

## Summary of the Children and Families Bill 2013

### Part 1: Adoption and Children Looked After by Local Authorities

Implements proposals from the Government paper *An Action Plan for Adoption: Tackling Delay* which has the objective of seeing more children being adopted by loving families with less delay including Fostering for adoption to enable children to be placed with prospective adopters earlier who are already approved foster parents;

- Removing the requirement that adoption agencies must give due consideration to ethnicity, religious persuasion, racial origin and cultural and linguistic background when seeking prospective adopters;
- Improving support for adoptive families through additional information, personal budgets to but support, and prospective adopters access to the national register of children for whom adoptive parents are sought;
- The Government is given a power to require a local authority to outsource its adoption functions;
- A new statutory basis to giving an adoptive child contact with the child's birth family; and
- A requirement on local authorities to have a 'virtual school head' (VSH) who can have a positive impact on the educational achievement of looked after children.

For further information see the [DfE Policy Statement on Adoption](#), the [DfE Evidence Pack Adoption Reform: Children and Families Bill](#), the [DfE Evidence Pack Virtual School Head for Looked After Children: Children and Families Bill](#) and the [House of Lords Adoption Legislation Committee](#).

### Part 2: Family Justice

Implements commitments the Government made in response to the *Family Justice Review* with the objective of achieving better outcomes for children and families who go to court after family separation or where children may be taken into care including:

- Attendance at a family mediation information and assessment meeting (MIAM) would be required before an application is made to the courts;
- Courts to take into account that both separated parents should continue to be involved in their child's lives where that is consistent with the child's welfare;
- A new child arrangements order to replace the existing residence and contact orders which will focus parents on the child's needs and not on the parents' 'rights' and includes a power for the courts to make activity directions and conditions which, for example, specify what happens when an order is breached;
- The permission of the courts is required before expert evidence is received although this will not apply to local authority social workers or CAFCASS staff;
- A 26-week time limit is introduced when the courts are considering whether a child should be taken into care; the time limits on interim care orders and interim supervision

orders is made subject to the courts; when the courts consider a care plan, only the matters essential for whether to make a care order should be considered; and

- Changes are made to divorce law so that arrangements for children are no longer considered as part of that process but through separate proceedings at any time.

For further information see the [DfE Policy Statement on Family Justice](#), [DfE Evidence Pack Family Justice: Children and Families Bill](#), and the House of Commons Justice Committee's report on [Pre-legislative Scrutiny of the Children and Families Bill](#).

### **Part 3: Special Education Needs**

Implements Government proposals which were first published in the Green Paper *Support and Aspiration: a new approach to special educational needs and disability* (2011) and the *Progress Report* (2012)

The Bill replaces the existing SEN legislation (which will continue to apply in Wales) and includes the Green Paper objectives of bringing together the separate arrangements for children in schools and young people in post-16 institutions and training up to their 25<sup>th</sup> birthday, and the integrated Education, Health and Care Plan to replace the statement of Special Educational Needs. The Bill also removes the separate treatment of local authority maintained schools and academies under SEN legislation. Since the Bill's publication, Government amendments have been laid which require Clinical Commissioning Groups to comply with any health service requirements in EHC plans, and an '[Indicative](#)' draft [Code of Practice](#) has been published (on 15 March) for the Committee scrutinising the Bill along with nine sets of illustrative regulations and other documents. The reader is referred to the [DfE Bill website](#) for these documents.

#### **Principles**

The Bill retains the pivotal role of the local authority in identifying, assessing, and securing the educational provision for children and young people with special educational needs. A new requirement is that the local authority must follow four guiding principles, namely that the local authority must:

- Listen to the views, wishes and feelings of children, young people and parents;
- Ensure children, young people and parents participate in decision-making;
- Provide the necessary information and support to help children, young people and parents participate in decision-making; and
- Support children, young people and parents in order that children and young people can achieve the best possible educational and other outcomes.

#### **Special Educational Needs and Provision**

The current definitions of special educational needs and special educational provision are retained and extended 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.

### **Role of the 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.

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 EHC provision, other education and training, and travel support. As at present, the local authority can secure provision in a school or college outside England and Wales.

### **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.

### **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.

## **Appeals**

There are innovations on 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. 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.

## **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.

## **Code of practice**

A new code of practice will be issued, with School Action and School Action plus being abolished.

## **Part 4: Childcare**

The Bill contains a small number of provisions to take forward its aim of reforming childcare to ensure “the whole system focuses on providing safe, high-quality care and early education for children” as set out in the paper *More great childcare*. Most measures do not require primary legislation such as increasing the minimum adult to child ratios. The Bill introduces:

- Childminder agencies to contract or employ childminders to stimulate the number of childminders, offer greater support and provide quality assurance;
- Early years settings will be able to request and pay for an Ofsted inspection;
- Although the Local Authority duty to secure sufficient childcare remains, the duty to publish an assessment of the sufficiency of childcare is repealed; and
- A maintained school governing body will no longer have to consult the local authority, staff and parents before making childcare provision at the school

For further information see [DfE Evidence Pack Childcare: Children and Families Bill](#).

## **Part 5: The Children’s Commissioner**

The Bill develops the role of the Children’s Commissioner’s effectiveness, taking forward recommendations in John Dunford’s *Review of the Office of the Children’s Commissioner* including:

- giving the Commissioner a statutory remit to ‘promote and protect children’s rights’; and

- introducing changes to make the Commissioner more independent of the Government.

For further information see DfE Evidence Pack: Office of the Children's Commissioner: Children and Families Bill and the Lords and Commons Joint Committee on Human Rights Reform of the Office of the Children's Commissioner: draft legislation.

### **Parts 6, 7 and 8: Employment**

A number of changes are made to workplace practice to support better parenting as set out in the Government's response to the *Modern Workplaces* consultation.

#### **Part 6: Statutory Rights to Leave and Pay**

Enables the sharing of parental leave following the birth of a child, on adoption, and prospective adopters who are fostering the child.

#### **Part 7: Time off Work: Ante-natal Care etc**

Enables the partners of pregnant women to time off work to accompany the woman to ante-natal care. The new right is extended time off to attend adoption appointments.

#### **Part 8: Right to Request Flexible Working**

The right to request flexible working is extended to all employees, not just those with parental or caring responsibilities.