;[237]
- The publication of information on children's centres in England;[238]
- The inclusion of children in equality impact assessments;[239] and,
- The establishment of specialist courts in cases where a child has been sexually abused or harmed and where the child will be required to give evidence to the court and to be examined by the court; and to appoint intermediaries to support children in all such cases.[240]

All the new clauses on these topics were withdrawn.

234 PBC 25 April 2013 cc756-759
235 PBC 25 April 2013 cc760-762
236 PBC 25 April 2013 cc762-764
237 PBC 25 April 2013 cc763-772
238 Ibid.
239 PBC 25 April 2013 cc790-794
240 PBC 25 April 2013 cc807-814