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THE EDUCATION BILL 1981

(Special Educational Needs)

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Brief for the Second Reading on Monday February 2nd

1. Provision for Special Educational Needs - from the 1944 Education Act to the Report of the Warnock Committee.
2. The Education Bill 1981
  - (i) Background
  - (ii) Main Provisions
3. Developing Special Educational Provision:
  - (i) Resources
  - (ii) Involvement for Parents
  - (iii) Integration - meeting individual needs
  - (iv) Provision Before and After School

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1. Provision for Special Educational needs : From the 1944 Act to the Warnock Report

The 1944 Education Act imposed on local authorities the duty of identifying those children who through disability of body or mind required special education and the duty of providing the special education they required. However, whilst this Act was a break through in special education it was based on the assumption that handicap was a medical problem which prevented a child from learning. Consequently regulations were based on a medical model of 10 disabilities - blind, partially sighted, deaf, partially hearing, physically handicapped, delicate, epileptic, educationally subnormal, speech defective and maladjusted.

In addition the 1944 Act incorporated the prescription of the Mental Health Act (1959) that some children could, on medical examination, be classified as totally unsuitable for education in any local authority school and become the responsibility of the local health authority.

However, greater knowledge and understanding of the causes of physical and mental handicap has meant that in many cases modern local education authority practice has outgrown the legal framework of the 1944 Act: first, educational handicap is not necessarily related to medical disability, for example physical handicap may present few, if any, learning difficulties. Second, the recognition of multiple handicap has meant that the major disability diagnosed on medical grounds may not be the one that presents the greatest educational problem, increasing attention must be paid to secondary handicaps. Third the existing ten categories of disability each of which presents a definable educational problem are not always appropriate either to children within those groups whose learning abilities differ or to children with multiple handicaps who present difficulties of classification.

The Education (Handicapped Children) Act 1970 abolished the concept that some severely disabled children were ineducable by transferring responsibility for them from health to local education authorities. In April 1971 some were brought into the education service.

In November 1973, the Rt. Hon Margaret Thatcher, then Secretary of State for Education and Science announced an inquiry into the provision of special education. (Hansard 22 November 1973 W.A. col. 512)

The 'Committee of Enquiry into the Education of Handicapped Children and Young People' was appointed under the chairmanship of Mary Warnock and reported in May 1978 (Cmd. 7212 HMSO 1978). The Warnock Report offered four main recommendations:

A wider concept of special educational need which could cover emotional and behavioural disorders and significant

learning difficulties as well as physical and mental disabilities.

A multi-professional system of special educational assessment for children with severe or multiple disabilities.

The replacement of the 10 existing categories of handicap by arrangements recording the individual needs of each child.

The development of a more flexible range of special educational provision in both ordinary and special schools.

## 2. The Education Bill 1981

### (i) Background

The Conservative Manifesto promised to "restore to every child, regardless of background, the chance to progress as far as his or her abilities will allow" (p.25). This commitment to equality of opportunity extends to all children including those who suffer from some educational disadvantage. Following consultations on the Warnock Report with more than 400 organisations connected with education, health, the social services, careers and employment, on 3rd March 1980 the Secretary of State, Mr Mark Carlisle announced the Conservative Government's intention of introducing early legislation broadly along the lines recommended by the Warnock Report. A White Paper "Special Needs in Education" (Cmnd 7996) was presented to Parliament on 6 August 1980. The proposals of the White Paper are incorporated in the Education Bill 1981.

Baroness Young, a Minister of State at the Department of Education and Science has summed the Government's proposals as:

"~~legislation to update~~ the law for children with special needs so that they can benefit from the most professional assessment of their disability, that as far as possible they can be educated alongside all other school children and so that their parents can receive broadly those rights of choice and information given under our 1980 Education Act." (London 14.1.81)

Lady Young has also emphasised the importance of the new Bill as the education services contribution to 1981 as the International Year of Disabled Persons.

### (ii) The main provisions

(The Education Bill (1981) covers England and Wales. The Education (Scotland) Bill (1981) published on 10th December 1980 contains similar provisions)

Clause 1 takes up the recommendation of the Warnock Committee that the existing ten categories of handicap be replaced by the wider terms of "special educational needs", "learning difficulty" and "special educational provision". The emphasis will be on the individual needs of each child and the new definition will assist a wider group of children than are currently ascertained as handicapped.

Clause 2 extends the duties of local education authorities and school governors to take account of the new definitions and provisions for special education. Clause 2 also established the principle that provided account has been taken of parents wishes, that the arrangements are compatible with the necessary special educational provision, that resources are used efficiently and that there is no effect on the education of other children, all children who are in need of special educational provision are to be educated in ordinary schools. It will replace Section 10 of the Education Act 1976 which established a similar principle but confined integration to physical location excluding association in the normal activities of the school.

Clauses 4-9 refer to the identification and assessment of special educational needs. Children whose needs are such that the local authority needs to make a statement about them and determine their needs, will also include those aged two years or more, with their parents' consent. Parents will be involved in the making of assessments and drafting of statements. They will be able to appeal against the special educational provision proposed by the authority; appeal committees will be able to recommend that local authorities reconsider their decisions and parents will have a further right of appeal to the Secretary of State. Regulations will be laid under Schedule 1 after consultations.

Clause 10 amends the definition of 'Special Schools', prevents the withdrawal of pupils from these schools without the permission of the local education authority and takes precautions on the placing of children with special educational needs in Independent Schools.

Clauses 11 - 20 cover technical and consequential adjustments, although Clause 13 provides that in future local education authorities will not be able to close special schools without giving notice of their intentions and obtaining the permission of the Secretary of State.

### 3. The Development of Special Educational Provision

#### a) Resources

The Warnock Report itself made two important points about resources for special education; first that a great deal could be achieved through redeployment of existing resources and second that legislative reform should provide a framework within which special education could develop in step with resources.

The Government's plans for expenditure on handicapped pupils at maintained and non-maintained special schools remain broadly constant with the standards of provision in 1978-9, this is despite the fact that the number of pupils at special schools has fallen over that period.

Since the new bill seeks to bring special educational provision up to the current modern practice of most local educational authorities and will use the arrangements for parental appeals laid down in the Education Act 1980 it should not involve significant educational expenditure.

b) Parental Involvement

The new Bill makes significant improvements on the involvement of parents in special educational provision:

- Parents must be informed if a local education authority proposes to assess their child, and they can ask for their child to be assessed themselves.
- They must be given time and opportunity to give their views to the local authority.
- They must be informed, entitled to be present at, and allowed to give their views on, any examination of their child.
- If a local authority decides to make a statement they must send parents a draft for comment and parents will be entitled to a copy of any statement that is made.
- The Warnock Report recommended that parents should have access to a 'named' person. Clause 5(3) provides that when parents are notified that their child is being considered for assessment they must be given the name of an officer of the local education authority who can provide personal support and advice.
- There will be an appeals machinery and local authorities will be required to keep at least an annual review of the statements on every child; where changes are proposed parents must be informed and will have the right to make representations.

The Bill does not completely open up professional records to parents since in some cases this might either inhibit the contents of the record, or where it bears on the home background, damage the interests of both parents and their child. However, in the post-legislative guide local authorities will be urged to use their discretion and to be as frank with parents as is possible.

c) Integration - provision for individual needs

The principle of integration established in Clause 2 proposes that in general children with special needs should be educated alongside all other children and should be involved in school activities. However, as the Conservative Manifesto pointed out, our primary concern must be for the individual needs of each child. The Bill is informed by Chapter 7 of the Warnock Report and places emphasis on individual assessment for each child in terms of whether an ordinary school can accommodate her or his particular needs - being not simple integration but appropriate education.

The development of teacher skill in recognising and catering for special educational needs and in facilitating integration is critical. The Warnock Report prompted a greater emphasis on this aspect of initial and in-service teacher training by 12

local authorities, colleges and universities. From 1982 the Open University will be providing a course on special educational needs for teachers. Within existing resources a great deal can be done to improve teachers knowledge of and ability to help children with special educational needs. As the Warnock Report concluded:

"We must emphasise that organisational changes and additional resources will not be sufficient in themselves. They must be accompanied by changes in attitudes. Special education must be seen as a form of educational activity no less important, no less demanding and no less rewarding than any other, and teacher, administrators and other professionals engaged in it must have the same commitment to children with special needs as they have to all other children." (Report of the Committee of Enquiry into the Education of Handicapped Children and Young Persons pp 384-335)

d) Provision Before and After School

Recognising the need to identify and provide for special educational needs at the earliest opportunity the Bill gives L.E.A's with the permission of its parents, the power to examine and make a statement on children under two years of age.

Nursery education provides a valuable opportunity for immediate recognition and help, many L.E.A's give priorities of admission to children with special needs. Latest statistics also show that in January 1980, the number of children in nursery classes increased by 5,600. The Government have retained a nursery education building programme which in 1980/1 should encourage an addition of 2,000 places.

Local education authorities have the duty to ensure that facilities are available in schools or in further education for all those under 19 who wish to continue their studies. This applies equally to handicapped young people, but is impractical where facilities are unsuitable. Recognising that post-sixteen education is often the starting point of learning or training the Government has set up a review of the law governing the general basis of further education which will accommodate the needs and interests of handicapped students.

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The recently announced public expenditure plans provide for a fall of about nine per cent (from nearly £9b. to £8b.) in expenditure on education over the five years 1979-1984. And yet the Government remains committed to maintaining and improving the quality of education. There are several reasons why we believe that this can be achieved.

The first reason is demographic - the number of children in school will fall by one and a half million over this period.

Secondly, the Government has concentrated on savings that do not directly affect education. For example, we believe that by allowing local authorities to make their own plans for providing meals (while protecting those on FIS and supplementary benefit) the school meals service will become much more efficient.

And thirdly, we are asking the majority of overseas students who come to this country from this autumn to pay the full cost of their tuition fees.

Schools

About a third of the savings (£240m. in England and Wales) will come from the schools. This amounts to six and a half per cent over this period. But there will be a fall of 13 per cent in pupil numbers. This gives a generous allowance for "diseconomies of scale" - the fact, known to every parent, that one child less in a house full of children does not lead to a proportionate drop in work or total household expenditure. In fact, over the next three years we are allowing £35m. extra (beyond the level required to maintain expenditure per pupil) for books and materials in the classroom.

With this fall in the school population, it would be wasteful to try to keep all the present school buildings in use but, of course, when there are closures other buildings may have to be improved or adapted. So while the money for basic building requirements will be nearly halved (from £90m. this year) the allowance for improvements will be increased by nearly 50 per cent (from £12m. this year to £17m.).

Despite the falling size of the school population, provision for special education has been protected. Expenditure is planned to remain at broadly the same level (£230m.) throughout the period because the Government thinks it is not safe to assume that the total number of children in need of special educational treatment will fall in line with the drop in total numbers.

## Teachers

As school numbers drop, it is reasonable to expect a reduction in the number of teachers and by 1982-83 we plan for a reduction of just over 40,000. But even so the numbers of teachers we expect to see employed in that year is 10,000 more than the numbers required to maintain existing teacher/pupil ratios (currently at their best ever level).

Teachers are leaving the profession at the rate of 30,000 a year, because of retirement or for other reasons, so there are still opportunities for the young entrant. But because of their importance, the Government is extending the special scheme for training mature entrants to "shortage subjects", such as maths, science and technology, and because the quality of teaching is so important, the Government has provided for induction courses and in-service (or refresher) courses for teachers to be continued at the same level.

## After School

Young people vote with their feet and in the last few years not as many as expected have chosen to go on to higher education. The age participation rate has fallen. The Government's plans allow for the number of students in higher education to be held at the present level to 1983-84 and this should provide sufficient opportunity for those who want it.

The colleges of further education have an important part to play in improving the numbers of skilled manpower and technicians for industry and commerce. So the plans allow for an increase of seven per cent (£40m.) next year in the provision for expenditure on non-advanced further education, which will be maintained at that level for the following years.

And because the Government attaches importance to the support of basic science as an investment in the country's industrial and intellectual future, expenditure in science will be increased so that by 1983-84 it will be five per cent above the £293m. for 1978-79.

## Conclusion

The school population rose from 5m. after the war to a peak of 9m. Now it is falling. The overall picture can be clearly foreseen. But success in carrying through national policies depends very much on local decisions and when rolls are falling it depends on sensible decisions on rationalisation, sharing and amalgamation. And it depends too on the good sense and professionalism of teachers.