

**Children and Families Bill
House of Lords Second Reading
Tuesday 2 July 2013**

Briefing from the Participation Works Partnership¹

Participation Works is a partnership of seven national children's and young people's agencies that are working together to ensure that all children and young people are given information, opportunities and appropriate assistance to participate in decision-making that affects them, as individuals and collectively. Our members include the British Youth Council, the Children's Rights Alliance for England, KIDS, National Children's Bureau, the National Council for Voluntary Youth Services, the National Youth Agency and Save the Children.

The Participation Works Partnership is calling for the Bill to be amended to strengthen children and young people's involvement in decision-making related to special educational needs.

Part 3 of the Children and Families Bill relates to the system of support for children and young people with special educational needs (SEN). Clause 19 of the Bill sets out the general principles underpinning the involvement of children and young people with SEN in decision-making. It requires local authorities to have regard to:

- The views, wishes and feelings of the child or young person
- The importance of the child or young person participating as fully as possible in decisions
- The importance of the child or young person being provided with the information and support necessary to enable participation in those decisions
- The need to support the child or young person in order to facilitate their development and help them to achieve the best possible educational and other outcomes.

Participation Works warmly welcomes this clause, which was introduced following pre-legislative scrutiny by the Education Select Committee. The Government has confirmed that it '*shares the Committee's views about the importance of involving children, young people and their parents at the heart of legislation*'.²

However, we are concerned that these good intentions are not reflected consistently throughout the Bill's SEN provisions. In particular, there are several clauses which appear to exclude younger children from participation in SEN decision-making, by providing for the involvement of only parents and young people over the age of 16:

Clause 32: advice and information for parents and young people

Clause 32 requires local authorities to provide advice and information to young people (those over 16) with SEN and parents about matters relating to the child's or young person's special educational needs. Younger children appear to be excluded from being given such advice and information.

¹ Prepared by the Children's Rights Alliance for England

² Department for Education (February 2013) *Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny* Page 69

Clause 36: assessment of education, health and care needs

Clause 36 requires local authorities to involve young people (those over 16) and parents in the assessment of their education, health and care (EHC) needs. Younger children appear to be excluded from expressing their views and making representations in this assessment.

Clause 38: preparation of EHC plans: draft plan

Clause 38 requires local authorities to involve young people (those over 16) and parents in the preparation of draft EHC plans. Younger children appear to be excluded from consultations about the content of the draft plans.

Clause 44: reviews and re-assessments

Clause 44 requires local authorities to involve young people (those over 16) and their parents in the review of EHC plans. Younger children appear to be excluded from this review process.

In the Commons, the Government rejected amendments to explicitly include younger children in the clauses above. The Minister stressed the importance of these clauses referring only to decision-makers (i.e. young people over 16 or parents) because of their legal responsibilities.³ However, the Government's argument is inconsistent as including children (under the age of 16) in the above provisions would not give them decision-making responsibilities, it would simply enable them to receive information and participate in processes. Furthermore, other provisions in Part 3 explicitly refer to the involvement of children as well as young people and parents. Clause 30, for example, enables regulations to introduce a duty on local authorities to signpost children as well as young people and parents to other sources of information, advice and support.

We are concerned that the provisions as they stand will result in confusion for local authorities regarding how they should inform and involve under-16s in decisions about their education, health and care needs.

Participation Works recommends that the Bill be amended to clarify that children under the age of 16 should receive advice and information and have their views given due regard, even where legal responsibility for decision-making rests with their parent.

Background

Children with special educational needs have a right to be involved in decisions which affect them. The UN Convention on the Rights of the Child (CRC) requires that:

*[Governments] shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*⁴

In December 2010, the coalition Government underlined its commitment to the CRC by stating that it would give due consideration to the Convention when developing new legislation and policy. The Government's own Positive for Youth vision emphasises the importance of involving children and young people (including those under 16) in decision-making and the benefits this can bring.

The UN Convention on the Rights of Persons with Disabilities further states that disabled children should be provided with disability and age-appropriate assistance to realise their

³ Children and Families Public Bill Committee 21 Mar 2013, Col. 451 & 16 Apr 2013, Col. 529

⁴ United Nations Convention on the Rights of the Child, UNGA resolution 44/25 of 20 November 1989, Article 12

right to be involved in decisions which affect them.⁵

When the UK's children's rights record was last examined by the UN Committee on the Rights of the Child, the Government was urged to widely '*promote, facilitate and implement, in legislation as well as in practice ... the principle of respect for the views of the child*'.⁶

Evidence tells us that despite disabled children's rights to participate in decisions which affect them, they are often excluded from decision-making processes, or face barriers to having their voices heard. Research carried out by the VIPER project,⁷ which looked at disabled children's participation in decision-making, found that:

- Many young disabled people are not given the chance to take part in decisions about their own care or about the services available to them locally. When they are involved, it is usually in decisions about their care and every day activities.
- Too often, basic access requirements to support young disabled people's participation are not being met. For example, the research found evidence of young people with high levels of support needs being excluded, rooms not being big enough for two wheelchair users, young people not being given enough information or notice to be involved properly, young people's communication requirements not being met, or insufficient funds to pay for travel costs.
- Some groups of young disabled people are less likely than others to participate: for example younger age groups, those 'in care', young disabled people from black and minority ethnic groups, and those with multiple impairments and more significant support requirements.

The VIPER project has called on the Government to put disabled children and young people's participation at the heart of the SEN reforms by giving it a clear mandate on the face of the Children and Families Bill.⁸

We hope that you will speak at Second Reading to ensure that children and young people's involvement in SEN decision-making is strengthened.

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⁵ United Nations Convention on the Rights of Persons with Disabilities, UNGA resolution 61/106 of 24 January 2007, Article 7

⁶ United Nations Committee on the Rights of the Child (October 2008) Concluding observations on the UK. Page 8.

⁷ VIPER (2012) *The VIPER project: what we found.*

http://www.councilfordisabledchildren.org.uk/media/284783/what_we_found.pdf.

VIPER is a research project looking at disabled children and young people's participation in decision-making. Funded by the Big Lottery Fund, the project is delivered by a partnership including the Alliance for Inclusive Education, The Children's Society, the Council for Disabled Children and the National Children's Bureau Research Centre. A group of 16 young disabled people act as joint researchers on this project

⁸ For more information, see VIPER policy briefing, *Hear Us Out!* (2012)

http://www.councilfordisabledchildren.org.uk/media/284859/hear_us_out_.pdf