

HEALTH AND WELLBEING BOARD

05 NOVEMBER 2013

Title:	Children and Families Bill
Report of the Corporate Director of Children's Services	
Open Report	For Decision
Wards Affected: NONE	Key Decision: NO
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Sponsor: Helen Jenner, Corporate Director, Children's Services	
Summary: <p>The Children and Families Bill was introduced into the House of Commons on 4 February 2013 and (according to the 'long title') and aims to:</p> <p>"Make provision about children, families, and people with special educational needs; to make provision about the right to request flexible working; and for connected purposes."</p> <p>This report provides further detail on the plans to ensure the recommendations of part 3 the Bill, which have particular relevance to the JSNA and Health and Wellbeing Strategy, are implemented by September 2014, including work to date and consultations plans for the Local Offer for children who have learning difficulties or disabilities, including those requiring statements of special educational needs.</p>	
Recommendation(s) The Health and Wellbeing Board is recommended to agree:	
(i) To support the integrated project team	
(ii) To endorse the direction of travel	
(iii) To ask for regular updates on progress against the Project Plan, particularly through the Children and Maternity Sub-Group.	
(iv) To support the input from across the partnership to a Local Offer	
Reason(s) The Bill expects strong ownership of this agenda through the Health and Wellbeing Board. Its expectations cannot be delivered without excellent integrated working.	

1. Background and Introduction

1.1 The Children and Families Bill was introduced into the House of Commons on 4 February 2013 and (according to the 'long title') aims to

'Make provision about children, families, and people with special educational needs; to make provision about the right to request flexible working; and for connected purposes.'

1.2 The Bill covers the work of children's services (for adoptions, family justice, special educational needs, childcare and the Children's Commissioner), local government legal teams (for adoptions and family proceedings) and HR teams (shared parental leave, paternal time off work for ante-natal care, and reform of law on requesting flexible working).

1.3 There are eight parts to the bill (A summary of the 8 sections is available as Appendix 1):

— Part 1: Adoption and children looked after by local authorities

— Part 2: Family Justice

— Part 3: Special Education Needs

— Part 4: Childcare

— Part 5: The Children's Commissioner

— Part 6: Statutory rights to leave and pay

— Part 7: Time off work: ante-natal care etc

— Part 8: Right to request flexible working

1.4 Although all 8 parts have some relevance to the Health and Wellbeing Board it is Part 3, Special Educational needs that is of particular relevance. This report provides further detail on the plans to ensure the recommendations of part 3 the Bill are implemented by September 2014, including work to date and consultations plans for the Local Offer.

1.5 The Bill retains current definitions of special educational needs and special educational provision extends them, to include young persons in education or training under the age of 25: "a child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her". The "learning difficulty" has to be 'significantly greater' than any learning difficulties experienced by others of the same age and the "disability" has to prevent or hinder the child or young person from making use of facilities of a kind generally provided for others of the same age. The Government has resisted calls to include all children with disabilities in the definition of special educational needs.

2. Proposal and Issues

The Bill requires the implementation of the following proposals

2.1 Role of local authority

A local authority must use its powers to identify all children and young people in its area who have or may have special educational needs and is “responsible” for them when the authority has identified them or they have been brought to the authority’s attention.

A local authority must work with health and social care services to ensure the integration of special educational provision where this promotes the well-being of children with special educational needs and improves the quality of provision for them. In particular, the local authority must work with its local clinical commissioning groups to secure integrated provision for children and young people with special educational needs. This is known as “EHC provision”: education, health and care provision for children and young people requiring special educational provision.

A local authority must keep under review the local special educational provision and consider the extent that it is meeting the needs of the children and young people for whom it is responsible. The local authority must work with schools and other education providers to keep this provision under review.

In carrying out these and other functions, the local authority must co-operate with a range of local partners including maintained schools and academies, and they must co-operate with the local authority.

2.2 The Local Offer

A local authority must publish a “local offer” of services it expects to be available for children and young people with special educational needs. The offer must include education, health and care provision, other education and training, and travel support. This document is currently being produced and receiving input from across the partnership. A programme of extensive consultation with children, young people and their families is also planned. As at present, the local authority can secure provision in a school or college outside England and Wales.

2.3 Education, health and care plans

The legislation on Education, health and care (EHC) plan is based on the current legislation for statements of special educational needs. Where the local authority believes that a young person’s needs are such that provision may need to be set out in a plan, then the local authority must secure an EHC needs assessment. The current rights of parents to be informed about the process and be involved in the assessment are retained. If required by the assessment, an EHC Plan must “specify” the special educational and other provision needed by the child or young person.

The local authority, as at present, must secure provision in a mainstream institution unless this is incompatible with the wishes of the parents or the provision of efficient education for others. Also, as at present, the local authority remains responsible for securing the educational provision but there is no equivalent duty on social care and health providers to comply with requirements in the plan (although Government

amendments have been laid to change this). Maintained schools and academies named in EHC plans have a duty to admit where the institution is named in a young person's plan.

2.4 Personal budgets

There is currently a pilot being undertaken, but the Bill extends this to all who have an EHC plan. When asked by the parent or young person, the local authority must make available a "personal budget" to allow the parent or young person to be involved in securing provision.

2.5 Appeals

Parents wanting to appeal against an EHC plan will first have the opportunity to take part in mediation before appealing to the First Tier Tribunal. However, participation in mediation will not be a requirement of appealing to the Tribunal (although Local Authorities will be expected to demonstrate that they have tried to take this approach). There are new voluntary arrangements for resolving disputes between local authorities, schools and colleges, and parents. Provision is made for children themselves to make appeals to the Tribunal.

2.6 Duties on schools and colleges

Institutions must use their "best endeavours" to secure special educational provision for children who have special educational needs. Schools, but not FE colleges, must appoint an SEN co-ordinator. Parents must be informed if special educational provision is being made for their child. Schools must prepare an SEN information report.

2.7 Code of practice

A new SEN Code of Practice will be issued, it will cover FE institutions. The Code will be approved using the negative instrument procedure, and not the affirmative procedure with the current Code. As previously announced, and confirmed by the draft Code published on 15 March, the existing arrangements for School Action and School Action plus will be abolished.

3. Implementing the Bill in Barking and Dagenham (including Consultation proposals)

- 3.1 A Project Programme Board has been established with multi-agency representation. The Project Initiation Document and Programme Board membership are attached as Appendix 2.
- 3.2 Work has already been completed, across agencies to put together a draft Local Offer for consultation (Appendix 3)
- 3.3 The consultation will run until December 2013.

3.4 It is proposed that a Project Update is presented to the Health and Well Being Board in February and June 2014, to ensure we remain on track for implementation in September 2014.

4. Mandatory Implications

4.1. Joint Strategic Needs Assessment

The Proposals in the reports support Section 2 and 3 of the JSNA. In particular Section 3.2 (Children and Young People with Learning Difficulties and Disabilities)

The 2011 Census found that just under 5,000 households in the borough include children and at least one person with a long term condition or disability, but there is no census data on the number of children living with learning difficulties and disabilities (LDD).

There are several sources of data on the local uptake of services by children and young people living with LDD, and modelling has been refreshed to estimate the level of need in the borough.

The JSNA made the following recommendation:

Recommendations for Commissioners

The Health and Wellbeing board will need to ensure that there is a robust programme and strategic plan in place to meet any emerging statutory responsibilities that are outlined within the current Children and Families Bill.

This report and the Project Plan address this recommendation

4.2. Health and Wellbeing Strategy

The proposals support the Health and Wellbeing Strategy Themes 1 – 5 and 8 in particular, but should also support Themes 6 and 7 as better early support should enable established adults and older adults with LDD/SEN to lead more fulfilled lives.

The priority areas of care and support; protection and safeguarding; improvement and integration of services and prevention will all be addressed through the project. Future reports will evidence how the work is addressing these priorities.

4.3. Integration

The Children and Families Bill has integration at its heart and a key theme for the project is ensuring integrated approaches that make pathways for children with SEN/LDD more straightforward, specifically aiming to reduce a key complaint of families that they have to repeat their life story and circumstances repeatedly for each agency, with multiple assessment being completed, but in some carers views “very little ever changes”.

4.4. Financial Implications

(Implications completed by Patricia Harvey, Group Manager, Finance)

It is difficult at this time to ascertain exact financial implications relating to the Bill as it is still being debated by Parliament. At this stage Board Members should be mindful that:

- The replacement of statements for SEN children from birth to 25 with a health and care plan would have to be modelled within LBBD's current funding envelope within the High Needs block of Dedicated Schools Grant (DSG)
- The introduction of offering families personal budgets is a new service initiative for children and is yet to be explored. Financial impacts are therefore somewhat unknown although there are service issues to be learned-from Adult Social Care and its use of personal budgets for the service users.
- The collaborative working of the LA with the Health Service under the umbrella of the Clinical Commissioning Group (CCGs) framework is an area that would have to be explored more fully within the redesign of the service area in support of the statutory requirements within the bill.
- The Funding implications of meeting the statutory responsibilities that will result from the Children's and Families Bill would have to be met from the existing funding envelope which is the High Needs Block of DSG. Clearer impacts will be possible to predict once there has been sufficient modelling and analysis work undertaken.

4.5. Legal Implications

(Implications completed by Lucinda Bell, Education Lawyer)

Draft clauses of the Children and Families Bill include

- **Clause 26** creates a new duty for joint commissioning which will require local authorities and health bodies to work in partnership when arranging provision for children and young people with SEN.
- **Clause 30** places a requirement on local authorities to publish a "local offer" of services they expect to be available for children and young people with SEN.
- **Clauses 36 to 47** set out the requirements relating to the provision and implementation of Education, Health and Care plans.
- **Clause 48** requires local authorities to prepare a personal budget for children or young people with an EHC Plan if asked to do so by the child's parent or the young person.

When preparing the Joint Health and Wellbeing Strategy, there is a duty imposed by the Health and Social Care Act 2012 to consider the extent to which the needs could be met more effectively by arrangements between local authorities and NHS bodies, known as section 75 agreements rather than in any other way.

When making any decision, s149 of the Equality Act 2010 requires the Board to have due regard to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EqA 2010;
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it.

4.6. Risk Management

There is a risk log as part of the project programme. A significant risk is lack of resources to meet the rapidly increasing demands of an increasingly complex child population, which now stands at 31% of the total population.

5. List of Appendices:

- APPENDIX 1: Summary of the Children and Families Bill
- APPENDIX 2: SEND Transformation Programme Brief