



The green paper on special educational needs and disability

Standard Note: SN/SP/5917
Last updated: 19 July 2012
Author: Christine Gillie
Section: Social Policy Section

****This note describes a system of provision for children with SEN which is in the process of being withdrawn, and is maintained for reference purposes. For information on the SEN system introduced from September 2014, see the Library standard note, [The reformed system for children and young people with Special Educational Needs in England](#), SN/SP/7020****

This Standard Note briefly outlines the current special educational needs (SEN) system in England, highlights the main proposals in the Government's green paper on special educational needs and disability, and refers to the Government's plans to implement changes, including the introduction of draft legislation later this summer. The Note provides some information on the pathfinder programme to test key elements of the green paper's proposals including the pilot arrangements to try the use of direct payments for educational provision for children and young people with SEN or disability.

The green paper, [Support and aspiration: a new approach to special educational needs and disability](#), proposed:

- a new approach to identifying SEN through a single early years setting-based category and school-based category of SEN;
- a new single assessment process and Education, Health and Care Plan by 2014;
- local authorities and other services to set out a local offer of all services available;
- the option of a personal budget by 2014 for all families with children with a statement of SEN or a new Education, Health and Care Plan;

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

- strengthening parental choice of school, for either a mainstream or special school; and,
- changing the assessment process to make it more independent.

On 9 May 2012, the Queen’s Speech announced the Government’s intention to introduce a *Children and Families Bill* that would include SEN reforms. On 15 May 2012, the DFE published its detailed [response](#) to the formal public consultation on the green paper and also set out the next steps. It confirmed that the Government would introduce the *Children and Families Bill* in this session of Parliament and would aim to publish a draft Bill on the SEN measures this summer for consultation and pre-legislative scrutiny.

Contents

1	Background: quick overview of the current SEN system	2
2	The green paper	4
2.1	The green paper’s proposals	5
2.2	A selection of initial reaction to the green paper	8
2.3	Oral evidence taken by the Education Select Committee	13
2.4	Westminster Hall debate on SEN	14
3	Pathfinders	16
4	Direct payments pilot scheme	17
5	The Queen’s Speech	20
6	Government’s response to the green paper and next steps	20
7	A revised SEN code of practice	22
8	Oral evidence taken before the Education Committee, 20 June 2012	22

1 Background: quick overview of the current SEN system

The following provides a quick overview of the current SEN system. [Library Standard Note SN/SP/5781](#) provides a more detailed account.

A child has special educational needs (SEN) if s/he has a learning difficulty which needs special educational provision to be made.¹ The legal responsibilities of LAs and schools towards children with SEN are contained in the *Education Act 1996*, as amended. Guidance on the duties of LAs and schools is set out in the statutory [Code of Practice on the Assessment and Identification of Special Educational Needs](#).²

The Code of Practice sets out a graduated approach to SEN that recognises a continuum of SEN which may require increasing action by the school. This is referred to as School Action,

¹ *Education Act 1996*, section 312

² DfES 2001: <http://www.teachernet.gov.uk/docbank/index.cfm?id=3724>

and, for some children, where greater involvement of external specialists is needed, School Action Plus.

The SEN needs of the great majority of children will be met within mainstream settings through School Action or School Action Plus, without the LEA needing to make a statutory assessment. In some cases, however, the LEA will need to make a statutory assessment of SEN and consider whether or not to issue a statement of SEN.

A statement describes the child's needs and the special provision needed. The *Code of Practice* sets out the detailed procedures relating to the assessment and statements of SEN.

Parents can say which school in the maintained sector they prefer their child to attend. Local authorities must meet the parents' preference unless:

- the school is unsuitable for the child's age, ability, aptitude or SEN;
- the placement would affect the efficient education of other children;
- the placement would affect the efficient use of resources.

Before naming a school in a statement, the local authority must consult the governing body of that school. A governing body must admit a pupil whose statement names their school.

Parents can make representations for a placement outside the maintained sector. However, if there is a suitable state school, the local authority has no legal duty to spend public money on a place at a non-maintained or independent school.

The [First-tier Tribunal \(Special Educational Needs and Disability\)](#) is an independent body that hears appeals against decisions made by local authorities on SEN assessments and statements. It has issued a guide for parents on [How to Appeal an SEN Decision](#). This explains when parents can appeal to the Tribunal, and how to go about making an appeal.

The *Children, Schools and Families Act 2010* introduced provision for an additional right of appeal for parents where, following a review of a statement of SEN, the local authority decides not to make any changes. Library [Research Paper 09/95](#) and Library [Standard Note SN/SP/3375](#) provided background on the labour government's policies on SEN.

The Local Government Ombudsman (LGO) may deal with certain complaints about local authority provision for children with SEN statements. Essentially the LGO is concerned with complaints about the SEN process - for example, where the LA has failed to follow the timescale for issuing a proposed statement of SEN or where the LA has failed to ensure that certain provision, as required in a child's statement, is provided. Further details about its remit are given in an [LGO factsheet](#).

In recent years, there has been growing concern about the operation of the SEN system. In July 2006, the Select Committee on Children, Schools and Families reported on special educational needs, and highlighted strong concerns about parents' confidence in the SEN system. Library [Standard Note SN/SP/3375](#) provided background on the Committee's report and the Labour government's response to it.

Part of the Labour government's response to the issues raised by the Select Committee was to ask Brian Lamb, the chair of the Special Educational Consortium, to carry out an inquiry into how parental confidence in the SEN assessment process might be improved. A series

of reports was published. These were made available on the former DCSF website at: <http://www.dcsf.gov.uk/lambinquiry/>

In addition, a number of reports looked at specific aspects of SEN provision (see [Library Standard Note SN/SP/5781](#)) and an Ofsted review of SEN, *Special educational needs and disability review – a statement is not enough*, which was commissioned by the Labour government, was published on 14 September 2010.

The Ofsted review evaluated how well the legislative framework had served children with SEN, and reported on a range of concerns about the current system. The review found that just over one in five pupils – 1.7 million school-age children in England – were identified as having special educational needs. Since 2003, the proportion of pupils with a statement of special educational needs had slightly decreased from 3% to 2.7%, while the proportion identified as needing less intensive additional support at School Action or School Action Plus had increased from 14.0% in 2003 to 18.2% in 2010. Amongst other things, the review said that as many as half of all pupils identified for School Action would not have been identified as having special educational needs if schools had focused on improving teaching and learning for all, with individual goals for improvement.

The review emphasised that providing an SEN statement itself did not mean that a child's current needs were being met. The key implication of the review's findings was that any further changes to the system should focus not on tightening the processes of prescribing entitlement to services but should focus on improving the quality of assessment; ensuring that where additional support is provided, it is effective; improving teaching and pastoral support; developing strategy for specialist provision and services; simplifying legislation so that the system is clearer for parents, schools and other providers; ensuring that schools do not identify pupils as having special educational needs when they simply need better teaching; and ensuring that those providing services focuses on the outcomes for the children and young people.

The review noted that the legislation, guidance and systems surrounding special educational needs had become very complex over the last 30 years with the result that the system had become difficult for everyone, especially for parents and young people, to understand and navigate. Part of the problem was the incremental nature of the changes, and the review said that any further changes to legislation or guidance should not add incrementally to the current arrangements. Instead, it said, changes should simplify arrangements and improve consistency across different services, and for children of different ages and levels of need. The review observed that the language of special educational needs had become highly contentious and confusing for both parents and professionals, and that the term 'special educational needs' was used too widely. [Library Standard Note SN/SP/5781](#) gives further background on the Ofsted review.

2 The green paper

On 7 July 2010, speaking at an Every Disabled Child Matters event, Sarah Teather, the Children's Minister, said that the Government would publish a green paper on SEN.³ On 10 September 2010 the Minister invited views from everyone with an interest in SEN and disability: *DFE paper calling for evidence*. This noted the priorities for the green paper to achieve

³ <http://www.education.gov.uk/news/news/sen-next-steps>

better educational outcomes and life chances for children and young people with special educational needs and disabilities - from the early years through to the transition into adult life and employment;

better early intervention to prevent problems later;

greater choice for parents in the schools their children attend and the support and services they receive, whether in a mainstream or special school setting;

public services centred on the needs of the family and child in the round, joining up support from education, social care and health, particularly for those with the most severe and complex needs and at key transitions; and

streamlining assessment systems so that parents don't feel they have to struggle with the system to get the support they need.

The DFE published an [analysis of responses to the call for evidence](#).

On 24 November 2010, the Government issued the schools white paper, *The Importance of Teaching*.⁴ This contained far-ranging proposals for school reform including teacher training. Many of the proposals in the white paper are relevant to SEN – some of these are highlighted in [Library Standard Note SN/SP/5781](#).

2.1 The green paper's proposals

The green paper, *Support and aspiration: a new approach to special educational needs and disability*, was published on 9 March 2011. It contains wide-ranging proposals to respond to the criticisms of the present system. The consultation ran from 9 March to 30 June 2011.

The [DFE press notice on the green paper](#) summarised the current problems and how the proposals would address these problems. In particular it stressed that parents felt that they had to battle to get the required support; SEN statements did not join up education, health and care support; children had to undergo multiple assessments; there was too much paperwork and bureaucracy adding delays to getting support systems in place; the assessment process was confusing and adversarial with parents' confidence in the system undermined by the perceived conflict of interest where the local authority must provide SEN support as well as assess children's needs; and that too many children were being over-identified as having SEN. The Government proposed to

- include parents in the assessment process and introduce a legal right, by 2014, to give them control of funding for the support their child needs;
- replace statements with a single assessment process and a combined education, health and care plan so that health and social services is included in the package of support, along with education;
- ensure assessment and plans run from birth to 25 years old;
- replace the existing complicated School Action and School Action Plus system with a simpler new school-based category to help teachers focus on raising attainment;
- overhaul teacher training and professional development to better help pupils with special educational needs and to raise their attainment;

⁴ [The Importance of Teaching](#), DFE, Cm 7980, November 2010

- inject greater independence from local authorities in assessments by looking at how voluntary groups might coordinate the package of support; and
- give parents a greater choice of school and give parents and community groups the power to set up special free schools.

In a Written Ministerial Statement on the 9 March 2011, the Education Secretary outlined the case for change, set out the proposed reforms and noted the next steps:

The Secretary of State for Education (Michael Gove): Today the Government publish "Support and aspiration: a new approach to special educational needs and disability".

This Green Paper is about the children and young people in this country who are disabled, or identified as having a special educational need. It is about their aspirations and their hopes. Their desire to become, like every child and young person, independent and successful in their chosen future, and, to the greatest extent possible, the author of their own life story.

It is about their families—who have consistently called for better support for their children and themselves. It is about families of the most disabled children who are providing 24-hour care from birth, or the families of children struggling at school who do not know where to turn for help.

It is also about their teachers, their college lecturers, and the many skilled staff from the health and social care professions who do their best, day in and day out, to provide the right support and encourage the highest aspirations.

Case for change

Life chances for the approximately 2 million children and young people in England who are identified as having a special educational need (SEN), or who are disabled, are disproportionately poor. By the time they leave school these young people are more than twice as likely to be out of education, training or employment as those without a special educational need.

We know that there is much that is excellent in the support for these children, young people and their families. But we also know that this is not happening nearly enough. While the circumstances of children, young people and their parents differ greatly; from young people requiring a few adjustments in class to children with life-limiting long-term conditions, hundreds of thousands of families with have a disabled child or a child with SEN have many shared concerns. Parents say that the system is bewildering and adversarial and that it does not sufficiently reflect the needs of their child and their family life.

Successive reports, such as the 2006 report of the Education Select Committee and Brian Lamb's report in 2009, have described a system where parents feel they have to battle for the support they need, where they are passed from pillar to post, and where bureaucracy and frustration face them at every step.

Disabled children and children with SEN tell us that they can feel frustrated by a lack of the right help at school or from other services. For children with the most complex support needs, this can significantly affect their quality of life.

Children's support needs can be identified late; families are made to put up with a culture of low expectations about what their child can achieve at school; parents do not have good information about what they can expect and have limited choices about the

best schools and care for their child; and families are forced to negotiate each bit of their support separately. According to the Council for Disabled Children, on average a disabled child experiences 32 assessments as they grow up. Resources that could be spent on support and teaching are diverted into bureaucracy.

Proposed reforms

Our proposed reforms respond to the frustrations of children and young people, their families and the professionals who work with them. The vision set out in the Green Paper is informed by the views and expertise of families and national and local organisations working with them.

We want to put in place a radically different system to support better life outcomes for young people; give parents confidence by giving them more control; and transfer power to professionals on the front line and to local communities.

To support better life outcomes for young people from birth to adulthood we will help professionals: identify and meet children's needs early by ensuring that health services and early education and childcare are accessible to all children; work in partnership with parents to give each child support to fulfil their potential; and join up education, health and social care to provide families with a package of support that reflects all of their needs. We propose:

a new approach to identifying SEN in early years settings and schools to challenge a culture of low expectations for children with SEN and give them effective support to succeed. A new single early years setting-based category and school-based category of SEN will build on our fundamental reforms to education which place sharper accountability on schools to make sure that every child fulfils his or her potential; and

a new single assessment process and "Education, Health and Care Plan" by 2014 to replace the statutory SEN assessment and statement, bringing together the support on which children and their families rely across education, health and social care. Services will work together with the family to agree a straightforward plan that reflects the family's ambitions for their child from the early years to adulthood, which is reviewed regularly to reflect their changing needs, and is clear about who is responsible for provision. The new "Education, Health and Care Plan" will provide the same statutory protection to parents as the statement of SEN and will include a commitment from all parties to provide their services, with local assessment and plan pathfinders testing the best way to achieve this.

To give parents confidence by giving them more control over the support their family receives, we will introduce more transparency in the provision of services for children and young people who are disabled or who have SEN. Parents will have real choice over their child's education and the opportunity for direct control over support for their family.

We propose:

local authorities and other services will set out a local offer of all services available to support children who are disabled or who have SEN and their families. This easy-to-understand information for parents will set out what is normally available in schools to help children with lower-level SEN, as well as the options available to support families who need additional help to care for their child; and

the option of a personal budget by 2014 for all families with children with a statement of SEN or a new "Education, Health and Care Plan", many of whom will have complex

support needs. Key workers will be trained to advise families and help them navigate the range of help available across health, education and social care.

To transfer power to professionals on the front line and to local communities we will: strip away unnecessary bureaucracy so that professionals can innovate and use their judgment; establish a clearer system so that professionals from different services and the voluntary and community sector can work together; and give parents and communities much more influence over local services.

We propose to:

give parents a real choice of school, either a mainstream or special school. We propose to strengthen parental choice by improving the range and diversity of schools from which parents can choose, making sure they are aware of the options available to them and by changing statutory guidance for local authorities. Parents of children with statements of SEN will be able to express a preference for any state-funded school-including special schools Academies and free schools-and have their preference met unless it would not meet the needs of the child, be incompatible with the efficient education of other children, or be an inefficient use of resources. We will also prevent the unnecessary closure of special schools by giving parents and community groups the power to take them over; and

introduce greater independence to the assessment of children's needs, testing how the voluntary and community sector could co-ordinate assessment and input from across education, health and social care as part of our proposals to move to a single assessment process and "Education, Health and Care Plan".

Next steps

The Green Paper marks an important milestone in the development of the Government's approach to supporting children and young people with SEN or who are disabled and their families. This marks the start of a four-month consultation period on our proposals.

Central Government cannot achieve this ambitious programme of reform through directing and managing change itself. The proposals we set out are for practical testing in local areas. From September 2011, local pathfinders will help demonstrate the best way to achieve our key reforms. We will also be working across Government and with our local and national partners to set out detailed plans by the end of the year.⁵

Sarah Teather, the Minister for Children and Families wrote to head teachers, school governors and local authorities explaining the proposed changes.⁶

2.2 A selection of initial reaction to the green paper

Initial reactions to the green paper were mixed. There was general support for a creating a single system of assessment of needs, and the emphasis on training of staff was welcomed. However, some commentators raised concerns about funding and the delivery of support for pupils in a diverse school system. Some commentators were also concerned that any attempt to redefine what constitutes SEN could lead to less support for pupils. The following gives a selection of initial reaction to the green paper; however, it is not, and is not intended to be, a comprehensive account.

⁵ [HC Deb 9 March 2011 cc63-5WS](#)

⁶ Links to the letters are available on the [DFE website on the green paper](#).

Lorraine Petersen, Chief Executive of the National Association for Special Educational Needs (NASEN), welcomed the green paper:

NASEN welcomes the green paper. There has long been a need for a more coherent joined-up approach to the assessment of children and young people identified as having SEN. The proposals for an Education, Health and Care Plan to replace the statement will ensure that all those providing services are involved from birth to 25 and commit to providing services in the plan.

We are also pleased to see a clear emphasis on training and development for staff in schools – building on the schools white paper. We need our teachers to be well trained and confident to identify needs and barriers to learning and provide the right support early on.

NASEN is delighted the green paper recognises the important role of the SEN coordinator and is pleased that support for training new SENCOs is continuing.⁷

Srabani Sen, Chief Executive of Contact a Family, said:

We welcome the Government's aspirations to improve the lives of families with disabled children as set out in Support and Aspiration: A new approach to special educational needs and disability.

Many of the principles outlined in the consultation paper are to be commended. We need to examine the proposals in more detail to assess the degree to which they will meet the real needs of disabled children and their families. However the consultation provides a very useful starting point for debate.

Baroness Shireen Ritchie, Chairman of the Local Government Association (LGA) Children and Young People Board, supported the aim of creating a single system but stressed the importance of sufficient funding:

"The aim of creating a single system for people up to the age of 25 with special educational needs is one which the LGA supports. However, more work needs to be done on how to make this ambition a reality.

"Talk of realigning systems simply does not go far enough. What the system needs is a radical transformation built on a firm legislative base.

"Councils are responsible for providing these services to people right through to the age of 25. We need a system that joins up the SEN provision in schools with that in further education colleges.

"We must be clear that if council support for SEN is to continue at its current level, which is something that all local authorities want to see, it must be sufficiently funded. In the recent local government financial settlement, councils saw funding for early intervention cut by 25%. Councils have been leading the way on giving parents greater control over their children's education through personalised budgets, but the Government needs to make sure that the funding from health, education and social care is available to meet these costs.

"Many councils have already made great strides in improving the SEN support they provide and it is encouraging that the Green Paper recognises the key role councils do, and will continue, to play in the coming years."⁸

⁷ [DFE press notice](#), 9 March 2011

Brian Lightman, General Secretary of the Association of School and College Leaders (ASCL) welcomed the proposals to streamline the SEN statementing process but said that there were still many unanswered questions about the future of local strategic planning for SEN provision:

ASCL strongly agrees that there is a clear case for change to the SEN system in order to support teachers and school leaders to give every child the support they need. We therefore welcome the proposals in the green paper to simplify the statementing process. The current system is much too bureaucratic, creates unhelpful tensions between schools and parents and often doesn't address children's needs. A single SEN category has the potential to streamline the process and allow more time for identifying and accessing support. The provision of mediation will help parents, schools and health and social care professionals to work together."

"However there are still many unanswered questions about the future of local strategic planning for SEN provision. SEN provision is very expensive and highly specialised and the proposed reforms will need significant investment. Schools cannot work in isolation and a principle of free choice for parents would be extremely costly. SEN is one area in which local authorities have an essential role to play in planning and locating provision and coordinating admissions. It is unclear how special schools becoming academies will contribute to the development of coherent provision."

"The problems covered in the paper are complex ones which would have been resolved long ago if there were simple answers. Schools are part of the solution, not the problem, and school leaders share the frustrations of working within a system which hinders rather than supports their efforts to access support for students. It would be naive to assume that the solution is to increase school accountability or exhort them to raise expectations with regard to achieving qualifications."⁹

The teachers' union, Voice, also welcomed the green paper's increased support for pupils and the proposed reduction in bureaucratic processes. However, it was doubtful about whether a single, multi-agency assessment could be achieved in the short or medium-term. Voice General Secretary Philip Parkin said:

"We would welcome increased support for pupils, more training for teachers and support staff and a reduction in the overburdensome, time-wasting, bureaucratic processes associated with assessment of pupils' needs.

"Measures which speed up and make more accurate diagnoses of children's needs, and provide more information and support for parents and families, would be widely supported.

"There should be specialist training for staff on how to support diverse learners. For example, SENCOs (special educational needs co-ordinators) could be trained to have a more specialised role.

"A single, multi-agency assessment on the same day, rather than separate assessments on separate days, would be ideal but I fear this is unlikely to happen in the short or medium-term without major changes to the way different agencies involved operate and and co-ordinate their services.

"We are concerned about the whether local authorities will have the resources and ability to carry out their functions effectively in the face of cuts to jobs and budgets.

⁸ [LGA response to special educational needs Green Paper, LGA media release, 9 March 2011](#)

⁹ ["Adversarial' statementing process needs streamlining", ASCL press release, 9 March 2011](#)

Mechanisms such as the SEN statementing process are already often thwarted and rationed by constraints of time, money and bureaucracy. Once schools have used up their quotas, it becomes more difficult for additional children to receive the support they need. Smaller local authorities in particular often have difficulties because the SEN budget may be spent disproportionately on a few expensive cases. This is likely to become worse.

“The fragmentation of the education service will also make it increasingly difficult to operate a coherent programme for special educational needs and there is a danger that children could fall between different types of school.

“We fear that academies will create a two-tier education system that will damage the ability of local authorities to deliver central services, such as special needs support, to maintained schools.

“Free special schools would create an even more chaotic system that would risk segregating children with special needs instead of including them, hampering their development and also making it more difficult for other children to have positive attitudes to, and understanding of, their peers who have special needs.

“Voice believes that, where possible, children should be included in mainstream education provided they have the appropriate support.

“We would like to see a focus on individual achievement rather than attainment against national benchmarks as progress by children with Special Educational Needs and/or Disabilities (SEND) is often more subtle than can be detected by national tracking systems.

“It is crucial that any policy is suitably flexible and adaptable to reflect and accommodate the complex nature of SEN.

“Voice will study the proposals in detail and participate in the consultation.”¹⁰

Christine Blower, General Secretary of the National Union of Teachers said:

“Local authorities play a vital role in co-ordinating provision of education for SEN and disabled pupils, backed up by high quality specialist advice. In the context of cuts to LA budgets the most vulnerable children will have access to lower levels of support. To suggest that the voluntary sector can step in to fill the gap is inappropriate.

“Mainstream and special schools also need to be able to build on the strong networks of schools to share responsibility for the success of all children in their area. The implementation of the academies and free schools programme poses a direct threat to such initiatives.

“No teacher can be an expert in all areas of SEN. A new scholarship fund for teachers to study higher level qualifications in SEN is welcome but should not be at the expense of central advisory teams nor the role of the SENCO within schools.”¹¹

Chris Keates, General Secretary of the NASUWT, the teachers’ union, said:

“Beyond the rhetoric and hype accompanying the publication of the Green Paper, the key message appears to be that the Coalition Government believes that there are too many children and young people classified as having SEN.

¹⁰ “SEN Green Paper: reducing bureaucracy but fragmenting the system?”, Voice press release, 9 March 2011

¹¹ Green Paper on SEN, NUT press release 9 March 2011

"The evident danger is that the Coalition Government is seeking to redefine what constitutes SEN. In the context of an austerity programme, this can only mean that fewer children will qualify for additional support.

"The reform of critical support for children and young people with SEN is being proposed at a time when the health service is being plunged into the chaos of reorganisation, the free market is being introduced into schools and massive cuts and job losses are being faced by essential services.

"Decisions are being taken in relation to reform of the funding system that could lead to SEN being sidelined, as the Coalition Government has not commissioned any detailed work on the funding of such provision.

"Reliance on the voluntary sector is once again rife in these proposals. This is fanciful at a time when voluntary organisations are struggling for their own survival.

"This Green Paper will not give confidence to those parents who have children currently on the SEN register. It will simply create anxiety and fear that they may no longer qualify for support.

"If this Green Paper is genuinely about seeking to meet the needs of children with SEN and disability rather than about cuts, then the Coalition Government must demonstrate its willingness to have an open and honest debate on this complex and critical issue."¹²

The Association of Teachers and Lecturers (ATL) issued the following press statement just before the green paper was published:

There is a grave danger that pupils with special educational needs will lose out because of the impact of government cuts and changes to education funding, according to the Association of Teachers and Lecturers (ATL).

On the eve of the release of the government's green paper on special educational needs, ATL general secretary, Dr Mary Bousted, warned: "Savage cuts are already been made to many of the specialist services teachers rely on to help them support children with special educational needs. Educational psychologists and speech and language therapists are being made redundant as local authorities cut their funding following budget cuts from government.

"As schools turn into academies and start acting independently we are worried that local authorities will have less funding to provide community education services and there will be increasing pressure on services for vulnerable pupils.

"The SEN green paper needs to strengthen the role of local authorities and external services so they can better support schools, and funding must be found to provide the support needed.

"We also want it to require schools to co-operate in providing SEN support. Statementing needs to be reformed so they happen faster, but there have to be enough specialists available to do this and provide the support needed.

"There needs to be an urgent review of staffing levels in the support services such as educational psychologists and speech and language therapists.

¹² [NASUWT comments on the special educational needs Green Paper, 9 March 2011](#)

"We would also like the green paper to improve training for staff in working with SEN pupils at initial teacher training, during continuous professional development and through stronger links with external specialists.

"We hope the SEN green paper also recognises the harm to SEN pupils caused by England's exam and testing system and the competition it encourages between schools at the expense of support and co-operation to help the most vulnerable young people."¹³

An article in the *Times Educational Supplement* quoted additional reaction.¹⁴

In response to some of the criticisms made of the green paper, Sarah Teather, the Minister for Children and Families stressed that the importance of parental choice was central to the green paper.¹⁵

Further comment from the various SEN voluntary organisation may be found on their websites including the detailed [responses](#) from the Special Educational Consortium (SEC)¹⁶ and the Council for Disabled Children (CDC). Although SEC and CDC supported the overall direction of the green paper, they raised specific aspects about which they had concerns.

2.3 Oral evidence taken by the Education Select Committee

On 16 August 2011 the House of Commons Education Committee published oral evidence taken on the SEN green paper on 17 May 2011.¹⁷ Evidence was taken from Sue Bourne, Headteacher, The Avenue School, Reading; Professor Geoff Lindsay, University of Warwick; Jane McConnell, Chief Executive, Independent Parental Special Education Advice; Councillor Ken Meeson, Local Government Association and Leader, Solihull Metropolitan Borough Council; Lorraine Petersen OBE, Chief Executive, Nasen; and Sarah Teather, Minister of State for Children and Families, Department for Education.

In the evidence session with Sarah Teather, Graham Stuart, chair of the Education Committee, said that the green paper had been broadly welcomed, and noted that the big question was whether the resources would be in place to deliver the vision set out in the green paper. Responding, the Minister said:

I think that the resources are available, and much of what we are doing is trying to use resources more efficiently. A lot is spent at the moment on special educational needs, and not all of it is spent effectively. A lot is spent fighting the system; a lot is spent with parents moving from one place to another trying to get the system to take responsibility. The tribunal wastes a lot of money. We need as much focus as possible on how we can get a better quality of engagement between parents, local authorities and the health service at an earlier stage, so that you have a better quality of dialogue early and people have more confidence in the system and are less likely to move through the different stages to get to the end point of a tribunal, and also a focus on getting the whole system to work more effectively.

We know from the evidence that parents, families and young people themselves gave to us during the consultation before we produced the Green Paper that many families

¹³ ["Pupils with special educational needs risk being squeezed by government cuts", ATL press statement,8 March 2011](#)

¹⁴ ["SEN shake up will see every child assessed before the age of three", TES, 11 March 2011 p4](#)

¹⁵ [Sarah Teather responds to criticism of the special educational needs green paper, DFE, 14 March 2011](#)

¹⁶ The Special Educational Consortium is convened under the auspices of the Council for Disabled Children, and consists of 24 voluntary and professional organisations

¹⁷ [HC 1019-i, 16 August 2011](#)

have to fight to get certain services that they really ought to be getting. That will affect educational provision. For example, with speech and language therapy, families will often move between different bits of the system—between the health service and the education service—trying to get someone to take responsibility. That is one of the things that pushes people down the expensive, gold-plated route, because they cannot necessarily get the support they want in a mainstream setting. This is all about trying to get resources to be used more effectively, so that families feel less under pressure and less as though they have to battle.

Some of the things we are recommending I would say are huge cultural changes, which will take time to implement. We are about to begin a phase of pilots and testing. That process will be iterative—a process of active and engaged learning—rather than the Schrödinger's cat model of a black box, when you do a randomised control trial and then come out and look at it at the end of the day. This is really going to have to be active, engaged learning, beginning on a small scale and then rolling those pilots out, so that we can learn the lessons.

Trying to get the health service, education and social care to join together is something I recognise that my predecessors, who have appeared before you, have probably tried and promised to do before. I know it is difficult, and we are determined to make it work, but the detail will be about how we get it to happen on the ground. Similarly, we want the plan to be focused much more on outcomes, rather than on inputs only. That is a huge cultural change—for people working in local authorities and for families as well. If we can get that to happen, it would be much better for families, and they would be much more likely to get the support that they need to enable their child to progress.¹⁸

The subsequent questions and answers included discussion about school choice and the possibility of placements at independent or non-maintained schools; the role of Ofsted in holding schools to account for their SEN provision; the difference between the proposed education, health and care plans and the existing statementing system; the recruitment and role of health visitors; the funding and training of SENCOs; teacher training about SEN; the curriculum and SEN; alternative provision; provision for adults with SEN; the careers service and the needs of children with SEN; the use of personal budgets; the health service and proposed reforms; and, looked after children with SEN and multiple placements.

2.4 Westminster Hall debate on SEN

Introducing a [debate on SEN in Westminster Hall on 6 September 2011](#), Annette Brooke said that while she welcomed the green paper there were concerns particularly relating to the provision of SEN education by non-maintained and independent special schools, which she thought had been overlooked by policy makers.¹⁹ She also made a number of specific points relating to perceptions about the cost of places at non-maintained special schools or independent special schools, and called for the collection of evidence on the matter.

Amongst other things, Rehman Chishti asked whether personal budgets proposed in the green paper would enable parents to purchase provision in the independent sector.

Responding, Sarah Teather, Minister of State for Children and Families, noted that the DFE was considering the responses to the green paper, and that a formal response would be published. She stressed that parents would continue to have the right to make representations for a place at a school that is not state-funded and that the local authority would have to take those representations into account when it makes its decisions on

¹⁸ Ibid., Q38

¹⁹ [HC Deb 6 September 2011 c55WH](#)

placements. Extracts from the Minister's response to the debate are reproduced below but readers are advised to consult the full debate.

..Members will be aware that this debate takes place relatively soon after we published a Green Paper on SEN and disability. We carried out a consultation that received 2,400 responses and we are going through all those responses. They were very varied, coming from education professionals, including teachers, families and health workers. Later this year, we will publish a formal response. So I take this debate in the spirit of that consultation. We are still in a period of gathering information and views about our Green Paper before deciding how to work through some of the proposals that we made and to ensure that we get the detail correct. During this period, we are also establishing local pathfinders to test out some of the best ways of delivering the change that we have proposed. We will announce details of those pathfinders later this month.

My hon. Friend made a number of specific points about naming schools and school choice. It is perhaps worth my placing on record what the Green Paper says. We are widening the range of schools from which parents can choose by enabling parents, teachers and others to set up free schools and by allowing existing schools to become academies. The free schools route also provides an opportunity for non-maintained schools to seek academy status if they wish to do so. We intend to change the law so that parents of children who would have an education, health and care plan have the right to express a preference for any state-funded school and to have that preference considered on the same basis, whether it is for a special school, a mainstream school, an academy or a free school.

My hon. Friend asked why we have not made a similar provision for parents to express a formal preference and then for local authorities to name a school if it is a non-maintained school or an independent school. It is about the original purpose of the legislation, which is to ensure that parents get that choice—often when a school may not choose to take the child. As she will be well aware, the process is that parents are able to express a preference and the local authority will then consider whether that is the right placement for that child, subject to the legal provisions about the best use of resources and whether it will have any detrimental effect on the education of other children. At that point, if the local authority agrees—if it does not meet the conditions, it has to agree—to place the child in that school, it formally names that school and the school is forced to take the child.

Of course, non-maintained schools and independent schools do not want to be forced to take a child and, in a sense, that is a point that the hon. Member for Gillingham and Rainham made when he raised wider issues about disability discrimination legislation. We have a diverse range of schools and there are balances of freedoms and restrictions applied to different schools. If non-maintained schools want to take on slightly different freedoms but also different restrictions, they have the freedom to apply for academy status, and independent schools have the ability to apply for free school status, as I outlined a while ago. In doing so, they trade some of the freedoms that they already have and gain different restrictions. Therefore, it does not make sense in that situation to extend the legislation so that schools would be forced to take a child, and I do not think that that is something that those schools would want to do. However, I stress that parents will continue to have the right to make representations for a place at a school that is not state-funded and the local authority must take those representations into account when it makes its decisions on placements. We are not proposing any change to that process in the Green Paper.

My hon. Friend raised points about whether non-maintained special schools and independent schools are always more expensive. She quoted some things that I had

said at a hearing of the Select Committee on Education. I think that they have been taken very slightly out of context. It is true to say that some independent schools and some non-maintained schools are more expensive than state-funded provision, but I have not said at any stage that all non-maintained special schools and all independent schools are always more expensive. It would simply be incorrect to say that. We have spoken to the National Association of Independent Schools and Non-Maintained Special Schools on this point and we have tried to encourage it to submit its own evidence about costs to the review about school funding, which is ongoing. We are out to consultation until about mid-October and we encourage those in the sector to submit what evidence they have about costs and to say whether full costs are being taken into account. Such evidence would be very useful when we are considering what we do with pupils, particularly those high-cost pupils about whom my hon. Friend spoke earlier.

It is also worth saying that local authorities are obliged to make decisions about placements on an individual basis. There is no doubt that for some children attending an independent or non-maintained special school will be absolutely the appropriate and right course of action for them, and the local authority is then required to fund a place for the child at that school. In fact, the number of children who are being educated in the independent sector has risen, not fallen, during the past five years.²⁰

On the issue of personal budgets and whether parents would be able to buy provision in the independent sector, the Minister said:

The answer is yes, but we think that it is unlikely to apply to the whole school place. That is something that we are testing at the moment through our pathfinder schemes, but we think that it is unlikely to be practical to apply to the whole school place. Of course, as I stated a short time ago, if that provision is correct for a child, local authorities are already bound to fund the whole school place anyway, but they may well be able to pay for some of the extra provision that might be offered in a particular school.²¹

3 Pathfinders

On 30 June 2011 the Government invited bids from local authorities and their partners to become green paper pathfinders (SEND pathfinders).²² Information on this was provided on the DFE website on [SEND pathfinders](#) (dated 8 August 2011), which said that the pathfinders would be funded to test the core proposals from the green paper: namely, a single assessment process; 'Education, Health and Care Plan'; greater engagement of the voluntary sector; and use of personal budgets. It invited bids to come from local area partnerships between local authorities and Primary Care Trust (PCT) clusters, and encouraged bids from partnerships of more than one local area; however, it made clear that bids from single LAs working with PCT clusters would also be accepted.²³ The Invitation to Tender and a FAQ note on the pathfinders was also published on the [SEND pathfinders](#) website.

20 pathfinders were announced.²⁴ These cover 31 local authorities and their PCT and emerging Clinical Commissioning Group partners. A list of the pathfinders is available on the

²⁰ Ibid cc 59WH-61WH

²¹ Ibid, c62WH

²² HC Deb 20 July 2011 c1046W

²³ <http://www.education.gov.uk/childrenandyoungpeople/sen/b00191706/send-green-paper-pathfinders>

²⁴ HC Deb 17 October 2011 c609

[DFE website](#). In addition, the Department announced the appointments of SQW to evaluate the pathfinder programme and Mott MacDonald to provide support to the pathfinders.²⁵

The pathfinders will test how to reform the system including SEN statements and the statutory framework; however, the existing framework will continue in pathfinder areas during the period of testing.²⁶

The pathfinders have three common objectives:

- to develop a new birth to 25 assessment process and single plan incorporating education, health and social care assessments, bringing together the range of support on which children, young people and their parents and families rely;
- to explore how the voluntary and community sector could improve access to specialist expertise and to introduce more independence to the process; and,
- to ensure the full engagement of children, young people, and their parents and families.²⁷

The pathfinder [slides](#) also noted that the Government would introduce an amendment to the *Education Bill*, then before Parliament (see below), to enable the pathfinders to test the use of education direct payments within the existing statutory framework. The idea underlying direct payments is to give families more flexibility and empower them to make decisions about the support they receive.

4 Direct payments pilot scheme

On 1 November 2011, during the debate on the *Education Bill* (in the Report Stage fourth day debate in the Lords), Lord Hill of Oareford moved new clauses that were added to the Bill to allow local councils to test the use of direct payments for meeting special educational needs.²⁸ Responding to issues raised about the pilots, Lord Hill of Oareford said that there would need to be very careful evaluation, and stressed that he wanted this to be an open process and that the findings would be shared as the pilot progressed.²⁹

The provisions for the pilot scheme are now contained in section 75 of the [Education Act 2011](#). It inserted new provisions into the *Education Act 1996*. The new sections are summarised in the [Explanatory Notes on the Education Act 2011](#).

Section 75: Direct payments: persons with special educational needs or subject to learning difficulty assessment

355. Section 75 concerns direct payments for persons with special educational needs (SEN) or subject to learning difficulty assessment. Subsection (1) inserts new sections 532A to 532C into Chapter 2 of Part 9 (ancillary functions of local authorities) of EA 1996.

356. New section 532A creates a power for a local authority in England to make a direct payment for the purposes of securing goods and services in respect of a person for whom they maintain a statement of SEN; or a young person who is subject to a

²⁵ [DFE website, SEND green paper pathfinders \(dated 26 October 2011\)](#)

²⁶ [DFE pathfinder slides](#) available on the DFE SEND green paper pathfinders website (last updated 26 April 2012)

²⁷ [DFE pathfinder slides](#)

²⁸ HL Deb 1 November 2011 cc1197-1201 and c1210-11

²⁹ *Ibid.*, cc1200-01

learning difficulty assessment by the authority. New section 532A(3) provides that direct payments can only be made in accordance with a pilot scheme made under section 532B.

357. New section 532B gives the Secretary of State the power to make pilot schemes by order, and stipulates certain matters that must be included in any pilot scheme. Subsections (3) to (6) set out what the pilot scheme must make provision about, including who direct payments can be made to, how the amounts are to be calculated, and arrangements for monitoring the scheme. A pilot scheme may also include such other provision as the Secretary of State thinks appropriate. Subsections (7) to (10) provide that a pilot scheme may stipulate that goods and services purchased by a direct payment can be treated as provided or arranged by a local authority in pursuance of their relevant statutory duties, which are listed in subsection (9).

358. New section 532C requires that an order creating a pilot scheme must set out the local authorities that will take part in the scheme and how long it will last. The duration of an initial scheme is limited to a maximum of two years, but a scheme can be extended by order so long as it is not extended to continue past the date which is four years from the date this Act received Royal Assent.

359. Subsection (2) amends EA 1996 to provide that an order to create or amend a pilot scheme is subject to approval by each House of Parliament under the affirmative resolution procedure.

360. Subsection (3) provides that the new provisions inserted into EA 1996 by section 75 will be automatically repealed four years after Royal Assent of this Act.

The details of the pilot scheme were set out in the draft [Special Educational Needs \(Direct Payments\) \(Pilot Scheme\) Order 2011](#). A DFE [Explanatory Memorandum](#) on the draft order outlined the policy background. It noted that

7.4 The pilot scheme allows direct payments to be made to the parent of a beneficiary who has not attained the age of 16 and a beneficiary who has attained the age of 16 and who has capacity to consent to the making of direct payments to them. So a young person aged 16 will be able to manage their own direct payments. Payments may also be made to a nominee or a representative to enable parents or young people (aged over 16) who may not otherwise be able to or wish to do so to have the opportunity of direct payments.

7.5 The pilot scheme contains a number of safeguards for children, young people and their families. Local authorities must arrange information, advice and other support for families in connection with direct payments. Before making any payments the local authority must ensure that recipients have a clear understanding of, and that they agree, what the payment is in respect of, how much it is, whether payable in a lump sum or in instalments and when they will receive the funds.

7.6 The take up of a direct payment will be voluntary and local authorities must obtain written consent from the person to whom the direct payment is to be made and where a nominee is to receive direct payments, on behalf of the parent or beneficiary, their agreement must be obtained by the local authority as well. The local authority must also be satisfied that the provision which the child or young person needs can be secured by means of a direct payment and ensure that the amount of the direct payment is sufficient to meet the full cost of that provision.

7.7 The scheme safeguards the use of public funds through a requirement for local authorities to consider, before agreeing any individual direct payment, whether the payment is compatible with the local authority's efficient use of its resources and that it

will not have an adverse impact on services for other children and young people with special educational needs and/or disabilities.

7.8 The scheme will require local authorities to monitor the use of direct payments and, as a minimum, undertake a review within three months of the first payment being made and at the end of the first year of their use by an individual and thereafter at appropriate intervals. The pilot scheme will operate for two years.³⁰

The [Explanatory Memorandum](#) said that respondents to the consultation on the Green Paper had broadly welcomed the proposals to introduce personal budgets and direct payments for SEN provision. However, there was recognition that the option may not be something in which all families would wish to participate.

8.2 Respondents to the consultation broadly welcomed the proposals to introduce personal budgets and direct payments for special educational provision and provision to meet educational and training needs, citing the additional freedom and choice that they could bring. There was recognition that the option may not be something that all families may wish to take advantage of and that is why we have made it a requirement that a local authority must obtain the written consent of the parent or beneficiary before making direct payments. Respondents also suggested a number of different types of provision that could be included in a personal budget, such as specialist support, auxiliary aids and transport, and highlighted important considerations including the need to ensure that families receive the appropriate support. The Department worked closely with a number of groups representing children and young people with special educational needs and disabilities during the passage of the Education Act 2011 and this work has included detailed discussions on the content of the pilot scheme. Many of the suggestions raised both in consultation and during the discussions with representative groups have been included in the pilot scheme. The pilot will help us to identify any other potential issues, and develop our understanding of the ways in which personal budgets, particularly direct payments, can help to improve families' choice and control.³¹

On 16 January 2012, the draft [Special Educational Needs \(Direct Payments\) \(Pilot Scheme\) Order 2011](#) was debated in Grand Committee in the House of Lords.³² It was also debated in the [Sixth Delegated Legislation Committee](#) on 18 January 2012.

Prior to the debates, Sarah Teather deposited in the House of Commons Library [extracts](#) from the analysis of consultation responses relevant to personal funding and direct payments.³³ (N.B. the full consultation responses and next steps document has now been published – see below.)

The [Special Educational Needs \(Direct Payments\) \(Pilot Scheme\) Order 2011](#), SI 2012 No 206, was made on 29th January 2012 and came into force on 30 January 2012. Schedule 2 of the Order lists those local authorities in the pilot scheme.

³⁰ DFE [Explanatory Memorandum](#) on the Draft Special educational Needs (direct Payments) (Pilot Scheme) Order 2011, p3

³¹ Ibid., pp3 and 4

³² HL Deb 16 January 2012 GC 101 116

³³ Letter from Sarah Teather to Graham Stuart MP, Library deposited paper DEP [2012 - 0049](#)

Some commentators have raised concerns about the complexity of managing a personal budget and question whether it would add to the stress that parents with children with SEN and disability already experience.³⁴

5 The Queen's Speech

The Queen's Speech on 9 May 2012 announced the Government intention to introduce a *Children and Families Bill* that would include the SEN reforms. The Department for Education's [press notice](#) announcing the Bill sets out the following regarding SEN.

Special Education Needs

The key measures are:

replacing SEN statements and Learning Difficulty Assessments (for 16- to 25-year-olds) with a single, simpler 0-25 assessment process and Education, Health and Care Plan from 2014

providing statutory protections comparable to those currently associated with a statement of SEN to up to 25 in further education – instead of it being cut off at 16

requiring local authorities to publish a local offer showing the support available to disabled children and young people and those with SEN, and their families

giving parents or young people with Education, Health and Care Plans the right to a personal budget for their support

introducing mediation for disputes and trialling giving children the right to appeal if they are unhappy with their support.

The legislation would draw on evidence from 20 local pathfinders set up in September 2011. The interim evaluation reports are due in summer and late autumn 2012, with a final report in 2013.

Ministers have committed to making all the necessary legal changes to put in place reforms proposed in the *Support and Aspiration Green Paper*.

The Green Paper was published for consultation in March 2011 – and next week, ministers will set out their detailed response and reform timetable.

6 Government's response to the green paper and next steps

On 15 May 2012, the Government published its detailed response to the formal public consultation on the green paper and also set out the next steps: [Support and aspiration: a new approach to special educational needs and disability - progress and next steps](#). This confirmed that the *Children and Families Bill* would be introduced in this session of Parliament and that the Government aims to publish a draft Bill on the SEN measures for consultation and pre-legislative scrutiny.

In his [Written Ministerial Statement](#) to the House of Commons on 15 May 2012, Michael Gove said that the draft Bill would be informed by early lessons from the pathfinders:

...

³⁴ ["Reforms will let parents hold the SEN purse strings"](#), *Times Educational Supplement*, 10 February 2012, p20

The Government are committed to achieving the ambitious programme in the Green Paper. Progress has been made in taking forward the commitments made. But there is more to do. We owe it to the children, young people and families who get a poor deal from the current system, and to those who work with and support them, to make sure we get those changes right. That is why we have established 20 local pathfinders involving local authorities and their local health partners who are testing out the reforms and building the knowledge and skills that will be needed for their successful implementation.

The practice developed by the pathfinders will be shared widely with other local areas. An interim evaluation of the pathfinders will be published by October 2012, with a final evaluation report following in 2013.

The Queen's Speech announced the Government's intention to bring forward legislation in the current session of Parliament to take forward the Green Paper reforms. These changes are vital for children, young people and families and we need to begin the legislative process in the current session in order to meet the commitments given in the Green Paper.

Our aim is to publish a draft Bill in the summer which would be informed by early lessons learned from the pathfinders. There would then be further opportunities for lessons learned from the pathfinders to inform the pre-legislative scrutiny stage and the Bill itself. Our intention remains, subject to Parliament's approval, to implement the reforms from 2014. Lessons learned from the pathfinders and evaluation of their activity will inform how the reforms are implemented.

The Bill would include provision for:

Every local authority to develop and publish a local offer of support for children, young people and families—including from early years settings, schools and colleges and the voluntary sector and from health and social care services;

A new, single assessment process and education, health and care plan from birth to 25 with arrangements comparable to statements for young people over 16—whether they are in school or at college—this is a significant change and will help us to get better transitions to adult life, independence and the world of work;

All families with an education, health and care plan to be offered a personal budget for their support;

Ensuring that services for disabled children and young people and those with special educational needs are planned and commissioned jointly by local authorities and clinical commissioning groups and that there are clear duties on all of the agencies involved, building on the reforms to the health services introduced by the Health and Social Care Act 2012 and drawing on the recommendations of the Children and Young People's Health Outcomes Forum;

Parents to have the right to express a preference for any state funded school, including academies and free schools, and have their preference considered under the same criteria as for maintained schools;

Families to try mediation before they appeal to the tribunal;

And it will seek a power to trial giving children the right to appeal to the tribunal.

We are working across Government and with our local and national partners to put the reforms in place, drawing on the findings from the pathfinder programme.³⁵

7 A revised SEN code of practice

In reply to parliamentary questions, Ministers have confirmed that when the SEN framework is changed there will be a revised code of practice that will be consulted on and laid before Parliament.³⁶ A recent answer to a PQ in the Lords reiterated this.

Question

Asked by The Countess of Mar

To ask Her Majesty's Government when they plan to revise the definition of special educational needs for schools; and whether they will publish that definition.[HL456]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): "Special educational needs" is currently defined within Part IV of the Education Act 1996. The Government have announced a Children and Families Bill which will replace Part IV and revise the definition of special educational needs (SEN) to reflect the proposed change to a birth to 25 system for assessing and providing for children and young people's needs. A draft of the Bill will be subject to pre-legislative scrutiny later this year. The SEN code of practice will be revised to reflect the new arrangements set out in the Bill and a draft of the code, including clearer guidance on what constitutes a special educational need, will be laid before both Houses for approval.³⁷

8 Oral evidence taken before the Education Committee, 20 June 2012

The Education Committee took evidence from Philippa Stobbs, Vice Chair (Policy), Special Educational Consortium; Jane McConnell, Chief Executive, IPSEA; Professor Brahm Norwich, Professor of Education Psychology and SEN; University of Exeter, Martin Bacon, Principal, Swavesey Village College; and Debbie Jones, Director of Children's Services, Lambeth, and President, ADCS.³⁸

There was discussion about whether draft legislation should be delayed until more information about the pathfinders is available especially as many of the pathfinders are in the early stages. For example, Jane McConnell, from IPSEA, suggested waiting until the pathfinders had been in operation for at least a year. Debbie Jones, from ADCS, said that 2013-14 should be a transitional year. Professor Brahm Norwich wondered whether some of the changes could be made at 'a regulation level, or in some other informal way.' However, Martin Bacon, from Swavesey Village College, thought that legislation was needed 'to drive cross-phase working.' Philippa Stobbs proposed a staged approach on the basis of the evidence from the pathfinders to avoid the risk of losing the will and desire of making the system work better.

Philippa Stobbs, from the Special Educational Consortium, raised parental concerns about the changes taking place at a time of local authority funding cuts, and stressed that there

³⁵ [HC Deb 15 May 2012 c24-25WS](#)

³⁶ [HC Deb 13 September 2011 c116W](#)

³⁷ [HL Deb 14 June 2012 cc271-2WA](#)

³⁸ [Uncorrected transcript of oral evidence taken before the Education Committee, 20 June 2012](#) to be published as HC 147-i

was a need for clear evidence that the new system would work better than the existing arrangements and would not compromise any of the existing entitlements. In addition to funding issues, there was discussion about the 'voice of the child', the local offer, assessment of needs and the single plan, the issue of independence of assessments, personal budgets, and better use of existing resources. Other issues raised included SEN and academies, exclusion as an indicator of SEN, planning for the transition to adulthood, the changing role of local authorities in the context of academy conversions and a reduction of in-house expertise as local authorities move to become commissioning authorities.

Sarah Teather, Minister of State for Children and Families, also gave evidence.³⁹ In reply to a question from the Chair about the timing of the introduction of draft legislation, the Minister made the following observations:

Q60 Chair: Four of the five expert witnesses we have just had before us recommended not bringing forward draft legislation this year until the evidence from the pathfinders is available. Is there any sense in that recommendation?

Sarah Teather: We are trying to balance a number of competing voices, and I am sure you expect that. Parents told us repeatedly that the current system does not work and that they want us to move as quickly as possible. Some of the stakeholder groups are saying, "Well, we've got to get the detail right," and at the same time some of them are saying that it is not quite radical enough, so there are lots of competing voices in this space. I want to say to the Committee immediately that one of the things that we have been trying to balance is your need for adequate time to do pre-legislative scrutiny for us. Our original intention had been to publish the draft clauses in July, but our officials have been speaking with your clerk and we understand that if we publish in the first week of September there will be adequate time for you. We would like slightly to delay publishing our draft clauses, which allows a little more time for the pathfinders to continue their work.

The Minister added that while a number of the stakeholder groups had expressed concern about the speed with which the Government were taking forward the proposals, nevertheless, individual parents had said that they wanted the Government to move more quickly. However, she stressed that there would be time for proper scrutiny:

We are not talking about an academies-style speed of getting through the Commons; we have time to go through that time during the Committee phase and Report stage. We do not expect to receive Royal Assent until 2014, and then we need to think carefully about how we implement, to make sure that we are doing that right. In terms of the evaluation, SQW, who are our partners for this, are doing regular updates; as it happens they are publishing another update next week, which is a couple of months out of date. Our first proper evaluation will come in time for you to do pre-legislative scrutiny, but regular updates will be published all the way through, so it is not as though this is going into a black box and we are waiting for the answers to come out the other end.⁴⁰

There was discussion about the single assessment, and the Minister noted that what is being proposed is a 'single assessment process rather than a single assessment.'

The Minister outlined the new approach as follows.

³⁹ [Uncorrected transcript of oral evidence taken before the Education Committee, 20 June 2012 Q59 to Q118](#)

⁴⁰ *Ibid.*, Q61

I want to tell you a bit about the re-engineering of the whole system; it is worth thinking about what we are doing in the whole to give you a sense of the big picture, as it is quite a big document, as you said. First of all, the local offer, laying out what parents should expect, should change the relationship right from the beginning. Instead of starting with a blank sheet of paper, you are starting with an offer of services about what is involved, involving everybody—from early years, professionals, schools, right up to colleges, health, and social care—and better earlier identification. We have already begun putting some of those steps in place with the new early years foundation stage curriculum and the two and two-and-a-half-year-old check. There is better training for teachers, which I can talk to you about in a minute.

The protections are being extended downwards; the statementing process at the moment normally only begins when you start at school. The last Government tried to discourage areas from using the statementing process in the early years. This is explicitly 0-25, and we are effectively formalising some of the triggers that exist in the system where it works well, so that health professionals can refer in to the system, for example. We want team around the child and early support, which is really good practice, to become best practice right from the beginning, so that instead of fighting for the first four or five years, until your child starts school, that should be in place right from the beginning. We are extending the age ranges, extending those statutory protections from 16 to 25, which is new.

There is a more integrated, streamlined assessment process, working with parents from the beginning, and that is really important in what is being tested. We have a joined-up plan, making clear who will pay; joint commissioning and duties on health for the first time, to make it clear that you have to plan and commission services together with the local authority, so that for the first time you might actually have the right types of services available that are needed by families and children in a particular area. The personal budget is not just about giving more choice to parents; it also requires people to set aside the money, and not just stick it in a plan and then not come up with the money to pay for it. Mediation will become a compulsory part of the process.

The whole system is designed to make sure that we can reach agreement at an earlier stage—that we are less likely to have to go all the way through to the end, fighting the process. Nevertheless, we intend to leave in the statutory protections that exist in the current statementing system, so you still have recourse to the tribunal. Our purpose is to try to prevent everybody from having to go all the way to the end, and to make sure that we are more likely to get agreement, and put safeguards in place from the very beginning. This is a very big, radical change, and it involves lots of different pieces of the jigsaw.⁴¹

The Minister noted that local offers will vary but that the Government will stipulate the kinds of things that should be included.

Sarah Teather: It is inevitable, and in some ways desirable, that local offers should be different, because it is a local offer, not a national offer. We intend to stipulate the kind of elements that should be in the local offer, and the legislation will do that, and you will be able to see that.

Q87 Ian Mearns: So you will have a minimum standard?

Sarah Teather: That is not quite what I said. We intend to stipulate the kinds of things that should be included in the local offer—that it should include an offer of services from early years, from schools and from colleges. I would like to see areas that are really

⁴¹ Q67

good at something championing that in their local offer, and not just making it something that you need to reach a threshold in order to attain. There are areas that are genuinely good at something. I know that we do not believe that, because we believe that the current system is so completely broken, but in fact the local offer comes out of experience in one local authority who tried this out and who had worked with parents in different ways. Some elements will be stipulated in legislation, but this is intended to be additional. You still have the statutory system, which functions through the education, health and care plan, which replaces statements and LDAs; however, this is intended to be an additional offer.⁴²

The Minster commented in some detail on the pathfinder experiences. Other issues covered included: mediation, funding issues, the role of health visitors, direct payments and local providers, speech and language therapy services, inclusion guidance, special schools, school exclusions, alternative provision, new duties on health to jointly plan and commission provision, the role of voluntary organisations and the issue of separating assessment and the funding of provision.

⁴² Q86 and Q87