HOUSE OF COMMONS
LIBRARY

Education Bill: Committee Stage Report

RESEARCH PAPER 11/37 5 May 2011

This is an account of the House of Commons Committee Stage of the *Education Bill*. It complements Research Paper 11/14, prepared for the Commons Second Reading debate.

The Bill covers a wide range of matters including: early years provision; discipline in schools; reporting restrictions on alleged offences committed by teachers; the abolition of five quangos; qualifications and the curriculum; the repeal of certain duties of school governing bodies, local authorities and others; the composition of school governing bodies; school inspection; school finance; the arrangements for setting up new schools, and provision for 16 to 19 academies and alternative provision academies; changes to post-16 education and training; and, the reform of the student finance system to enable the Government to charge a real rate of interest on higher education student loans and permit the Secretary of State for Education to place a cap on tuition fees for part-time higher education courses.

As originally presented, the Bill sought to make provision relating to the National Assembly for Wales' framework powers. However, these clauses were removed from the Bill following the 'yes' vote in the Welsh Devolution Referendum. A Government amendment to clause 13 (reporting restrictions on alleged offences by teachers) was agreed to without a vote. This inserted new schedule 11B into the *Education Act 2002*, and was introduced to secure compliance with a European Electronic Commerce Directive. Several minor and technical Government amendments were also made to the Bill. The Opposition tabled many amendments, a considerable number of which were pressed to a division but none was successful.

The Bill, as amended in Public Bill Committee, was published as Bill 180.

Christine Gillie
Susan Hubble

Recent Research Papers

11/27	Economic Indicators, Budget update	22.03.11
11/28	Police Reform and Social Responsibility Bill: Committee Stage Report	24.03.11
11/29	Economic Indicators, April 2011	05.04.11
11/30	Direct taxes: rates and allowances 2011/12	06.04.11
11/31	Health and Social Care Bill: Committee Stage Report	06.04.11
11/32	Localism Bill: Committee Stage Report	12.04.11
11/33	Unemployment by Constituency, April 2011	14.04.11
11/34	London Olympic Games and Paralympic Games (Amendment) Bill [Bill 165 of 2010-12]	21.04.11
11/35	Economic Indicators, May 2011	03.05.11
11/36	Energy Bill [HL] [Bill 167 of 2010-12]	04.05.11

Research Paper 11/37

Contributing Authors: Christine Gillie, all school-related subjects, Social Policy Section
Susan Hubble, YLPA, FE & students, Social Policy Section
Manjit Gheera, early years and children's trusts, Social Policy Section
Daniel Harari, apprenticeships, Economic Policy and Statistics Section
Grahame Danby, reporting restrictions, Home Affairs Section

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.

We welcome comments on our papers; these should be e-mailed to papers@parliament.uk.

ISSN 1368-8456

Contents

Summary

The *Education Bill* was introduced into the House of Commons on 26 January 2011 as Bill 137 of Session 2010-12. It received a Second Reading on 8 February 2011. Library Research Paper 11/14, which was prepared for the Commons Second Reading debate, outlined the main provisions of the Bill, as presented. The Library Bill gateway web pages provide information on the progress of the Bill and links to relevant information.

The Bill had 22 sittings in Public Bill Committee, between Tuesday 1 March 2011 and Tuesday 5 April 2011. This Research Paper notes the main areas of debate, the matters on which the Committee divided, and the main changes made to the Bill in Committee.

The Bill covers a wide range of matters including: early years provision, school discipline, public reporting on allegations made against teachers, the governance of Ofqual, and careers education and guidance. Certain duties on school governing bodies, local authorities and further education institutions would be removed, including the duty on local authorities to appoint school improvement partners. Other measures relate to school admissions, school meals, composition of school governing bodies, school inspection, school finance and permitted charges. The Bill would make changes to the arrangements for setting up new schools, and would make provision for 16 to 19 academies and alternative provision academies. Five quangos would be abolished: the General Teaching Council for England, the Training and Development Agency for Schools, the School Support Staff Negotiating Body, the Qualifications and Curriculum Development Agency and the Young People's Learning Agency. New powers would be given to the Secretary of State as a consequence of some of these changes.

Measures on post-16 education and training would affect the powers of the Chief Executive of Skills Funding, and the entitlement to free education and training at level 2 and 3. The legislation relating to raising the participation age to 18 would be retained but the Bill would give the Secretary of State flexibility as to the timing of the commencement of enforcement procedures.

Reforms to the higher education funding and student finance system would enable the Government to charge a real rate of interest on higher education student loans (currently interest cannot be charged at more than the rate of inflation), and would also permit the Secretary of State for Education to place a cap on tuition fees for part-time higher education courses.

As originally presented, the Bill sought to make provision relating to the National Assembly for Wales' framework powers in relation to the school workforce and the funding of pre-16 education and training. However, these clauses were removed from the Bill as they were no longer needed following the 'yes' vote in the Welsh Devolution Referendum 2011, and following the passing of an order by the Assembly to legislate on those matters. A Government amendment to clause 13 (reporting restrictions on alleged offences by teachers) was agreed to without a vote. This inserted new schedule 11B into the *Education Act 2002*, and was introduced to secure compliance with a European Electronic Commerce Directive. A Government amendment was made to schedule 11 of the Bill to transfer intervention powers to the Secretary of State. Several minor and technical Government amendments were also made to the Bill.

The Opposition tabled many amendments, a considerable number of which were pressed to a division but none was successful.

The Bill, as amended in Public Bill Committee, was published as Bill 180.

1 Introduction and Second Reading debate

The *Education Bill* was introduced into the House of Commons on 26 January 2011 as Bill 137 of Session 2010-12. Library Research Paper 11/14, prepared for the Commons Second Reading debate, outlines the main provisions of the Bill, as presented, and gives references to the key documents on the Bill. The Library Bill gateway web pages provide information on the progress of the Bill and links to relevant information.

The Bill received its Second Reading in the House of Commons on 8 February 2011, after a division. The programme motion and money resolution were also agreed. The debate was wide-ranging, reflecting the nature of the Bill. The following highlights the views of the Government and the Labour Opposition on the Bill. It also signposts some of the main issues raised by others in the debate; however, it is not intended to summarise all contributions.

The Education Secretary said that the Bill was a response to three specific challenges: "the challenge of how to respond to an economic crisis, the challenge of how to respond to the scandal of declining social mobility, and the challenge of how to respond to our educational decline, relative to competitor nations."[1]

Andy Burnham, the Shadow Education Secretary, said that it had been only weeks since the Government had asked the House to pass an education act [the *Academies Act 2010*] using procedures normally reserved for counter-terrorism legislation and yet, he said, the Education Secretary was back with 'an even more audacious request' asking for 'more than 50 new powers, and near-total control over almost every aspect of our school system in England.' Mr Burnham highlighted what he described as 'the powers to seize land, to close schools, to overrule councils on budgets, to ban teachers from working, to define early-years provision, and to rewrite the curriculum without reference to parents or the public.' He invited the House to reflect on whether 'it can ever be healthy for so much power over something as precious as our children's education to be vested in one person,' and said that local authorities would be 'stripped of their long-standing role of looking after all children in their areas, balancing the wishes of one group against another and thereby ensuring that service is shaped by need and not by the loudest voices.' However, while he broadly supported some elements of the Bill (such as proposals relating to early years provision and school discipline, subject to further assurances about the powers to search pupils[2]), nevertheless, he said that Labour would oppose the Bill because it represented 'too big a gamble with the life-chances of our children, and because …it takes power from pupils, parents, professionals and the public, leaving them with fewer protections in a less publicly accountable education system.'[3]

Graham Stuart, the chair of the Education Select Committee, found much to support in the Bill particularly the priority given to pupil behaviour and discipline, a more focused brief for Ofsted, an emphasis on international comparisons, and the duty on schools relating to career education. Yet he was disappointed that the Bill offered less than he would have liked on removing incompetent teachers, and he sought clarity on a number of issues relating to teacher misconduct and competence. He was also concerned that competition should not stifle the exchange of best practice between schools.[4] The Education Secretary said that he would be happy to discuss how to ensure that ineffective teachers do not continue in the classroom.[5] (Subsequently, on 11 March 2011, he announced the details of a Review of

1 HC Deb 8 February 2011 c164
2 Ibid c192
3 Ibid cc180-1
4 Ibid cc170 and 195-197, for example
5 Ibid c170

Teachers' Standards. The Review will consider the Framework of Professional Standards for Teachers developed by the Training and Development Agency for Schools and the General Teaching Council for England 's Code of Conduct and Practice for Registered Teachers.)

As noted above, Mr Burnham expressed support for the Bill's proposals on early years provision.[6] However he said that there was deep concern among Labour Members that the provisions would be undermined by the Government's failure to protect Sure Start.[7] His comments were echoed by a number of other Labour Members including Bill Esterston and Debbie Abrahams. Andy Burnham stated that the Bill also placed 'question marks' over the current universal early years provision for three and four year olds.[8] Annette Brooke, for the Liberal Democrats, commended the previous Labour Government for introducing the universal entitlement but pointed out that challenges, such as cost, quality, quantity and sustainability, remained. She supported the targeted free provision for disadvantaged two year olds and hoped it would be welcomed across the House.[9]

Despite the broad consensus about the focus on school discipline, several Members, particularly Megg Munn (Labour), raised concerns about the proposed powers of search and child protection issues[10], and Lisa Nandy (Labour) was concerned about the effect of no-notice detentions on young carers.[11]

The provisions on interest rates on student loans received little attention during the Second Reading debate. However, David Blunkett said that 'a real rate of interest for students under the new fee system would create difficulties and have a dangerous impact on access'[12], and Alex Cunningham said that the measures gave 'the Secretary of State free rein to set uncapped and commercial rates of interest' on student loans.[13] Also, several Members commented on the way that these important provisions had been 'snuck'[14] into the Bill. Debbie Abrahams said that it was 'like the small print of a dodgy contract'.

Other main issues raised in the Second Reading debate included

- Sex education – Edward Leigh (Conservative) sought a reassurance that the Education Secretary would resist amendments that would bring in compulsory sex education in primary schools. The Education Secretary said that he would not accept amendments that would make the curriculum more prescriptive or intrusive.[15]

- Free schools and the purchase of land and buildings.[16]

- Special educational needs.[17]

- The provisions on the all-age careers service were mentioned by Julie Hilling who was concerned that the Connexions service was being dismantled before the replacement service had been established.[18]

---

6 HC Deb 8 February 2011 c181
7 HC Deb 8 February 2011 c190
8 HC Deb 8 February 2011 c190
9 HC Deb 8 February 2011 c200
10 HC Deb 8 February 2011 cc 197-9
11 HC Deb 8 February 2011 c174
12 HC Deb 8 February 2011 c202
13 HC Deb 8 February 2011 c244
14 Kevin Brennan c258
15 HC Deb 8 February 2011 c165
16 HC Deb 8 February 2011 c168
17 HC Deb 8 February 2011 cc 188-190

- Abolition of the local school admissions forum.[19]

- The removal of the duty on schools to co-operate with local authorities. Debbie Abrahams said that the Bill failed children and young people by 'denying communities the opportunities that can be gained by schools working together in partnership.'[20] Annette Brooke, for the Liberal Democrats, was also concerned by the repeal of the duty on schools without there being an 'obvious measure to fill the gap.'

- The impact of the English Baccalaureate - this was raised by many Members (although the Bill does not contain provision relating to the new performance measure).[21]

2 Committee Stage

The Bill was programmed to have 22 sittings in Public Bill Committee, beginning on Tuesday 1 March 2011 and ending on Tuesday 5 April 2011. All sittings were held; oral evidence was taken during the first four sittings and the remaining sittings were on the clause-by-clause scrutiny of the Bill. In accordance with the programme order, as amended,[22] the debate was brought to an end on 6pm on 5 April 2011. The Bill, as amended, in Public Bill Committee was published as Bill 180.

The following account notes the main areas of debate, the matters on which the Committee divided, and the main changes made to the Bill in Committee. It does not cover every issue raised nor every amendment tabled or discussed and withdrawn. Each section starts with a brief summary of the Bill's key provisions. All the references to clauses are to those contained in the Bill (Bill 137), as presented and considered in Committee.

Nick Gibb, Minister of State for Schools, and John Hayes, Minister of State for Further Education, Skills and Lifelong Learning gave the Government's views; Kevin Brennan and Iain Wright led the Opposition. Graham Stuart, the chair of the Education Select Committee also served on the Committee. The full membership of the Committee is given in the appendix to this research paper.

2.1 Early years provision

Clause 1 of the Bill would make provision for the introduction of targeted free early years care for children under compulsory school age.

A group of amendments (4 to 9) were tabled to clause 1 by the Opposition. Amendments 4 and 5 would insert a new sub-clause 4 into clause 1 and require any regulations made under section 7(1) of the *Childcare Act 2006* to make provision for free early years education for children from the start of school terms following a child's third birthday. The intention behind the amendments was to ensure that the current universal provision of early years care for three and four year olds[23] was not undermined by the changes in the Bill.[24] Concerns that the targeting provisions in clause 1 would be used by the Government to restrict the current universal provision had been raised by a number of groups during the Committee's evidence taking sessions.[25]

---

18 HC Deb 8 February 2011 c230
19 HC Deb 8 February 2011 c188 and c201
20 HC Deb 8 February 2011 c206
21 HC Deb 8 February 2011, cc178, 184, 186,187, 197 for example
22 Education Bill, Public Bill Committee, 1 March 2011, c1, as amended on 31 March 2011, c801
23 Under the *Childcare Act 2006*, section 7
24 PBC 8 March 2011 c172-3
25 Ibid, c 173; see for example National Union of Teachers (E24) and the National Children's Bureau (E104)

During the debate, the Minister for State, Nick Gibb, restated the Government's commitment to retain the current provision for three and four year olds.[26] However he explained that clause 1 was necessary as the current section 7 of the *Childcare Act 2006* was 'prescriptive' and would only permit an extension of the entitlement to a whole age group.[27] Therefore he explained 'it would not have been possible to use that legislation to create regulations that extended early-years provision only to a proportion of children of a prescribed age who were disadvantaged.'[28]

Although Kevin Brennan accepted the Government's commitment and the Minister's 'strong words' he wished to make it clear on the record that the Opposition did not want any potential weakening of the universal provision by future governments. Accordingly the amendments were pushed to division where both were defeated by 2 votes.[29]

The remaining probing amendments to clause 1 explored the consequences of amending the current duty on local authorities to provide free early years care to all three and four year olds. The amendments sought:

- to define which groups of disadvantaged two year olds qualify for the free provision (amendment 6);

- to clarify the need for the Secretary of State's regulation-making power to prescribe the amount and duration of the free provision (amendment 7);[30]

- to ensure the quality of the clause 1 provision by requiring that Ofsted report to Parliament on the progress of the provision 12 months after its commencement (amendment 8);

- assurances that the new data sharing provisions would not be used to disclose information unnecessarily (amendment 9).

Although not part of the Bill Members used the proceedings to express concerns about the future of Sure Start[31] and funding for the free entitlement against a backdrop of local authority cuts.[32] The remaining amendments were withdrawn following reassurances from the Government, including a commitment to consult on the regulations covering the eligibility criteria for the targeted year provision and the quality of that provision. Clause 1 was ordered to stand part of the Bill.[33]

2.2 Discipline

Powers of members of staff at schools to search pupils

Clause 2 of the Bill would amend the *Education Act 1996* to extend the existing powers of teachers and authorised staff to search pupils, without their consent, for an item that had been, or was likely to be, used to commit an offence or cause injury to the pupil or another, or damage property. Provision would also be made to search for items banned under the school rules. Existing provision relating to the way that searches may be conducted would be amended by the Bill to allow searches (in certain circumstances) to be carried out by a member of staff of the opposite sex to the pupil being searched, and for searches to be

---

26 PBC 8 March 2011 c175, 190, 192 and *Memorandum submitted by the Department for Education* (E 43)
27 *Ibid,* c191,197
28 *Ibid,* c191
29 *Ibid*, c 206; Ayes 8, Noes 10
30 Clause 1(2)/new section 7(2)
31 PBC 8 March 2011 c213
32 PBC 8 March 2011 c198
33 PBC 8 March 2011 c222

carried out without another member of staff being present. New subsections inserted into the 1996 Act would provide specific powers regarding electronic devices seized under the provisions. The person who has seized the item may examine any data or files if they believe there is a good reason to do so. Data or files from the device may be erased if the person has decided to return it to its owner, retain it or dispose of it and thinks there is a good reason to do so. In determining whether there is a good reason to examine any data or files, or erase data or files, regard must be had to guidance issued by the Secretary of State.

These proposed new powers were debated during the sixth, seventh and eighth sittings.[34] The Labour Opposition tabled a number of amendments to probe how the provisions would work in practice, and to test whether the provisions were 'usable' and would not put teachers in a more difficult position. There was particular concern about the provision for searches in certain circumstances to be carried out by a member of staff of the opposite sex to the pupil/student being searched, and for searches to be carried out without another member of staff being present in certain circumstances. There was also concern about whether staff would be trained to use the extended powers of search. The issue of searching pupils with special educational needs was also raised.

Kevin Brennan for the Opposition said that while the Bill sought to build on existing legislation that Labour had introduced, he was not convinced that the proposed powers had been thought through. He said that the Opposition did not have a problem with head teachers deeming an item to be 'contraband' under school rules, but he was concerned about the search powers in the Bill.[35] His lead amendment (10, linked to amendment 11) was intended to tease out exactly why the powers were needed and how they would be used. It sought to require the Secretary of State to lay before Parliament a statement, agreed by Her Majesty's Chief inspector of Education, Children's Services and Skills, on the evidence that school staff needed these additional powers. There was a large number of grouped Opposition amendments: amendment 12 relating to the training of staff; amendment 15 requiring the Secretary of State to issue guidance to define certain terms; amendment 16 designed to reinstate the requirement for a witness to be present when a search is undertaken; and, amendment 17 to apply the clause to academies to ensure consistency between academies and local authority maintained schools. The lead amendment (10) was subsequently withdrawn.[36] However, the Opposition registered their concern about searches being carried out without a witness by pressing amendment 16 to a division, which was defeated by 10 votes to 8.[37]

During the debates on this group of amendments, Mr Brennan referred to the concerns expressed by some of the witnesses who came before the Committee. However, Graham Stuart (Conservative), the chair of the Education Select Committee, noted that the Select Committee had recently produced a report on behaviour and discipline, and that evidence submitted as part of the inquiry had expressed support for expanded powers of search. He noted, however, that the Select Committee had said that staff would only feel confident is using their powers if they received regular training and felt that they had the full support of school leaders in their use.[38]

Megg Munn (Labour) questioned whether the powers for a teacher to search a child of the opposite sex without a witness would undermine the approach to child protection, and asked about the circumstances that the provision was meant to deal with. Responding, Nick Gibb

---

34 Education Bill, Public Bill Committee, Sixth sitting 8 March 2011 (afternoon), Seventh sitting 10 March 2011 (morning) and Eighth sitting, 10 March 2011 (afternoon).
35 PBC 8 March 2011 c250-1
36 PBC 10 March 2011 c271
37 PBC 10 March 2011 c274
38 PBC 8 March 2011 cc 229-230

clarified that the provisions applied not only to the person of the pupil but also to the pupil's possessions, and referred to circumstances were the proposed powers would be needed, for example, in a primary school or on a school trip where there was only one teacher, and where there was evidence that something in a child's bag may be used immediately to cause harm.[39] Mr Gibb stressed that the powers would be used in exceptional circumstances by authorised staff. Later in the debate he gave the following practical example:

> On Tuesday the hon. Lady said that she could not imagine a situation where this provision might be necessary. A practical example of where it would be helpful in a secondary school is that of a lone science teacher who suspects that a pupil, known to have self-harmed in the past, has taken a bottle containing a chemical substance which he intends to ingest. The teacher feels unable to leave the room to summon another member of staff, for fear that the pupil will ingest the substance in her absence. In this instance, the law would allow the teacher to undertake an immediate search of the student, because the teacher reasonably believes that by taking the substance the pupil could cause himself serious harm.
>
> I also suggest that any actual or suspected possession of a weapon is an emergency situation which teachers must be able to respond to immediately, rather than being required to wait for reinforcements.
>
> It is not possible for us in the Committee room to predict every circumstance in which it might be necessary for a member of school staff to search a pupil without a witness, but it is right that if and when such circumstances arise the law enables them to take immediate action in the interests of all concerned.[40]

Mr Gibb explained why he thought the other Opposition amendments in the group were unnecessary. In relation to amendment 15 he said that most of the terms listed in the amendment had been part of the searching provisions since 2007, when the powers to search pupils without consent for knives and weapons were introduced.[41] On the issue of training for those carrying out searches, Mr Gibb said that it would be for head teachers to decide what training they wanted to make available to their professional staff.[42] In relation to searching pupils with special educational needs and disabilities, he noted that teachers have had the power to search for some years and he said that was not aware that there had been a particular problem.[43] On the question of whether the powers of search extended to academies, Mr Gibb said that the existing provisions already applied to academies and that the Government intended to apply the search powers in the clause equally to all state-funded schools, and that therefore amendment 17 was unnecessary.[44]

Opposition amendment 13, requiring that school rules be approved by the Secretary of State, sought to probe the Government on which articles could be searched for under the school rules at independent schools, including academies. Nick Gibb said that the provision for searches of items banned by school rules would apply to academies through regulations, a draft of which he had circulated. These, he said, set out the processes that academies would have to follow to define and publicise items banned by the school rules.[45] The amendment was withdrawn.

---

39 PBC 8 March 2011 c236
40 PBC 10 March 2011 c257
41 PBC 10 March 2011 c262
42 PBC 10 March 2011 263
43 PBC 10 March 2011 cc262-3
44 PBC 10 March 2011 c265
45 PBC 10 March 2011 c271 and c273

A substantial part of the debate on clause 2 focused on searches of mobile phones. Opposition amendments (14 and 22, which were grouped together although the latter related to clause 3 and further education institutions) sought to ensure that staff using powers to search data and files would have appropriate training. Kevin Brennan said that while the Opposition gave strong support to counter cyber-bullying and the misuse of electronic devices, it wanted to know that the provisions would work and would not infringe any important rights or increase the likelihood of legal challenge. He asked, for example, whether under the provisions, teachers would be able to look through mobile devices at will, albeit with some reasonable suspicion; whether the Minister would expect that the head teacher or some senior member of staff would have to be present, and whether students would have any particular rights of veto with regard to certain files in a mobile device. He thought there was the potential for serious risks to student privacy and staff culpability if they were not well-trained or inadvertently viewed certain images. Dan Rogerson (Liberal Democrat) thought that the powers, properly circumscribed, could be of benefit as a teacher would have the power to deal with a matter, such as an image that might be used for bullying, without recourse to the police.

Responding, John Hayes, the Minister for Further Education, Skills and Lifelong Learning stressed that mobile phones were being used in schools to harass students and teachers. He said that without the powers provided in the Bill, teachers would not be able to take swift action. Amongst other things, he said that guidance would clarify the interface between this change in the law and other legislation. On the issue of data stored on electronic devices and their retention, he said that if a school kept an electronic device, it would become the data controller of the data on the device and would have to deal with the information in compliance with the data protection principles under the *Data Protection Act 1998*. He stressed that there would have to be 'good reason' to seize an item, examine, retain or dispose of data. The teacher would have to have regard to guidance issued by the Secretary of State which, he said, would become available shortly.[46]

Mark Durkan (SDLP) asked about the position where a teacher or member of staff in an FE institution took a device from a student that did not belong to the student. The Minister said that the salient point was not ownership but the behaviour of the pupil; however, he said that he would look into the matter and come back with further clarification. He also said that he would write to the Committee about another related point that had been raised by Mr Brennan - the position where a student uses a mobile phone owned by the parent and whether the teacher would have legal protection from any legal action a parent might take in relation to the material that may be contained on the phone. Mr Brennan withdrew his probing amendment (14) but said that as there had not been a clause stand part debate the Opposition may wish to return to the issue on Report. He said that more detail and reassurances on how the measures would work were needed. Clause 2 was ordered to stand part of the Bill.[47]

Power of members of staff at further education institutions to search pupils

Clause 3 provides further education institutions with similar powers to search students for alcohol, controlled drugs and stolen articles, as clause 2 provides for schools. The only substantive difference to the powers for schools is that powers given to further education institutions do not include the power to search for items identified by school rules.

Several amendments were moved to the clause by Mr Wright; he began by saying that the purpose of the clause was to create a level playing field between schools and colleges and the provision had been welcomed by witnesses.[48] However he pointed out that although

---

46 PBC 10 March 2011 cc292-3
47 PBC 10 March 2011 cc293-5
48 PCB 10 March 2011 c296 (8th sitting, afternoon)

further education practitioners had said that they welcomed the provision they had also said that they could not envisage using the new power. Mr Wright said that the amendments were intended to probe the circumstances in which the power would and could be used.

The purpose of amendments 19 and 20 was to ascertain whether further education staff needed the additional powers in clause 3 because it was alleged that students in further education, being over 16, were less disruptive. Amendment 23 aimed to probe whether an upper age limit was necessary on the power and amendment 21 sought to ensure that staff conducting searches were trained. A further amendment, 25, attempted to define key terms in the Bill such as 'serious harm' and 'reasonable grounds'.[49]

The debate on the amendments had two main themes: equivalence between schools and colleges,[50] and the difficulties involved with searching over 18s. Mr Hayes summed up the issues when he said that 'the balance between creating a degree of consistency throughout institutions and recognising their different character presents a challenge to the Government', this he acknowledged created a tension about how to deal with colleges and schools, given that colleges are attended by many 16 to 18-year-olds as well as adults.[51] Mr Wright asked about the legal issues and raised the possibility of human rights cases being brought against institutions.[52] Mr Hayes agreed to write a letter to the Committee which would address a number of the points raised.[53]

Mr Hayes further said that although these matters were sensitive it had to be acknowledged that colleges had to confront some of the problems experienced in schools. He said that there was evidence of disruptive behaviour in colleges and he cited cases where weapons had been used by students to cause damage. Mr Stuart said that the Association of Colleges had welcomed the extension of powers, but he said that they had asked for guidance on the legislation.

The debate touched on issues such as cyber-bullying and extremist behaviour and the use of electronic devices for these purposes and then returned to a discussion of the amendments. Mr Hayes said that an upper age limit would create a barrier and was not necessary because staff should have the power to search students carrying items likely to cause harm regardless of age.[54] He said that colleges would be expected to interpret and apply the power and that the Government trusted them to interpret the provisions sensibly. On amendment 21 he said that searches must only be carried out with good reason and those reasons were set out in the legislation. With regard to special educational needs and disability issues he said that emphasis must be placed on appropriateness and sensitivity and these situations would be addressed in guidance.[55]

Mr Hayes, summing up the debate, said that heads and principals must be allowed to use their discretion in how to apply the power. Having earlier said that good heads and principals would want to ensure that their staff were appropriately trained,[56] he said that college principals should not be hampered with over-prescription about how to train staff and that training had not been a requirement in the previous legislation which extended powers to search.[57] He said that the powers would apply to all students regardless of age and that

---

49 PCB 10 March 2011 c298
50 PCB 10 March 2011 c301
51 PCB 10 March 2011 c301-302
52 PCB 10 March 2011 c303
53 PCB 10 March 2011 c303
54 PCB 10 March 2011 c306
55 PCB 10 March 2011 c307
56 PCB 10 March 2011
57 PCB 10 March 2011 c309

defining terms in the legislation was not necessary as these terms had been used since 2007 and were well understood.[58]

Mr Wright restated that guidance was required and said that he would return to the issue on Report, he then withdrew the amendment and the clause was agreed.

Exclusion of pupils from schools in England: review

Clause 4 inserts a new section 51A into the *Education Act 2002* providing for the exclusion of pupils from maintained schools and Pupil Referral Units (PRUs). Current powers would be retained for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently. However, independent appeal panels would be replaced by new review panels.

A review panel would be able to uphold the decision of a 'responsible body' (a maintained school or a PRU); or recommend that the responsible body reconsiders the case. If it considers that the decision of the governing body was flawed when viewed in the light of the principles of judicial review, it could direct the responsible body to reconsider the matter, but (unlike an independent appeal panel) the review panel would not have the power to order reinstatement. Where a review panel quashed a decision of the responsible body and directed that it considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. In effect this would mean that the review panel could specify that where the school reconsiders its decision but decides to go ahead with the exclusion, then the school would pay a financial penalty (achieved by a deduction from its budget share) to recognise the costs of providing alternative provision for the excluded child. The Secretary of State would be required to make regulations setting out how the amount of such a payment would be determined and what effect such adjustments would have on the budget shares of other maintained schools.

The Secretary of State would be empowered to apply new section 51A (and regulations made under it) to academies, or a description of academy, with or without modifications.

The provisions were debated during the eighth, ninth and tenth sittings. A large number of amendments were discussed; most of these were withdrawn after discussion; however, there were unsuccessful divisions on Amendments 1 and 36.

The Opposition argued that clause 4 had the potential to reduce parents' rights by abolishing both appeal panels and pupils' ability to be reinstated by an independent body, and would replace them with a review panel that could not require reinstatement. It noted the concern of parents and others about safeguards for vulnerable groups, such as children with special educational needs and groups that have disproportionate levels of exclusion. Responding, the Schools Minister said that the reinstatement of an excluded pupil, however rarely it happened, could seriously undermine a head teacher's authority. He said that the most important thing was to restore and maintain the authority of the head teacher. However, he said that the Government wished to ensure that exclusions were carried out fairly and that vulnerable groups were safeguarded. The review panel would have the power to uphold an exclusion, recommend that the governing body reconsider the exclusion, or quash an unreasonable exclusion and direct the governing body to reconsider its decision. He said that where the review panel directs the governing body to do so, and it decides not to reinstate a pupil, the panel would be able to order the school to pay a financial penalty of approximately £4,000.[59] The rules relating to such financial penalties would be set out in regulations and the Minister said that a copy of the proposed regulations had been circulated to the Committee. The Minister also emphasised that an important new safeguard was that

---

58 PCB 10 March 2011 c310
59 PBC 10 March 2011 c319

parents would be allowed to request the attendance of a SEN expert at a review panel, where relevant, and that regulations would cover that.

There was some discussion about the financial penalty arrangements and whether the penalty would be applied to the pupil premium. The Minister confirmed that the financial penalty would not affect the pupil premium as the penalty would be a reduction in the school budget share, and the pupil premium will be paid as a separate grant.[60] Kevin Brennan said that it would be perverse if a financial penalty had been made yet the pupil premium associated with the excluded pupil was left with the school. Mr Brennan urged the Minister to think about how the pupil premium would work in the context of the clause, and to look at how the 'fine' could be tied more realistically to the needs of the pupil. He said that while he understood the Minister's desire to give a strong message about head teachers' authority, he felt that the financial penalty needed to bear some relationship to the cost of providing suitable support for the excluded pupil.[61]

There was a very wide-ranging debate on the potential effect of the proposed changes on children with special educational needs (SEN) and other vulnerable children. Several amendments relating to the publication of data were debated but not pressed to division. Stella Creasy (Lab/Co-op) moved an amendment (2) to require the Secretary of State to lay before Parliament an annual report to include information on the number of students subject to the powers and whether they had SEN.[62] Opposition amendment 28 sought to ensure that the decisions of 'responsible bodies' and review panels would be 'quality reviewed.'[63] Graham Stuart tabled New Clause 2 relating to the collection and publication of data on serious incidents of misbehaviour in schools. Responding, the Minister explained current data collection arrangements, and why he thought the request for new arrangements was not necessary or not appropriate for legislation.[64]

Two Opposition amendments (27 and 39) related to the exclusion process and children with SEN. Graham Stuart tabled amendment 67 to trigger a SEN assessment if a pupil had been excluded more than once in a 12 month period or was at risk of permanent exclusion. Another amendment (68) tabled by Mr Stuart sought to require members of review panels to be trained in SEN law and practice and disability awareness. Responding, the Schools Minister explained why additional primary legislation would not be the most effective way to address the issues.[65] On amendment 67, for example, Mr Gibb said that while he had no problem with the principle set out in the amendment, he thought that the amendment would be too rigid in practice. In relation to amendment 68, the Schools Minister said that regulations would include a training requirement for review panel members.[66] Earlier in the debate, Graham Stuart referred to DFE Memorandum E45 that outlines how the new independent panels will operate, including where a child has SEN. He asked several questions about how the proposal to allow parents to request an SEN expert to advise the review panel would work in practice.[67]

Amendment 1 tabled by Pat Glass (Labour) related to the reinstatement of pupils in specified circumstances and provided for an assessment of their needs and necessary adjustments to be made. Introducing the amendment, Ms Glass explained that it related to four areas: SEN, children in poverty, looked-after children, and children with caring responsibilities.

---

60 PBC 10 March 2011 c321
61 PBC 10 March 2011 c324
62 PBC 15 March 2011 cc327-360
63 PBC 15 March 2011 c341
64 PBC 15 March 2011 cc352-358
65 PBC 15 March 2011 cc375-386
66 PBC 15 March 2011 cc379
67 PBC 15 March 2011 cc373-4

Responding, the Minister said that he had considerable sympathy with the intention to protect the interests of vulnerable groups but he thought that the amendment was not the right way to safeguard them. He stressed that a decision to reinstate a pupil could undermine the head teacher, and he referred to the Government's green paper proposals on early assessment and identification of children with SEN to prevent problems later. He said that occasionally head teachers need to exclude a pupil with SEN and that in those circumstances parents may ask for a SEN expert to attend the review panel hearing.[68] In response to questions later in the debate, Mr Gibb said that the local authority would appoint the expert.[69] Amendment 1 was pressed to a division and was defeated by 9 votes to 8.[70]

Opposition amendment 35, subsequently withdrawn, sought to empower the review panel to require reinstatement of a pupil. Kevin Brenna explained that another Opposition amendment (36) sought to clarify the supplementary powers of review panels, and to provide that the affirmative procedure would be applied to the regulations relating to the review panels. Responding, the Minister fully acknowledged the importance of the regulations, and said that that was why he had circulated a detailed policy statement on them to the Committee. He added that the regulations would be very detailed and would be consulted on. However, he did not think it would be an efficient use of parliamentary time automatically to scrutinise them on the floor of the House.[71] Mr Brennan said that the regulations could be considered in Committee, and he pressed amendment 36 to a division, which was defeated by 10 votes to 8.[72]

Other amendments discussed included: amendment (64) relating to pupil participation in the process so that their voice is heard[73]; amendment (37) intended to clarify different aspects of the proposed financial penalty[74]; amendment (38) to enable the review panel to make a recommendation about arrangements for the future educational provision of an excluded child[75]; and, two amendments (31 and 32) to probe whether the clause would apply to academies. John Hayes confirmed that the provisions and regulations will apply to academies; that the arrangements for academies will 'mirror' those for maintained schools and that academies will be subject to any financial penalties that the review panel may impose.[76]

Clause 4 was then ordered to stand part of the Bill.[77]

Repeal of requirement to give notice of detention to parent: England

Clause 5 would amend section 92 of *Education and Inspections Act 2006* by removing the requirement on members of staff in schools in England to give to a parent, guardian or carer a minimum of 24 hours' written notice that their child is required to attend detention outside of normal school hours.

Several Opposition amendments were tabled to probe why the Government wanted to end 24 hours' notice detentions. Kevin Brennan said that Labour Members were concerned that the clause could put young people at risk, that it would be discourteous to parents and could put young carers in a difficult position. However, Graham Stuart said that head teachers

---

68 PBC 15 March 2011 cc380-82
69 PBC 15 March 2011 c386
70 PBC 15 March 2011 c397
71 PBC 15 March 2011 c395
72 PBC 15 March 2011 c390, 395 and cc405-6
73 PBC 15 March 2011 cc397-405
74 PBC 15 March 2011 cc406-413
75 PBC 15 March 2011 c408
76 PBC 15 March 2011 cc414-5
77 PBC 15 March 2011 c416

would use the power sensibly and proportionately, and would come up with their own ways of supporting teachers and communicating with parents sensibly.

Responding, the Schools Minister said that being able to use detentions more effectively would allow teachers to 'nip persistent disruption in the bud.' He added that the requirement to give 24 hours' written notice can encourage pupils and parents to challenge teachers over a detention and thereby diminish their authority. He said that the Government wanted to shift the balance of authority in schools back to the teacher and head teacher, and that the latter would decide what arrangements would be most appropriate in their school. He said that he was not saying that schools should never give notice of a detention but that the statutory requirement would be removed; that the Government trusted head teachers and teachers to behave reasonably. He referred to a number of safeguards that would remain in place under section 91 of the *Education and Inspections Act 2006*, namely that disciplinary sanctions, including detentions, must be 'reasonable' and that consideration must be given to 'all the circumstances.' Moreover, governing bodies, he said, would continue to have a statutory duty under the *Education Act 2002* to make arrangements to ensure that their functions were carried out with a view to safeguarding the welfare of pupils under the age of 18 at school. He stressed that teachers were well placed to consider individual needs of pupils, and that they should be trusted to do so.[78] Kevin Brennan pressed amendment 43, which sought to require a school to give reasonable notice of a detention, to a division. The amendment was defeated by 9 votes to 7. Clause 5 was then ordered to stand part of the Bill.[79]

Repeal of duty to enter into behaviour and attendance partnerships

Clause 6 would remove the requirement in section 248 of the *Apprenticeships, Skills, Children and Learning Act 2009* (ASCL) that the governing body of a maintained secondary school, or the proprietor of an academy, city technology college or city college for the technology of the arts (referred to in the section as "relevant partners") must co-operate with at least one other relevant partner in their area for the purpose of promoting good behaviour, discipline and attendance amongst pupils.

Kevin Brennan moved amendment 45 (which was linked to amendment 46) to delay the repeal of the requirement to form behaviour and attendance partnerships until September 2013, and only after Ofsted had reported that the voluntary partnerships were working in all local authorities. Graham Stuart tabled amendment 69 to require the Secretary of State to commission a report within two years of removing the duty.[80]

In the debate that followed there was discussion of the merits of compulsion as opposed to voluntary co-operation and partnership between schools. Opposition Members spoke in favour of compulsion. Mr Brennan said that sometimes a duty was needed to ensure something was embedded thoroughly into the culture of a system. He stressed the benefits of behaviour and attendance partnerships, and was concerned that removing the statutory requirement would diminish the concept of partnership.[81] Other Labour Members spoke about the importance of partnerships, and felt that without compulsion some schools would not take their fair share of children with behavioural problems.[82]

Graham Stuart referred to evidence taken by the Education Select Committee during its inquiry into behaviour and discipline in schools, and noted that his proposed amendment was based on the recommendation of the Select Committee's report, namely that the Government should monitor areas where voluntary partnerships do not already exist and be

---

78 PBC 17 March 2011 cc 436-441
79 PBC 17 March 2011 c447
80 PBC 17 March 2011 cc 447-8
81 PBC 17 March 2011 cc448-9
82 PBC 17 March 2011 cc 457-8 and 462

prepared to reverse its decision to remove the statutory requirement if voluntary partnerships failed to deliver behavioural improvements.[83]

There was some discussion about the current arrangements, and the Schools Minister pointed out that existing behaviour and attendance partnerships had never been compulsory since the provision in the 2009 Act, which would have made them compulsory from 1 September 2010, had not been implemented. The Government had introduced a statutory instrument in September 2010 to prevent the duty coming into force, and he said that the purpose of clause 6 was to remove the duty altogether.[84] However, Mark Hendrick (Labour/Co-op) noted that schools and the educational establishment generally were aware that the duty was expected to come into force and had acted on that presumption. The Minister said that while this may or may not have been the case, he shared the concern that partnership working should be effective. However, he thought the best way to do that would be to give schools the freedom to choose what partnerships they form, and to hold schools accountable for the outcomes they achieve. He emphasised that it should not be for the Committee or the DFE to set out a model of how schools should operate together as there may be many innovative and alternative approached of working together. Moreover, he said that all schools would be obliged by the School Admissions Code to be part of fair access protocols. He said that behaviour and attendance partnerships had flourished without being mandatory and that schools would continue to form them where they needed them. He also pointed out that the revised Ofsted school inspection framework would give more attention to behaviour.

In response, to Mr Stuart's amendment the Minister said that while he understood the thinking behind it, he thought it would be difficult to evaluate the effect of the proposed repeal, given that the arrangements had never been mandatory.[85] Mr Stuart indicated that in discussions with the Minister beforehand, it had been suggested that perhaps the Education Select Committee could review the matter. Mr Stuart said that was not an 'unreasonable line thrown back by the Minister.' However, he said that he hoped that the Government, with their resources, would keep an open mind on the matter, and he said that on the basis of reassurances given by the Minister outside the Committee, he was happy that the Government would keep an open mind and be prepared to think again, if necessary.[86]

Mr Brennan said that the Opposition intended to register their concern about the change in policy by pressing amendments 45 and 46 to a vote, and both amendments were defeated by 9 votes to 7.[87] Clause 6 was then ordered to stand part of the Bill.

2.3 School workforce

Abolition of the General Teaching Council for England

Clause 7 of the Bill seeks to amend section 1 of the *Teaching and Higher Education Act 1998* (THEA) to abolish the General Teaching Council for England by removing all references to it.

The Opposition tabled probing amendments to elicit further information about how the GTCE's functions will continue following its abolition. Iain Wright moved amendment 47 (linked to amendment 48) to require the Secretary of State to lay a report before Parliament setting out the new arrangements before the abolition of the GTCE. Opposition amendments

83 PBC 17 March 2011 c453
84 PBC 17 March 2011 cc460 and462
85 PBC 17 March 2011 cc 463-6
86 PBC 17 March 2011 cc468-9
87 PBC 17 March 2011 cc 469-70

49 and 50 sought to ensure that sufficient resources and expertise were in place before the Secretary of State exercised his new regulatory functions for the teaching profession.

Responding, the Schools Minister said that the DFE had been working closely with the GTCE, and that he had already circulated to the Committee a detailed policy statement about the new arrangements for regulation. In response to specific questions and points raised in the debate, he referred to the review led by Sally Coats on teaching standards (Review of Teachers' Standards). He said he expected that this would not only help develop clear standards for teachers, that would help schools make judgements about teacher conduct and competence, but also result in new standards to replace both the Training and Development Agency for Schools' framework of professional standards for teachers and the GTCE's code of conduct and practice. The new standards are expected to be in place by September 2012, and that prior to that, existing guidance, including the current code of practice held by the GCTE and current professional standards, would continue.

Mr Gibb said that the Government had already announced its intention to make it easier for schools to tackle poor teacher performance through streamlining and simplifying the performance management and capability arrangements. He said there would be consultation on proposed revisions to the performance management regulations and on a short and optional model policy, consistent with the ACAS code of practice. Mr Gibb said that he hoped Opposition Members would be satisfied with the plans and not seek to pre-empt or duplicate the work with additional requirements to provide Parliament with a report on such issues. He said that while he did not want to replicate the GTCE's current register of teachers, he was exploring further what central records and data would still be needed, and that there would be consultation with teacher and head teacher unions. He expected to be able to confirm the plans during the later stages of the Bill's passage through Parliament.

He stressed that he wanted to ensure that when a school wanted to employ a teacher they would have a quick, simple and cost-effective way of checking that the teacher had Qualified Teacher Status, and he added that there would be other data that listed those who were not suitable for working with children. He also referred to consultations with the GTCE and unions on the transfer of functions of staff. In practice, he said, the new system of regulation would be undertaken by a new workforce agency, which would be an executive agency of the DFE. Within the new system of regulation, the Government propose that investigations of disciplinary cases would be able to draw on a range of expertise, as required, and that only the most serious cases would proceed to a hearing panel, which would decide whether the person would be barred from teaching. The issue of costs and savings had been raised, and the Minister said that he would write to Mr Wright with more details.[88]

Mr Wright replied that the Government were creating 'a curious situation in which the teaching profession is not trusted with any degree of self-regulation' and he said that it would be as if the Department of Health were regulating the nursing profession. He questioned whether the solution should be abolition of the GTCE rather than reform, and asked why the responsibility had to be centralised to the Secretary of State. Mr Wright did not press his amendment but said that he may return to the matter on Report. Clause 7 was then ordered to stand part of the Bill.[89]

Functions of the Secretary of State in relation to teachers

Clause 8 would insert new sections into the *Education Act 2002* for the Secretary of State to provide regulatory functions for the teaching profession in England. The Secretary of State would be empowered to consider allegations of unacceptable professional conduct, conduct that may bring the profession into disrepute, or convictions of a relevant offence, and to

88 PBC 17 March 2011 cc 477-83
89 PBC 17 March 2011 c483

decide whether to prohibit the person from teaching. A new schedule 11A would be inserted into the 2002 Act to make provision about the regulations to be made by the Secretary of State relating to the procedures to be followed in making decisions about prohibiting a person from teaching, and to allow for a right to appeal.

Graham Stuart proposed three probing amendments (70, 71 and 72) which, he said were aimed at continuing the discussion on the regulation of the teaching profession. The Schools Minister said that the effect of the amendments would be to require that allegations of both professional competence and misconduct be considered at the national level, which would replicate the current GCTE arrangements. As drafted, the Bill proposes that only cases of misconduct would be considered by a national regulator. The Minister explained why he considered employers to be best placed to make decisions about the competence of their workforce, and referred to the package of measures the Government was introducing to empower them and support them to do so (which he had already referred to in the discussion on clause 7).[90]

Mr Wright moved amendment 52 to give the Secretary of State more options to deal with teachers' disciplinary matters. However, the Minister said this would reinstate the range of intermediate sanctions that the GTCE currently had at its disposal, but that was not what the Government wanted to achieve with the Bill. Instead, he said, 'We want to trust the professionals to tackle those issues of competence and conduct effectively. Only those cases of gross misconduct should be referred to the national level.'[91] Although Mr Wright withdrew his amendment, he gave notice that he would return to the issue on Report.[92]

Graham Stuart moved amendment 73, subsequently withdrawn, to highlight the fact that further education teachers with QTLS (Qualified Teacher Learning and Skills) would be able to teach vocational courses, and he wanted to ensure that there would be a consistent system so that when schools look at the list of those barred from teaching they can find out about those with QTLS in the same way as they can with qualified school teachers. Responding, John Hayes said that under the future arrangements other regulators, including the Institute of Learning, will share information about teachers that have been barred for misconduct, and the new agency, acting on behalf of the Secretary of State, will consider who to add to the barred teachers list.[93]

Labour Members tabled several amendments aimed at probing how various aspects of the new arrangements would work with the changes that are proposed to the Independent Safeguarding Authority, and how information would be shared.[94] Mr Wright moved amendment 83, subsequently withdrawn, relating to consultation with stakeholders in the implementation of the new arrangements. The Schools Minister said that the Government was committed to consult all the groups specifically mentioned in the amendment as well as wider stakeholders with an interest in the area. He appreciated Members' concern about the types of information that will be included on the list and how accuracy will be ensured. He said that the Government was committed to ensuring that there would be public access to information about teachers who had been barred from the profession, and that he was consulting on these matters.[95] In the debate on clause 8 stand part of the Bill, the Minister sought to reassure Members that the functions of the GTCE that are being transferred to the Secretary of State will be conducted in partnership with the profession. Mr Wright said that although the Opposition would not press the amendments to a division, there were concerns

---

90 PBC 17 March 2011 cc483-88
91 PBC 17 March 2011 c490
92 PBC 17 March 2011 cc492-3
93 PBC 22 March 2011 c505
94 PBC 22 March 2011 cc493-509
95 PBC 22 March 2011 cc509-11

about this part of the Bill as, he believed, it centralises power in the hands of the Secretary of State. Clause 8 was ordered to stand part.[96]

Requirements for teachers in England to serve induction period

Clause 9 inserts new sections into the *Education Act 2002* that largely reproduce section 19 of the *Teaching and Higher Education Act 1998* regarding teachers' induction periods, and transfer existing provisions regarding induction from the GTCE to the Secretary of State as far as these relate to England.

Mr Brennan moved a probing amendment (54) to clarify the Secretary of State's powers to set standards for teacher induction. The Schools Minister referred (as he had done in the debate on the two previous clauses) to the review of standards for teachers, which he said would include the standards that teachers have to meet at the end of the induction period. He emphasised that the review committee includes a range of professionals from throughout the school sector; that the review committee had been asked to engage with the profession and its representatives as it develops new standards; and that the Government was committed to consulting on those standards. With those assurances, Mr Brennan withdrew his amendment.

Other amendments moved by Mr Brennan, and subsequently withdrawn, sought to probe the Minister on: the role of the local authority as the appropriate body for deciding whether a newly qualified teacher had passed his/her induction period (amendment 55); the role of the Secretary of State for the award of qualified teacher status (QTS); and, whether a register of all qualified teachers would be maintained (amendment 102).[97] On the latter, the Minister noted that in discussions on clause 8 he had made it clear that he did not want a heavily resourced registration process but that he was considering possible options about maintaining a central list of teachers who hold QTS. He said that the amendment 'helpfully links that with consideration of teachers who have successfully completed a statutory induction period', and that he was happy to explore that in conjunction with consideration of having a central record on the award of QTS. He promised to update the House on that in due course.[98] In the clause stand part debate, Mr Brennan raised a number of points including the position on appeal to the Secretary of State, and whether teachers may complete their induction period in academies. Responding, the Minister said that on appeals to the Secretary of State, there was no change from the current position, and he clarified that there was no right of appeal to the High Court on the issue of induction and that the final decision would rest with the Secretary of State. He confirmed that induction periods may be served in academies. Clause 9 was ordered to stand part of the Bill.[99]

Abolition of the GTCE: transitional provisions; consequential amendments; and transfer schemes

Clause 10 would make transitional provision in respect of certain functions currently undertaken by the GTCE. Clause 11 would give effect to schedule 2 which makes consequential amendments to other enactments to reflect the changes made by provisions of this Bill. Clause 12 would give effect to schedule 3 which enables the Secretary of State to create a scheme whereby members of GTCE staff can have their contracts of employment transferred to the Secretary of State, with appropriate civil service terms and conditions, unless they give notice of objection.

---

96 PBC 22 March 2011 c519
97 PBC 22 March 2011 cc 522-26
98 PBC 22 March 2011 c526
99 PBC 22 March 2011 c528

Opposition amendment 57, subsequently withdrawn, sought to probe the Minister's thoughts on the transitional period and what would happen to teachers within the disciplinary system when the GTCE is abolished. Mr Gibb said that his understanding was that the current rules will remain in place until the Secretary of State takes over regulation of the teaching profession on 1 April 2012, and that the DFE was working closely with the GTCE to manage the transition. Mr Wright asked what would be the process where a teacher had been referred to the GTCE for a disciplinary matter which was ongoing on 31 March 2012. The Minister said that he would write to the Member on that point.[100] After debate, clause 10 was ordered to stand part of the Bill. Clause 11 was then ordered to stand part of the Bill, and after a brief exchange between Mr Wright and the Minister about consultation on QTS, schedule 11 was ordered to stand part of the Bill.[101]

Mr Wright moved amendment 60, subsequently withdrawn, to probe whether GTCE property, including intellectual property rights and the name 'GTCE', could be transferred to a charity. Specifically, he wanted to know what would happen to the teacher professional development model, the Teacher Learning Academy, that the GTCE had invested in and which many schools used as an improvement tool. Responding, Mr Hayes said that when the property scheme was in force, the Secretary of State would already have the power to enable him to transfer properties and rights to a charity or any other appropriate organisation without specific need for an amendment to the Bill. He said that there was nothing to stop appropriate organisations, such as charities, offering to take on aspects of the GTCE's non-statutory work once the GTCE is abolished. There followed a short debate on the schedule more generally, during which the Minister commented on specific staff issues and TUPE. Schedule 3 was then agreed.[102]

Restrictions on reporting alleged offences by teachers

Clause 13 of the Bill provides for the protection of school teachers from false allegations by imposing reporting restrictions. These restrictions would only be lifted once the teacher in question had been charged with an offence though a court could lift these sooner, for example on an application by the police.

The clause was amended in Committee. A new schedule 11B was inserted into the *Education Act 2002*. This amendment, agreed to without a vote, would apply only to information society service providers (ISSPs). It was introduced to secure compliance with the European Electronic Commerce Directive (Directive 2000/31/EC). A Memorandum submitted by the Department for Education (March 2011) provides the following explanation of the measures:

> To comply with Article 3(1) of the Directive we have to make provision for information society service providers established in England and Wales to be liable for any offences under new section 141G in the Education Bill committed in another Member State; and to comply with Article 3(2) we need to provide that an information society service provider established in another Member State, or outside the European Economic Area, is not covered by the offences under new section 141G (because they will be subject to any criminal penalties imposed by the Member State where they are established).

A significant area of debate centred on the possibility of extending the protection offered by reporting restrictions to other workers in the education sector. This led to the only division on clause 13, namely on an amendment that would have enabled the Secretary of State by order to extend reporting restrictions in connection with allegations made against other staff

---

[100] PBC 22 March 2011 c530
[101] PBC 22 March 2011 c531
[102] PBC 22 March 2011 c536

working in schools or further education institutions. The Minister of State, Nick Gibb, expressed the view that there was "not yet sufficient evidence of systemic problems to merit interfering with the freedom of the press" other than for the teachers already covered by the clause.[103] He gave a commitment to look at the evidence to see what could be done in future to help other staff.[104] The amendment was defeated on a division by 9 votes to 8.[105]

The Opposition gave strong support to anonymity for teachers but brought forward other amendments, subsequently withdrawn, seeking to extend this. Kevin Brennan said that the amendments were "meant to ensure that teachers and non-teaching staff in schools and FE and sixth-form colleges all benefit from the new anonymity provisions."[106]

The stand part debate on clause 13 focused on a submission by the Newspaper Society that the Bill could give rise to unforeseen consequences that could adversely affect fundamental press freedoms. Nick Gibb offered to write to the Committee with the Government's view.[107]

Abolition of the Training and Development Agency for Schools

Clause 14 would abolish the Training and Development Agency for Schools (TDA). Clause 15 would empower the Secretary of State to exercise the functions the TDA currently exercises, and would confer functions on Welsh Ministers in relation to teacher training. Clause 16 would give effect to schedule 4 which makes consequential amendments to other legislation; and clause 17 would give effect to schedule 5 which provides for the transfer of staff and property from the TDA to the Secretary of State.

Opposition probing amendments (62 and 63), subsequently withdrawn, sought to tease out what would happen to the TDA's functions after its abolition, particularly in relation to standards of entry to initial teacher training and promoting teaching as a career. Responding, Mr Gibb outlined the Government's intentions, referring to the proposals in the schools white paper.[108] An amendment moved by Graham Stuart (99), subsequently withdrawn, sought to require the Secretary of State to preserve all the data that the TDA had collected prior to abolition. While stressing the importance of information to understand the background of those training to become teachers, the Minister said that it would be premature to require the retention of all the data currently held by the TDA before there had been an opportunity to review future data requirements. Clause 14 was ordered to stand part of the Bill.[109]

Opposition amendment 105 (linked to amendment 106), subsequently withdrawn, sought to ensure that the Secretary of State would have sufficient resources and expertise to carry out the new functions. Introducing the amendment, Mr Wright said that would be helpful if the Minister would set out his thinking in relation to the transfer of TDA staff to the DFE to enable them to continue to use their experience and expertise. He said that his amendment would provide a safeguard as Parliament would need to be satisfied that the Secretary of State was demonstrably capable of taking on the functions before they were transferred. The Minister sought to reassure Members that those functions would be carried out effectively. Mr Wright suggested that this could be something the Education Select Committee may consider in the future.[110]

---

[103] PBC Deb 22 March 2011 c554
[104] PBC Deb 22 March 2011 c556
[105] PBC Deb 22 March 2011 c559
[106] PBC Deb 22 March 2011 c540
[107] PBC Deb 22 March 2011 c575
[108] PBC 22 March 2011 c577-82
[109] PBC 22 March 2011 c579-82
[110] PBC 22 March 2011 cc582-84

Another Opposition amendment (92) sought to probe the Government on tuition fees with respect to teacher trainees working in the maintained and academy sectors. Responding, Mr Gibb observed that financial assistance was not distributed according to the type of school, and outlined the arrangements that would apply for bursaries in priority subjects in 2011-12, and referred to the plans in the schools white paper for future assistance for trainee teachers. This set out the Government's intention that in order to receive Government funding for PGCE training the person would need to hold at least a second class first degree from a UK higher education institution or an equivalent qualification. He also referred to the introduction of a new competitive national scholarship scheme to support teachers in their continuing professional development.[111]

A further Opposition amendment (93), subsequently withdrawn, proposed a requirement on the Secretary of State to publish an annual report on his compliance with his duties under the equalities legislation. Responding, Mr Hayes stressed the commitment to ensure that under represented groups in the teaching profession carry on being advanced, and noted that the Secretary of State would have the duty under the *Equalities Act 2010* to make clear what he has done to comply with the Act.[112]

Clauses 15 and 16 were ordered to stand part of the Bill. After a short debate on an Opposition probing amendment (94) to clarify paragraph 19 of schedule 4, which related to student fees, schedule 4 was agreed. In the debate on clause 17 stand part of the Bill, Mr Wright raised a number of issues associated with TDA transfer schemes, and in particular asked about compulsory redundancies. Responding, Mr Gibb said that the proposed changes to staffing were a year away, and that it was not possible to provide detailed information now; however, he stressed that the department and TDA were working closely on all issues relating to staff and premises, with a view to ensuring that the transition would be as smooth as possible. While there would be implications for staff, he expected many of the TDA functions to continue. On the issue of the location of offices, Mr Gibb said that if there are developments as the Bill progresses he would inform Mr Wright. Clause 17 was ordered to stand part of the Bill and schedule 5 was agreed.[113]

Abolition of the School Support Staff Negotiating Body

Clause 18 seeks to abolish the School Support Staff Negotiating Body (SSSNB).

Mr Brennan said that the Opposition wanted to see the clause removed, and that if the Government were determined to abolish the SSSNB then the amendment (101) he had moved would at least 'restore some sanity to the situation', by delaying abolition for 18 months to enable it to complete its work on drawing up job profiles for support staff. He said that the profiles had reached the stage of being tested in schools, and that extra time was needed to complete the work. Responding, Mr Gibb explained the reasoning behind the decision to abolish the SSSNB, stressing the desire to reduce central prescription on schools and give schools greater autonomy. He said that he appreciated the work put into the development of a pay and conditions framework for school support staff; that the Secretary of State had made it clear that there was a case for completing some of the work begun by the SSSNB as the outputs might be of use to employers and schools. Mr Brennan said that the work that had been done was now being dismantled on the whim of the Secretary of State, and he pressed his amendment to a division. It was defeated by 9 votes to 8. This was followed by a division on clause 18 stand part, which was agreed by 9 votes to 8. Clause 18 was ordered to stand part of the Bill.[114]

---

111 PBC 22 March 2011 cc584-5
112 PBC 22 March 2011 cc584-86
113 PBC 22 March 2011 cc587-89
114 PBC 22 March 2011 cc589-98

Staffing of maintained schools: suspension of delegated budget

Clause 19 would make minor changes so that the effect on staffing of a suspension of a school's delegated budget should be the same for schools in England and Wales.

The Minister said that this was a technical clause to remedy an omission that was made when the *Education and Inspections Act 2006* was brought into force. The clause was ordered to stand part of the Bill without further discussion.[115]

2.4 Qualifications and the Curriculum

Requirement on schools to participate in international surveys

Clause 20 would insert a new section into the *Education Act 1996* to empower the Secretary of State to direct the governing body of a community, voluntary and foundation school in England to participate in international education surveys as specified.

An Opposition probing amendment (103) sought to clarify whether academies would be covered by the requirement as they were not specifically mentioned in the clause. Mr Gibb said that new academies would be covered through their funding agreements. However, Mr Brennan raised the issue of existing academies that would not already have the requirement in their funding agreements. Mr Gibb said that academies created under the previous administration had had a good participation record. Mr Brennan concluded that he had highlighted a flaw in the proposals, and withdrew his amendment.[116]

Opposition amendment 104, subsequently withdrawn, sought to require the UK Statistics Authority to approve, before it is published, any statements or reports from the Secretary of State resulting from schools' participation in international surveys. There was a wide-ranging debate on the results from existing surveys, and Opposition Members argued that the Secretary of State had quoted selectively from the evidence. Mr Gibb said that the amendment was not necessary as the UK Statistics Authority already had the power to comment on any statistics produced by the Secretary of State although it did not have the power to approve statements and reports before publication. He emphasised that the DFE had specialist statisticians to support the department using data effectively. In the clause stand part debate, Mr Brennan highlighted the need to ensure that test results are not skewed by efforts to be inclusive in relation to pupils with SEN. Mr Gibb drew attention to the Government's measures to close the gap between those from wealthy and poor backgrounds, and also referred to the proposals to help children with SEN contained in the recently published green paper. Clause 20 was ordered to stand part of the Bill.[117]

Ofqual

Clause 21 and schedule 6 would provide for the position of the chief regulator of qualifications and examinations to be held by the chief executive of Ofqual, rather than by the chair.

The Schools Minister explained that under the provisions, the post of chief regulator would continue to be appointed by Her Majesty by Order in Council, and the chair would be appointed by the Secretary of State. Clause 21 was ordered to stand part of the Bill, and the Committee moved on to debate schedule 6.[118]

Mr Wright moved amendment 107, subsequently withdrawn, to introduce a requirement for the Education Select Committee to confirm appointments to the position of chair of Ofqual.

---

115 PBC 22 March 2011 cc598-600
116 PBC 24 March 2011 cc603-4
117 PBC 24 March 2011 cc618-620
118 PBC 24 March 2011 cc 620

He also spoke on another amendment (108) to consult the Select Committee before the removal of a chair from office. He explained that these were probing amendments in order to get an idea of the Minister's thinking. Mr Gibb said that the Government believed in the benefits of a pre-appointment hearing system, and had asked that, in future, the Select Committee scrutinise appointments not only to the position of chair, as it currently does, but also to the proposed new combined post of chief executive and chief regulator. However, he thought that the amendments would muddy the waters over accountability, and said that ultimately responsibility for appointments must remain with Ministers accountable to Parliament. He added that while the Select Committee had an important role to play in holding Ofqual to account, the grounds on which the chair could be removed by the Secretary of State are limited by legislation, and that the Government do not believe that a requirement to consult the Select Committee before doing so would provide additional benefits. He believed that the amendments would make things worse by calling into question Ministers' accountability. Graham Stuart, chair of the Select Committee, felt that consultation with the Select Committee would not bar the Secretary of State from carrying out his duties, and thought that the Minister had overstated the case.[119] There was some discussion of reasons for dismissal, and the Minister said that he would write to Mr Stuart on the matter and copy this to other Members of the Committee.[120]

Another Opposition amendment (110), subsequently withdrawn, relating to the functions of the chair and chief regulator sought to probe the reasons for the clause and the schedule. Mr Gibb explained that by combining the positions of chief executive and chief regulator there would be a single figurehead for Ofqual. That, he said, was the key driver behind the change, rather than having the role of chief regulator wrapped up with the non-executive position of chair, which in his view seemed an odd governance arrangement. Schedule 6 was agreed.[121]

Clause 22 would replace section 128(2) of ASCLA 2009 with a new subsection setting out Ofqual's qualifications standards objective. Members raised a number of questions. These included the extent to which Ofqual's priority should be to its qualification standards objective, and whether there was a tension between the different requirements on Ofqual. The Minister said that all the other objectives will remain in force. The issue of comparing qualifications over time was also discussed. Clause 22 was ordered to stand part of the Bill.[122]

Abolition of the Qualifications and Curriculum Development Agency

Clause 23 seeks to abolish the Qualifications and Curriculum Development Agency (QCDA). Clause 24 would give effect to schedule 7, which removes references to the QCDA from other legislation, and enables the Secretary of State to make further changes to subordinate legislation by order in consequence of clause 23. Clause 25 would give effect to Schedule 8, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the QCDA to Ofqual and the Secretary of State.

Opposition amendments (111, 112 and 113) sought to delay the abolition of QCDA. Mr Wright argued that given the current review of the national curriculum, it would be sensible to delay the abolition of QCDA to ensure continuity of experience and expertise. Other Opposition amendments (114 and 115) sought to ensure that the Secretary of State would have sufficient resources and expertise to carry out the functions that would transfer to him with the abolition of QCDA. Responding, Mr Gibb said that detailed consultation with QCDA and staff had already begun; that a new executive agency, the standards and testing agency,

---

[119] PBC 24 March 2011 cc 623-24
[120] PBC 24 March 2011 c625
[121] PBC 24 March 2011 cc629-32
[122] PBC 24 March 2011 cc 632-39

would be established in Coventry to develop and deliver the statutory assessments of children up to the age of 14. QCDA's functions would transfer to that agency. QCDA's current work to support the effective delivery of examinations would transfer to the DFE. He said that QCDA had overwhelmed teachers with guidance, and that would stop. With a slimmed-down curriculum, he said, schools would have the freedom to design a full, rigorous and relevant curriculum without interference from government or their agents. He said that unnecessary work had already ceased, and that he did not want to prolong the closure process as that would serve no one, least of all the tax payer. Mr Wright did not press his amendments to a division but emphasised that, in his opinion, the Bill had a centralising effect. Clauses 23 and 24 were ordered to stand part of the Bill.[123]

Opposition probing amendments (117 and 116) to schedule 7 sought to specify the period which stakeholders could submit evidence for representations relating to proposed changes to orders and regulations relating to the national curriculum. It proposed 12 months. While Mr Hayes agreed that contributions from those concerned should be encouraged, he said that the Government had taken the same view as the previous administration that consultation should normally take 12 weeks - not 12 months, which he thought would be seen as too cumbersome. He noted that the Government had made a commitment to ensure that the review of the national curriculum would be carried out in an open, consultative and inclusive way. Schedule 7 was agreed to, and clause 25 was ordered to stand part of the Bill.[124]

Mr Wright moved amendment 118 to schedule 8 (*Abolition of QCDA: Transfer Schemes*) to enable the Secretary of Sate to transfer any residual QCDA staff and assets to a charity. Mr Gibb explained that in the process of transferring and disposing of assets, the Department was actively considering the benefits of transferring some assets to charities, including awarding bodies; however, he said these arrangements would not need a transfer scheme as they would be sorted out well in advance of the closing date. After a short debate during which Mr Wright questioned the Minister about the schedule in relation to staff, premises and liabilities, schedule 8 was agreed.[125]

Towards the end of the Committee's proceedings, Mr Brennan moved new clause 9. It sought to impose an obligation on the Secretary of State to continue the work undertaken by the QCDA in developing non-statutory programmes of study for RE and PSHE. Mr Gibb said that while he understood the rationale behind the new clause, he did not think it was appropriate. He confirmed that the Government did not intend to make any changes to the statutory basis for RE. On PSHE, he said that the schools white paper had announced that the Government would conduct an internal review and that the Department was currently 'scoping' the review. New clause 9 was negatived.[126]

New Clause 13, moved by Julie Hilling (Labour), sought to make provision for teaching emergency life support skills (ELS) in the National Curriculum for England. She noted the importance of first aid, and how schools could teach ELS. Mr Gibb agreed that ELS could have an immensely positive effect. However, he said the Government's aim was to reduce unnecessary prescription throughout the education system. That, he said, would give teachers the freedom and flexibility to incorporate ELS initiatives, such as Heartstart, in their school programmes. New clause 13 was negatived.[127]

---

123 PBC 24 March 2011 cc 639-43
124 PBC 24 March 2011 cc 643-47
125 PBC 24 March 2011 cc648-52
126 PBC 5 April 2011 cc984-86
127 PBC 5 April 2011 cc988-90

Careers education and guidance

Education and training support services in England

Section 68 of the *Education and Skills Act 2008* requires local authorities in England to make available such services as they consider appropriate to encourage and assist young people to remain in education and training. Section 69 of that Act gives the Secretary of State power to direct local authorities in relation to their function under section 68. Clause 26 of the Bill removes the Secretary of State's power to direct local authorities under section 69.

Debate on clause 26 began with a group of probing amendments aimed at ascertaining what arrangements would be made for the transition period between the abolition of the Connexions Service and the start of the All Ages Careers Service. A group of amendments[128] attempted to insert a new subsection into the legislation which would place a duty on the Secretary of State to produce a transition plan to assist schools, colleges and LEAs in the intervening period.

Members were concerned about the effect that the loss of professional careers advisors, due to the closure of Connexions centres, could have on the employment prospects of young people[129] and on social mobility.[130] Several members highlighted the current problem of high levels of unemployment among young people an emphasised the particular importance of good careers advice at this time.[131] However Mr Stuart commented that Connexions had not delivered, despite the good work that it had carried out,[132] it was suggested that this was because Connexions was asked to deliver too much.[133]

Mr Wright asked about the timetable for setting up the new service, he said that while some services would be available in September 2011 others would not be up and running until April 2012 and this could leave a gap in services.[134]

Concern was expressed about possible cuts in funding for careers advice, as the Connexions budget now sat within the Early Intervention Grant and this fund would be cut by 11% in 2011 and in 2012.[135] Ms Hilling commented that Connexions had to compete with other services in the Early Intervention Grant such a youth services.[136] Mr Stuart asked for information on funding and on the budget for the new service.[137]

Mr Hayes in responding to concerns said that he was 'passionately committed' to good advice and guidance, he referred to Alan Milburn's report on access to the professions and the Browne report, which highlighted the critical importance of advice and guidance.[138] He said that primary responsibility for careers advice would in future lie with schools, but local authorities would retain the responsibility to encourage, enable and assist the participation of young people and adults with learning difficulties and disabilities. He reassured the Committee that the Government would set out more clearly how the responsibilities of schools and local authorities would change over the next 12 to 18 months[139] said they would

---

[128] Amendments 100,121, and 122
[129] PCB 24 March 2011 c654 (16th sitting afternoon) ,Mr Wright
[130] PCB 24 March 2011 c 658 - Mr Stuart
[131] PCB 24 March 2011 c660 – Ms Creasy
[132] PCB 24 March 2011 c658
[133] PCB 24 March 2011 c665 – Mr Hayes
[134] PCB 24 March 2011 c656
[135] PCB 24 March 2011 c656 - Mr Wright
[136] PCB 24 March 2011 c 660
[137] PCB 24 March 2011 c659 - Mr Stuart
[138] PCB 24 March 2011 c664
[139] PCB 24 March 2011 c666

issue guidelines to local authorities as a matter of urgency.[140] Mr Hayes said that he would also communicate with schools about their responsibilities under the new arrangements.[141]

The Minister explained that the Connexions budget had not been ring fenced since 2008 to allow greater flexibility and that bringing a number of funding streams together in the Early Intervention Grant continued this process as it would allow authorities to target resources at areas of greatest need.[142]

With regard to the transition arrangements Mr Hayes gave a commitment to hold a summit of interested parties to 'talk through the transitional arrangements and the set up of the new service to make sure that they are seemless'.[143] He also said that he would hold a second summit for users of the service and that the summits would be put together as a matter of urgency.[144]

Mr Wright responded that the Minister has failed to answer 'key logistical and administrative points' with regard to the all age careers service[145] and had not addressed the fact that nothing would be in place for a large part of the country for six months. Despite reassurance by Mr Hayes that he was determined to make the transition as effective as possible, Mr Stuart pressed the amendment to a vote. The Committee divided ayes 6, noes 10.

Mr Wright moved amendment 119 which would maintain the duty on schools and colleges to permit careers professionals access to schools. This amendment was in response to evidence given by a careers advice practitioner who said that effective advice required interview facilities in schools.[146] This amendment started a debate about the value of face-to-face advice compared to online facilities. Mr Wright stressed the importance of building up relationships between advisors and students,[147] he also said that the amendment would ensure that careers advisors remained accessible to all students not just the 'brightest and the best'.[148] Mr Gibb reassured the Committee that the strengthened duty on schools to provide impartial advice, destination measures and increased accountability, would ensure that the quality of advice was not different for different pupils in schools.

Mr Wright was not reassured that careers professionals were being given the necessary support to do their job and he said he felt that an 'elitist' approach was built into the statutory framework; he said he would return the matter on Report and withdrew the amendment.

The Committee divided on amendment 122 which was lost by 6 votes to 9. Clause 26 was then ordered to stand part of the Bill.

Careers guidance in schools in England

Clause 27 would insert a new section 42A into the *Education Act 1997* to require maintained schools and Pupil Referral Units in England to secure independent careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age. Such guidance would have to be impartial and, as is currently set out in section 43(2ZB) (which has not been brought into force), it would also have to include information on all 16 to 18 education or training options, including apprenticeships.

---

[140] PCB 24 March 2011 c667
[141] PCB 24 March 2011 c668
[142] PCB 24 March 2011 c668
[143] PCB 24 March 2011 c699
[144] PCB 24 March 2011 c699
[145] PCB 24 March 2011 c670
[146] PCB 24 March 2011 c672
[147] PCB 24 March 2011 c673
[148] PCB 24 March 2011 c675

Mr Wright moved an amendment 123 (linked to 124), subsequently withdrawn, to require the Secretary of State before commencing the section to lay before Parliament a report setting out agreed arrangements with representatives of school teachers, local authorities and employers on the delivery of careers guidance education. He said that clause 27 would change dramatically the landscape of careers guidance in schools in England, and raised concerns expressed by teachers' representatives and the Institute of Careers Guidance about the potential negative effect of the change given the uncertainty about the future of services such as Connexions. Amongst other things, he stressed the importance of a face-to-face meeting between a professional and a young person to discuss education, training and development. He said that a pre-commencement report would need to address three key questions: first, whether schools would be required to seek services from service providers that are already registered with an accredited careers professional body; second, whether the Government would require that all providers of careers guidance services to schools comply with Government-determined quality standards; and third, whether future service providers be subject to Ofsted inspection to ensure that schools comply with their obligations. Other Members also spoke about the need for high quality careers advice, and the link between careers advice and social mobility.

Responding, Mr Hayes spoke about the variability in the quality of the advice currently offered. He acknowledged the concern expressed, and said that he intended to call a summit of those with an interest in careers guidance, to ensure that each can have their say and play their part in the smooth transition from the existing arrangements to the new system. Following the summit, an action plan would be produced. Mr Stuart raised the issue of schools not wanting to allow students access to information about further education colleges. Mr Hayes said that schools would have to offer balanced advice so that all the options to young people were made clear, and he stressed the need for collaboration between local education providers. There was discussion about standards for career professionals, and the Minister referred to the work of Dame Ruth Silver as chair of the Careers Professional Task Force, which, he said, had recommended that a thematic review of careers should be carried out to identify excellent provision and to establish a baseline for future policy development. He also noted that in March 2010 Ofsted had produced a thematic review on career information, advice and guidance, and that he would consider asking Ofsted to carry out a further thematic review. He said that that would allow a direct comparison to be made between the effect of the new arrangements and the problems that he had highlighted with the existing ones.[149]

A large group of amendments related to the quality of careers guidance and much of the debate focused on work experience, and on professional standards of those providing careers guidance. Two amendments in the group were pressed to a division. Amendment 128, moved by Mr Wright, to require the responsible authorities for a school to secure that careers guidance includes information on 'likely post-18 pathways'. The amendment was defeated by 10 votes to 8. Amendment 146 tabled by Julie Hilling (Labour) and Stella Creasy (Labour/Co-op) required responsible authorities for a school to secure that careers guidance is provided by persons appropriately qualified to provide comprehensive and impartial careers guidance. The amendment was defeated by 10 votes to 8.[150]

In addition, Opposition amendments (129 and 130) sought to probe the Government's thinking on the age, and particularly the age range, at which careers advice should be provided. Mr Wright said that providing a young person with appropriate careers advice up to and including 18 would be consistent with raising of the participation age to 18 by 2015. He welcomed a DFE submission E86 on the matter, which said that the DFE would consult on the issue and, subject to the outcome of that consultation, lay regulations to ensure that

[149] PBC 29 March 2011 cc680-91
[150] PBC 29 March 2011 cc691-712

all young people have access to careers guidance up to the age of 18. Mr Wright also wanted careers advice to be provided when a pupil reached the age of 12, not 14 as the clause provided.

Responding, Nick Gibb said that he agreed that careers guidance should not cease once a young person reached the age of 16. He said that subject to the outcome of a consultation, regulations would be introduced to ensure that all young people attending schools and further education institutions would have access to high-quality careers guidance up to the age of 18 in future. On the question of the earliest age at which pupils should be given independent careers guidance, he accepted that a cogent argument could be made in support of commencing the duty at the beginning of the secondary phase of education. He thought that starting it at age 12 would be extreme because some pupils in the class would still be aged of 11, but he was interested in the proposal from Tessa Munt (Lib Dem) to provide it when the majority of pupils in the class attain the age of 13. He announced that the consultation to look at extending careers advice beyond 16, would also look at extending it down to year 8 (pupils aged 13/14 years). But he wanted to see how wide a demand there would be for such an extension. Meg Munn raised the issue of funding for the career service, and the Minister said that he would make an announcement on that in due course. [151]

Clause 27 was ordered to stand part of the Bill.

Repeal of Diplomas Entitlement

Clause 28 would remove the diploma entitlement for 16 to 18 year olds, and clause 29 would repeal it for key Stage 4 pupils (i.e. those aged 14 to 16).

Mr Wright said that he opposed the repeal, and did not think the clause should stand part of the Bill. He referred to the concerns expressed by several bodies, and asked what assessment the Government had made of the effect on young people of narrowing the curriculum, both through this clause and through the English baccalaureate. He also asked what assessment the Minister had made of the impact of the repeal on the levels of NEETs. Responding, Mr Hayes said that when the diploma was introduced the Conservatives gave it a fair wind, and that while some of the diplomas offer a strong practical path he did not think it was the role of the Government to force local authorities, and through them, schools and colleges, to offer the whole line of diplomas. He said that it should be for schools and colleges to decide which diplomas were appropriate for their cohort, which they have the capacity to deliver effectively and which would deliver the best outcomes for their students. Clause 28 would, he said, place responsibility back into the hands of the professionals to make those judgments, and he stressed that the clause would not remove diplomas or prevent providers of 16 to 18 education from offering diplomas, if they wished. Clause 28 was ordered to stand part of the Bill.[152]

During the clause 29 stand part of the Bill debate, Mr Wright repeated a number of points raised in the discussions on clause 28, and specifically asked how the Government intended to ensure that a sufficient supply of diplomas would be available at Key Stage 4 to meet demand, and whether there would be a narrowing of the curriculum available to young people. He also asked if there would be a role for the local authority to work with schools to plan diplomas. Responding, Nick Gibb said that the provisions being amended were not yet in force but that, were they to be implemented as originally planned, they would have given an entitlement to pupils of that age to study for any of the diplomas, and would have placed a corresponding duty not only on local authorities, but governing bodies and head teachers of all maintained secondary schools in England to secure an entitlement for pupils aged 14 to 16 to all 14 sub-diploma subject lines at every level. That, he said, would have placed a

[151] PBC 29 March 2011 cc712-18
[152] PBC 29 March 2011 cc721-24

huge burden on schools. He pointed out that, as with clause 28, nothing in clause 29 would prevent schools or any other provider from offering diplomas if they wished. He added that removing the diploma entitlement would not signal a lack of interest by the Government in vocational education, and he believed that forcing particular options on schools would not be the answer. Clause 29 was ordered to stand part of the Bill.[153]

2.5 Educational Institutions: other provisions

Duties to co-operate with local authority

Clause 30 would remove the duty on schools to co-operate with children's trusts to improve the well-being of children in the local area.[154]

Six Opposition amendments were tabled to clause 30 (137, 138, 140, 142, 143 and 145). Although none were pushed to division, a number of Members expressed concerns about the removal of this duty. Meg Munn asked the Government to consider how the 'real benefits gained over the past decade in children's organisations working more effectively together [through children's trusts] would not be lost.'[155] Kevin Brennan was also concerned that the clause would undermine child protection work and tabled a group of amendments (137-139[156]) which would effectively delay the implementation of clause 31 until Ofsted had reported on the operation of the children's trust arrangements.

Concerns were also expressed about the consequences for other services of removing the duty on schools to co-operate. For example the amendments probed the effects of clause 30 on:

- identifying children not receiving education (amendment 140);
- the duty on schools and academies to support local authorities with youth services (amendment 142); and
- the Achievement for All partnerships to improve outcomes for pupils with special educational needs (amendment 143)

In addition Stella Creasy tabled two new clauses (8 and 10) which reflected her concerns about the erosion of partnership working as a result of clause 30. She warned:

> If we start to unhook schools from relationships with local authorities in the guise of removing unnecessary prescription, the public benefits that we get from such relationships may inadvertently be lost.[157]

New clause 8 would require the Secretary of State to publish regulations to establish the Achievement for All partnerships[158] and require schools and other bodies to participate. The clause was an attempt to understand the juxtaposition between the Bill and the Government's special educational needs green paper which proposes a single combined health, education and care assessment.[159] The new clause was supported by Pat Glass who

---

153 PBC 29 March 2011 cc724-25

154 Under the *Children Act 2004*, section 10. Library research paper RP 11/14 provides information on the operation of that duty

155 PBC 29 March 2001, c727

156 Amendment 139 was to clause 78 and was a consequential amendment

157 PBC 29 March 2001, c736; see also c744

158 Achievement for All partnerships, introduced under the previous Government, is a school-based programme that aims to improve the attainment and progress of pupils who have special educational needs or who are disabled.

159 Further information about the green paper is set out in the Library standard note, *The green paper on special educational needs and disability* SN/SP/5917

agreed that it fitted with the objective of the green paper and 'may prevent a disaster in low incidence SEN services, which were disappearing before our eyes'.[160]

The Minister explained that the green paper proposals would bring together the appropriate support services and that assessment pathfinders would test which approach would work best. Although Stella Creasy withdrew the amendment she was not convinced the Bill and the green paper fitted together and put on record her 'deep concern for the future of special educational needs.'[161]

New clause 10 would impose a duty on the Secretary of State to publish regulations requiring schools to support local authorities to secure access to education and recreational leisure activities.[162] Stella Creasy argued that schools played a key role in providing youth provision in communities and accused the Government of having a blasé attitude to youth services.[163]

The Minister for Further Education, Skills and Lifelong Learning, John Hayes, assured her that the Government would be taking careful note of the Education Select Committee's recently launched inquiry into services for young people and its recommendations would help to shape Government thinking. Ms Creasy stated that the Opposition were satisfied of the importance of the select committee inquiry and withdrew the amendment.[164]

Duties to have regard to children & young people's plan

Clause 31 would remove the requirement for maintained schools and Schools Forums in England to have regard to the children & young people's plan. In the debate on clause 31 stand part of the Bill, Mr Wright asked whether removing the plans would present any risks to local authorities and schools. The Schools Minister said that the removal of the requirement does not mean that the Government are opposed to planning. On the contrary, he said, the Government wanted to support effective planning 'that genuinely reflects local priorities and the worries of local people. Under the clause, we intend to free local partners and partnerships from the micro-managements of central Government and let them produce genuinely local plans.' Clause 31 was ordered to stand part of the Bill.[165]

Duty to prepare and publish a school profile

Clause 32 would repeal the duty for maintained schools in England to prepare and publish a school profile.

In the debate on clause 32 stand part of the Bill, Mr Wright said that the Opposition did not dispute the need to do something about the duty on school governing bodies to publish a school profile. He noted that a significant proportion of schools had not published a profile, and that parents were denied information about schools. The Labour Government had wanted to repeal the school profile provision, and replace it with a school record card system. Mr Wright asked the Minister to say more about the information the Government intended to publish. Responding, Nick Gibb noted that parents already have information on a school's performance through the performance tables, and that the schools white paper had made it clear that the Government wanted to require schools to publish comprehensive information online including, for example: admission information and oversubscription criteria, the school's curriculum, the school's phonics and reading schemes, arrangements for setting pupils, the behaviour policy and home school agreements, the special needs policy, information about how the school uses the pupil premium and clear signposting for parents

---

160 PBC 29 March 2001, c747
161 *Ibid,* c 752
162 PBC 29 March 2011 c 735
163 *Ibid,* c 742
164 *Ibid,* c 743
165 PBC 29 March 2011 cc 755-56

who would like more detailed information. He also said that key performance tables would focus on a range of measures, including the English Baccalaureate. Clause 32 was ordered to stand part of the Bill.[166]

Duty to appoint school improvement partners

Clause 33 would remove the duty on a local authority to appoint a school improvement partner (SIP) for each school they maintain.

In the debate on clause 33 stand part of the Bill, Kevin Brennan noted the current functions of SIPs, and the concern that had been expressed about the proposals. Other Labour Members spoke about their experience of SIPs. Responding, Nick Gibb quoted support from various bodies for the removal of the duty, and stressed that the Government wanted to see more co-operation, mentoring and school-to-school support but he believed that that would not be delivered by a range of statutory duties on schools. He said that for too long 'schools have been the focus of highly centralised, top-down approaches, leading to the stifling of creativity and innovation.... We are committed to creating a self-improving school system that empowers schools to become fully responsible for their own improvement.' He concluded that 'schools need to be free to take responsibility for their own improvement by defining their improvement priorities and accessing the most appropriate support themselves, either from other schools or from the marketplace.' Mr Brennan said that experience showed that some schools 'act as islands if we do not put into the system a requirement for them to co-operate, collaborate and act together'. Although he decided not to force a division on the clause, he hoped the Minister would reflect further. Clause 33 was ordered to stand part of the Bill.[167]

Duties in relation to school admissions

Clause 34 seeks to make a number of changes to the school admission provisions contained in Part 3 of the *School Standards and Framework Act 1998* (SSFA 1998). The clause would remove the requirement on English local authorities to establish an Admission Forum for their area; remove the School Adjudicator's power to change admission arrangements under section 88J of the SSFA; and remove the requirement for local authorities to provide to the School Adjudicator reports on admissions to schools in their area.

The Opposition tabled a number of amendments with the stated aim of ensuring fair access to schools for all children. Moving amendment 147, subsequently withdrawn, to require each admission authority in agreeing admission arrangements to ensure fair access to educational opportunity, Mr Brennan said that he was concerned that the clause was about creating 'more wriggle room for schools to get out of fair admissions.' Responding, Nick Gibb said that he agreed with the sentiments behind amendment 147, and referred to the measures the Government had taken to tackle inequality in the education system. He stressed that there was no hidden agenda to introduce covert selection through revisions to the admissions code. However, he referred to 'more than 660 mandatory requirements in the current code - too many to follow' and that 'the chief adjudicator says that the code needs to be more accessible.' He said that as part of the announced review of the school admission process 'the draft codes on which we will soon consult will continue to have fairness and equality as their guiding principles. As I said in the policy statement that we circulated to the Committee, we shall require the local authority to report on the effectiveness of fair access protocols.' The Minister said that the draft codes would be issued imminently, and referred to a policy statement circulated to the Committee. This, he said, had stated that the Government would require the local authority to report on the effectiveness of fair access protocols for children with special needs and children in care. Priority for SEN and looked-after children would

[166] PBC 29 March 2011 cc755-59
[167] PBC 29 March 2011 cc759-64

continue. He believed that the codes, rather than legislation, would be the best place to give effect to the aim expressed in the amendment.[168]

Amendment 148 moved by Mr Brennan, subsequently withdrawn, sought to take out the provision relating to the removal of the duty to establish admission forums. Mr Gibb emphasised that the clause would remove the duty on local authorities in England to establish admissions forums, but it would not ban or abolish them. He said that he was not advocating their abolition, but rather their adoption only if that were the right local solution. He believed it was 'disproportionate and bureaucratic that legislation should set out such requirements.' In addition, he said that later this year, the regulations on powers to object would be changed, so that anyone with an interest or issue would be able to object to admission arrangements in their area. Admissions forums would therefore be 'a duplication of effort and expense.'[169]

Amendment 149 moved by Mr Brennan related to the proposed change to the School Adjudicator's powers by the repeal of section 88J of SSFA. The Minister said that the clause would not affect the Adjudicator's scope to receive objections and consider admission arrangements but it would remove the power to directly modify admission arrangements as part of a decision in relation to objections received from parents and other persons. Mr Gibb said that it should be for schools to implement such decisions, and that they should have the freedom to decide how and what to change to comply with the Adjudicator's binding decision.[170] Mr Brennan said that the point of retaining the current power would be to have a 'stick in the system' to ensure that schools fully implement their obligations, and he felt that the proposed change would weaken the role of the Adjudicator. The amendment was pressed to a division and defeated by 9 votes to 8.[171]

A group of Opposition amendments (150, 152, 153 and 154) sought to retain the system of reports from local authorities to the adjudicator. Moving amendment 150 (which was later withdrawn) Mr Brennan said that the removal of the current provision 'tinkers unnecessarily with an existing law that is working well.' He argued that removal of the local authority duty to report to the Adjudicator, and removal of the admission forum to provide expert local accountability on the report meant that that important aspect of securing compliance with the admissions code will effectively go by default. Responding, Mr Gibb said that he agreed with the principle underlying the amendment, namely that local authorities should report to their communities and constituents about admissions arrangements in their area; however, referring to a policy statement that he had circulated to the Committee on 25 March, he said that the revised draft school admission code would require local authorities to publish their report locally, rather than to the Adjudicator, and that the code would specify some important elements of the report. There was again discussion about when the draft code would appear. The issue was also raised during the debate on clause stand part. Mr Gibb said that the draft admissions code and the revised draft appeals code would be published soon, and that copies would be sent to Members of the Committee. The Committee agreed by 9 votes to 7 that clause 34 be ordered to stand part of the Bill.[172]

(Clause 60 of the Bill also relates to admissions. The clause, which would bring objections to admission arrangements for academies within the remit of the Schools Adjudicator, is covered in the section on academies below).

---

168 PBC 29 March 2011 cc764-70
169 PBC 29 March 2011 cc773-75
170 PBC 29 March 2011 cc777-8
171 PBC 29 March 2011 c780
172 PBC 29 March 2011 cc 786-87

Duties in relation to school meals

Clause 35 would amend school meals provisions in the *Education Act 1996* to remove the current restriction on schools that where a school charges for a meal, it must charge the same price for the same quantity of the same item. The aim is to allow the use of flexible charging. The change would not affect the provision of free school meals (and free milk) to eligible pupils. In the debate on clause 35 stand part of the Bill, Mr Brennan asked what effect the provision would have on schools' finances if they chose to charge less than cost price to some of their pupils, and how eligibility would be determined for reduced price meals. Responding, Mr Gibb explained that schools that decide to use such flexibility would, in effect, have deliberately chosen to invest their funding to increase take-up to build a better, more sustainable and cost-effective service. He said that the school would determine eligibility, provided it does not charge more than the cost of the food. He noted that academies can already price school meals flexibly for different pupils. Clause 35 was ordered to stand part of the Bill.[173]

Establishment of new schools

Clause 36 would give effect to schedule 10 which would make amendments to Part 2 of EIA 2006 in order to give precedence to proposals for academies where there is a need for a new school. The proposed changes include a requirement on the local authority to obtain the consent of the Secretary of State before publishing proposals for a competition for the establishment of a new school.

Clause 36 was ordered to stand part of the Bill[174] and there followed discussion of schedule 10. Mr Brennan moved amendment 157, subsequently withdrawn, to remove paragraphs 2, 3, 4 and 5 of the schedule (i.e. the presumption that new schools would be academies and the associated provisions). He questioned why new powers were needed for the Secretary of State, and whether he would have the local knowledge to make decisions in every case that would be in the best local interest. Mr Gibb said that the amendment would undermine the changes that the Government were seeking to make to increase diversity of provision, and pointed out that the Secretary of State had a team of advisers who work with local authorities. There was a more general debate about the merits of academies during the clause stand part debate. Mr Gibb stressed that the schedule would not remove the local authority from the system but rather 'cements the change in their role from one of provider and maintainer to one of commissioner and champion of education excellence.' Although the Opposition did not press schedule 10 to a division, nevertheless, Mr Brennan said that the Government's approach would take options away from local communities in relation to the types of schools that they want to set up. Schedule 10 was agreed.[175]

Governing bodies: constitution and dissolution

Clause 37 seeks to reduce the number of categories of governor required for governing bodies of a maintained school in England. Clause 38 relates to the discontinuation of federated governing bodies. It would prevent dissolution from happening in circumstances where two or more schools remain in the federation after the school concerned has discontinued. The purpose is to enable a school to close or convert to an academy, without having to first undertake a statutory procedure to leave the federation in order to avoid dissolving the federated governing body.

A group of Opposition amendments (158,159,160,161 and 162) sought to retain the requirement for representation on the governing body of local authority, school staff and the local community. Dan Rogerson (Lib Dem) also expressed concern about clause 37. He

---

[173] PBC 29 March 2011 cc 787-89
[174] PBC 29 March 2011 c789
[175] PBC 31 March 2011 cc 800-1

accepted that the clause would not in any way ban local government or staff governors, and that schools may opt to use them but he thought there was reason to look at the issue again. He was concerned that where there was a strong head teacher who had a close relationship with the chair of governors 'there may be insufficient challenge, particularly if the chair is in the position to lead the co-option of other governors into the governing body.'[176] Several Members spoke of the experience that local authority and staff governors can bring to a governing body.

Responding, Mr Gibb paid tribute to the work of school governors. He stressed that the Government wanted to give governing bodies more freedom to recruit governors based on skills, in order to make them better able to hold head teachers to account and to set a clear ethos and strategy for the school. He said that the present arrangements were too complex and prescriptive, and that the proposed arrangements would be permissive and would put decisions in the hands of governing bodies. Each governing body would be able to decide its own size and composition to meet the needs of the school. The requirement for governing bodies to elect parent governors would be retained as would the requirement to include the head teacher and, in foundation schools and voluntary schools, foundation governors. Mr Gibb felt that the debate had become more polarised than it needed to be. He subsequently made the concession that he would consider further, including in drawing up the relevant regulations, how to ensure that governing bodies that wish to move away from the 'stakeholder model' would give due consideration to the need to retain the particular skills that come with being a local authority governor. Mr Brennan pressed his lead amendment (158) to retain a requirement for local authority governors, and it was defeated by 10 votes to 8. Clause 37 was then ordered to stand part of the Bill.[177]

After a very short debate on the Government's reasoning behind the clause 38, it was ordered to stand part of the Bill.[178]

School Inspections

Clause 39 would amend the current requirement for the Chief Inspector to inspect and report on every school in England at intervals prescribed in regulations, and would provide for the regulations to stipulate that certain schools (to be known as 'exempt schools') would be exempt from routine inspections carried out under section 5 of the *Education Act 2005.*

Clause 40 would redefine the areas upon which the Chief Inspector would be under a general duty to report as part of an inspection conducted under section 5 of the 2005 Act. In addition to the general duty of the Chief Inspector to report on the quality of education provided in the school, the report would have to focus on the achievement of pupils at the school; the quality of teaching in the school; the quality of leadership in and management of the school; and the behaviour and safety of pupils at the school.

Two Opposition probing amendments (164 and 167) sought to require Ofsted to inspect an exempt school or college if requested to do so by the local authority, and to impose a duty on the local authority to make such a request if petitioned by 25% of parents of registered pupils at a school, or by 25% of students in the case of colleges. Responding, Mr Gibb said that he did not think that this would be a proportionate approach. While he did not want an over-prescriptive approach, he accepted that there would need to be a trigger at some point for a school to be reinspected. He noted that the consultation document that was issued recently with the new Ofsted framework set out examples of triggers. He said that if there were a dip in the exam results of a school that would be a trigger, for example. In the debate on clause 39 stand part of the Bill, Mr Gibb also noted that the Government had circulated draft

[176] PBC 31 March 2011 c804
[177] PBC 31 March 2011 cc 801-14
[178] PBC 31 March 2011 cc 814-51

regulations which defined outstanding schools. Clause 39 was ordered to stand part of the Bill.[179]

Opposition amendment 165, subsequently withdrawn, sought to require Ofsted to inspect community cohesion, and another amendment (166) sought to ensure that inspections considered financial management and governing arrangements at a school. Mr Brennan asked the Minister why the Government had decided to remove the current requirement for Ofsted to inspect community cohesion. Mr Gibb said that while he considered community cohesion to be important, he did not accept that it should be one of the core areas of inspection. The duty on schools to promote community cohesion would remain. Mr Gibb also noted that leadership and management of the school would be a core area of inspection. Clause 40 was ordered to stand part of the Bill.[180]

Inspection of FE institutions

Clause 41 makes provision to exempt outstanding sixth form and further education colleges from routine inspections.

A short clause stand part debate was held on the provision. Mr Wright welcomed the clause but asked for information on procedures for inspections of exempt colleges.[181] Mr Hayes responded saying that the new procedures would allow outstanding colleges to be free from the burden of unnecessary inspection and he reassured the Committee that Ofsted would continue to risk-assess the performance of all exempt colleges on an annual basis.[182] He also said that colleges could request an inspection and clause 41 would permit charges to be made for such inspections. He further reassured the Committee that appropriate notice would be given for inspections, the clause was then agreed.

Inspection of boarding accommodation

Clause 42 relates to the inspection of boarding accommodation, and would amend sections 87 and 87A to 87D of the *Children Act 1989*. In response to Mr Brennan's request for the Minister to outline the intentions of the clause for the record, and Mr Gibb said:

> As hon. Members will know, boarding schools are inspected on two things: education and welfare. In England, independent inspectorates carry out inspections in most independent boarding schools, and Ofsted carries out all welfare inspections. Joint inspections by Ofsted and independent inspectorates are undertaken where possible, to minimise disruption to the schools concerned, but there are two separate inspection reports, published on two separate websites. A single inspection report of the school published on a single website would be more helpful for parents and easier for schools to handle.
>
> The Children Act 1989 gives a power, which we will now use, to remedy that position and continue the previous Government's work in this area. We intend to appoint an independent inspectorate to undertake some boarding welfare inspections in England, as is already the case for some education inspections of independent schools. The clause therefore makes three changes consequential to the use of that power.

The Minister then went on to explain each of the consequential changes, and clause 42 was ordered to stand part of the Bill.[183]

---

[179] PBC 31 March 2011 cc815-22
[180] PBC 31 March 2011 cc825-30
[181] PCB 31 March 2011 c830
[182] PCB 31 March 2011 c831
[183] PBC 31 March 2011 c832

Schools causing concern: powers of Secretary of State

Clause 43 would amend *Education and Inspections Act 2006* to make provision for the Secretary of State to direct a local authority to issue a warning notice to a school on grounds of performance or safety concerns. It would also extend the Secretary of State's powers to direct a local authority to close a school to all schools eligible for intervention, rather than (as at present) only those deemed by Ofsted to be in need of special measures.

Mr Brennan questioned the rationale for the clause, and said that it was another example of the Secretary of State taking power to himself. Quoting comments from the Local Government Association, he asked whether the clause was counter to the Government's plans for localism. Responding, Mr Gibb said that the Government believed that the power to direct a school's closure should not be confined to schools in special measures, but should be available in all circumstances where a school was eligible for intervention because of poor performance. Mr Brennan said that although he would not press the clause to a division, he said the Opposition was concerned about the potential abuse of power and accountability. Clause 43 was ordered to stand part of the Bill.[184]

Parental complaints about schools

Clause 44 would repeal the provisions in the *Apprenticeships, Skills, Children and Learning Act 2009* on a new complaints service for parental complaints about schools to be made to the Local Commissioner (i.e. the Local Government Ombudsman). There was a phased introduction of the new complaints system from April 2010, and the arrangements were expected to apply nationally from September 2011.

The Opposition tabled several amendments relating to clause 44. Lead amendment (169, linked to 170) sought to require a report on the operation of the new complaints service to be laid before Parliament before clause 44 could be commenced. Graham Stuart had also tabled an amendment (77), that was not selected, which sought to delete the whole of clause 44. He noted that the LGO had spent considerable time and resources developing, piloting and training its staff in an effort to implement the new complaints procedure. He said that the LGO appeared to offer 'a more accessible and local route for parents to make complaints about the nature of their children's education.'

Moving his amendment (169), Mr Brennan said that clause 44 was another example of the 'attack on parents' rights that is part of the Bill.' Responding, Mr Hayes said that the Government's aim was to ensure that parents and schools had access to a complaints system that would be quick, transparent, simple and cost-effective and would provide proper independence. Referring complaints that had not been resolved at a school level to the Secretary of State offered, he said, a simple system. He reminded the Committee that that was already the situation in all but the 14 local authorities that had been operating the new complaints system. There was some discussion of the cost implications of the new complaints system, and another issue raised was complaints relating to children with special educational needs. Mr Brennan stressed that the new complaints system had been introduced by the Labour Government following the recommendations of Sir Alan Steer, who had felt that referring complaints that had not been resolved at a school level to the Secretary of State was 'using a hammer to crack a nut'. Mr Brennan said that he would press his amendment to a division because he felt the clause would be a significant reduction in parents' rights. The amendment was defeated by 9 votes to 7.[185]

In relation to an Opposition probing amendment (171) there was discussion about the local authority's role in considering complaints about the curriculum, sex education and religious

---

[184] PBC 31 March 2011 c836
[185] PBC 31 March 2011 c836-47

worship in schools that they maintain.[186] Two further Opposition amendments (172 and 173) aimed to bring academies within the scope of the Secretary of State's powers under sections 496 (powers to prevent unreasonable exercise of functions) and 497 (general default powers) of the *Education Act 1996*. Responding, Mr Gibb said that the Government's policy, like the previous Government's, was that academies would be regulated through their funding agreements with the Secretary of State rather than through legislation. He noted that the specific obligations placed on academies, such as duties in relation to the curriculum or assessment, were contained in the funding agreements, and that parents could complain to the Secretary of State about the failure of an individual academy to meet any of those obligations. If an academy were to breach its funding agreement or fail in respect of any of its statutory duties, he said, the Young People's Learning Agency (YPLA) would enforce an appropriate remedy. He added that after the abolition of the YPLA, any such complaints would continue to be dealt with through the Department for Education. Mr Brennan withdrew his amendment but reiterated that he felt the clause represented a significant reduction in parents' rights. Clause 44 was ordered to stand part of the Bill.[187]

2.6 Finance

Local authorities' financial schemes

Clause 45 would amend schedule 14 of the *School Standards and Framework Act 1998*, enabling the Secretary of State to revise the whole or any part of a local authority scheme by giving a direction. It would also require the Secretary of State to consult the relevant local authority and such other persons as the Secretary of State thinks fit before a direction is given.

An Opposition probing amendment (174) sought to subject the Secretary of State's powers to the affirmative resolution procedure. Mr Hayes explained why he thought the affirmative resolution would not be appropriate. He said that the purpose of using a direction would be to give the Secretary of State flexibility and allow him to bring in measures quickly. The affirmative procedure would, he said, slow down the process and would only be appropriate for more contentious or controversial matters. He noted that the previous Government had repealed the directed revision power, and that the Government wanted to put it back so that schemes can be amended more simply as policies change. Clause 45 was ordered to stand part of the Bill.[188]

Payments in respect of dismissal

Clause 46 would amend section 37 of the *Education Act 2002* to provide that a local authority must recover costs in relation to school staff employed for community purposes from the governing body of a maintained school in England, but that costs may be met by the governing body out of the school's budget share.

An Opposition probing amendment (175) opened a discussion about who should fund redundancy costs. Mr Hayes said that the Government took the view that schools should be able to fund redundancy costs from their delegated budgets. He added that as from April, they will be able to do so for all other expenditure relating to community facilities or extended services, and that the clause provides consistency in relation to the funding of the costs of staff employed for community purposes. Clause 46 was ordered to stand part of the Bill.[189]

---

[186] PBC 31 March 2011 c847-48
[187] PBC 31 March 2011 cc848-9
[188] PBC 31 March 2011 cc849-51
[189] PBC 31 March 2011 cc851-2

Permitted charges

Clause 47 would make changes in relation to permitted charges for optional extras.[190]

Several Opposition amendments sought to probe the Government's intentions, and to see whether the purpose of the clause 'was to extend the ability of schools to charge for provisions that would be in keeping with the objective of section 17 of the *Childcare Act 2006*', or whether it would be 'a means of squeezing more cash from hard-working parents.' In particular, Mr Brennan asked about charges for summer born children in reception provision. Responding, Mr Gibb said that the clause would clarify a point that was not altogether clear by making 'a simple technical change that puts beyond doubt the fact that costs for things such as heating and lighting can be included in the charges for all optional extras.' Earlier, he had noted that the clause would not expand the definition of an optional extra; the definition in the *Education Act 1996* would remain. On the point about reception provision, he said:

> I make it absolutely clear that reception provision is free, full-time provision in schools and it will remain so. In freeing schools to be able to charge for early years provision, regulations will make it clear that reception provision remains free. That will be the case whatever the age of the child in reception, including children who start reception before the age of five.[191]

Another matter raised by the Opposition related to the protection of free early years education for disadvantaged children. Again, the Minister sought to reassure the Committee. He said that the regulations enabling schools to charge for additional early education cannot allow schools to charge for provision that must be offered free of charge as a result of the duty in section 7 of the *Childcare Act 2006*, and that the free provision for disadvantaged two-year-olds will be a statutory entitlement under section 7.

Mr Brennan said that while he would not press the amendments to a vote, he wanted to reserve the right to return to the question of charging at a later stage, if he continued to have concerns after looking carefully at what the Minister had said. Clause 47 was ordered to stand part of the Bill.[192]

Further education institutions

Clause 48 of the Bill gives effect to schedule 11 which would amend the duties on further education corporations (FECs) and sixth form college corporations (SFCs). The aim of these amendments was to reduce government intervention and bureaucracy and to give colleges greater autonomy.

The debate on schedule 11 began with Mr Wright pointing out that the changes in the Bill would 'demolish the architecture put in place only a few short months ago under the auspices of the Apprenticeships, Skills, Children and Learning Act 2009'.[193] Mr Wright then moved amendment 189 to remove paragraph 2 of the schedule, this part of the schedule would allow FECs and SFCs to borrow money without seeking the permission of the relevant authority. The amendment sought to ascertain who would be responsible for colleges under the new arrangements if a college got into financial difficulty.[194]

---

190 Optional extras currently include education outside of school hours, entry for certain public examinations, some school transport, and board and lodging provided on residential trips.

191 PBC 31 March 2011 cc855

192 PBC 31 March 2011 cc852-58

193 PCB 31 March 2011 c858 (20th sitting afternoon)

194 PCB 31 March 2011 c859

Mr Hayes responded that requiring colleges to seek consent before borrowing money was too restrictive and bureaucratic and he said that colleges should take responsibility for the financial health of their institutions;[195] however intervention would be possible in cases of mismanagement. Mr Wright was concerned that colleges in financial difficulty could be left to 'go under'. Mr Hayes said that there needed to be greater clarity about the long term funding of further education and that the Government would 'devolve power for all kinds of decisions to colleges'.[196] Mr Wright was concerned that funding which colleges relied on such as Education Maintenance Allowances and Building Schools for the Future could just be 'turned off abruptly' and he asked for a commitment that such decisions would not happen in the future. Mr Hayes reassured the Committee that 'on his watch there would be consistent and coherent' policy.[197] He said that the interests of learners and the protection of money would be protected thorough the financial memorandum of colleges and he assured the Committee that 'he would take the brakes off colleges' but would 'not allow them to crash'. Mr Wright said he might come back to this on Report and withdrew the amendment.

Mr Wright then moved probing amendment 182 to leave out paragraph 3 – paragraph 3 would repeal the duty on colleges to promote the economic and social well-being of their area. Mr Wright was concerned that the Bill put too much trust in colleges and that an 'inward looking' college might not promote wider economic and social well being.[198] Mr Hayes responded that all colleges regarded their social and economic purpose as salient and that enshrining this in legislation was 'paternalistic'.[199] He also said that there were checks in place via inspection and local challenges to the leadership of colleges. Mr Wright said the 2009 provision was aspirational and that the Minister was 'right in many respects' and withdrew the amendment.

The next amendments (184, 186 and 187) concerned new further education providers and intervention procedures, the amendments aimed to keep the current procedures for establishment and closure of SCFs. Mr Hayes said that these procedures, whereby proposals from local authorities were sent to the Secretary of State, were restrictive, and created delays and that prospective providers and SFCs should be able to make direct proposals.[200] On intervention procedures he said that powers would be transferred to the Secretary of State but he anticipated that these powers would rarely be used[201] and he also said that it was a necessary safeguard that the Secretary of State should be able to dissolve a college without a proposal.[202] Mr Hayes implied that these provisions were connected to the Government's aim to create a more plural system with new providers coming into the market.

Mr Hayes sought to reassure the Committee on the amendments saying that the Secretary of State would only be able to intervene in 'certain prescribed circumstances' which are set out in legislation[203] and that removing the power of local authorities to appoint two members of a governing body would not preclude colleges approaching local authorities for advice about membership.[204]

Mr Wright remained concerned on some points and said he failed to see what new providers could offer, but withdrew the amendment.

---

[195] PCB 31 March 2011 c859
[196] PCB 31 March 2011 c860
[197] PCB 31 March 2011 c861
[198] PCB 31 March 2011 c863
[199] PCB 31 March 2011 c864
[200] PCB 31 March 2011 c867
[201] PCB 31 March 2011 c867
[202] PCB 31 March 2011 c868
[203] PCB 31 March 2011 c869
[204] PCB 31 March 2011 c869

Several Government technical and consequential amendments[205] relating to the abolition of the YPLA were agreed. Other Government amendments which would transfer intervention powers held by the chief executive of the Skills Funding Agency to the Secretary of State were also agreed.[206]

Repeal of provision to change the name of Pupil Referral Units

Clause 49 would repeal provision in the ASCLA 2009, which have not yet been brought into force, relating to the renaming of PRUs to short stay schools.

Opposition probing amendments sought to clarify the Government's purpose in revoking the name change. Pat Glass pointed out that although provision for name change had not come into force, it had been expected, and good local authorities had made plans for it. She said that the purpose of the previous Government's proposal to change the name to short-stay schools was to send a signal that children should have proper, permanent, full-time placements. Responding to the debate, Mr Gibb said that the clause would not prevent a unit from using the term 'short stay school' in its name, if that were appropriate. However, he said, the clause would repeal the change to short-stay school, because the Government do not want to send the signal to local authorities that such institutions are places in which pupils should only ever be educated for short periods. He observed that often pupils would return quickly to mainstream school, but they should not be forced to if that was not the most appropriate provision. Clause 49 was ordered to stand part of the Bill.[207]

2.7 Academies

Academy arrangements

Clause 50 would remove the requirement[208] that academies providing secondary education must have a specialism in a particular subject area or particular subject areas. Clause 51 seeks to make provision for two new types of academies: 16 to 19 academies, and alternative provision academies. Clause 52 would give effect to schedule 12 which reflects the fact that there would be three different types of academies (i.e. academy schools, 16 to 19 academies, and alternative provision academies). Many of the changes are needed because academies would no longer necessarily be schools.

The Opposition did not table any amendments to clause 50 but posed a number of questions including what the Government's policy was on specialism and whether there would be implications for allowing schools to select up to 10% pupils on aptitude for subjects. Mr Gibb explained that the Government's policy was to remove bureaucracy from the system and to give schools greater freedom, and that as part of that policy, it had ended the specialist schools programme for maintained schools. He said that schools could choose whether to have a specialism in the light of their particular circumstances, but associated funding for the specialist schools programme had been 'mainstreamed into the general schools budget so that schools can decide how best to use the funding available to them to raise standards, whether through a specialism or not.' Clause 50, he said, would give academies the same freedom by amending the statutory characteristics of academies so that opting for a specialism would in future be voluntary. In answer to a question about the drafting of clauses 50 and 51 he said:

> The hon. Member for Cardiff West asked a good question about why we are also removing the same subsection in the next clause of the Bill, in clause 51(3), which says "Omit subsection (6)" of the Academies Act 2010. The reason for that is that

---

[205] 202,206,200,209 to 214 and 201
[206] 203 to 208
[207] PBC 31 March 2011 cc874-79
[208] contained in section 1(6)(b) of the *Academies Act 2010* (AA 2010)

> clause 51(3) provides that academy status will for the first time be able to apply to post-16 education and alternative provision. It is likely that sections 50 and 51, when the Act gets Royal Assent, will have different commencement dates, and we are keen that all other academies outside those covered in section 51 should not be delayed in having that bureaucracy removed, so it is a timing issue. But the hon. Gentleman is absolutely right to raise the issue so that it is now on the record. There are no cost implications to the legislative change. It will have no financial impact on schools.[209]

Mr Gibb also clarified that schools that choose to have a specialism would be able to select 10% of pupils by reference to it. Clause 50 was ordered to stand part of the Bill.[210]

Several Opposition amendments sought to amend clause 51 and to clarify understanding of the Government's policy including the policy on chains of academies. The lead Opposition amendment (192, linked to 194) sought to require the Secretary of State to set out the criteria that he would use to determine with whom he would enter into academy arrangements, and to require the approval of such criteria by a resolution of both Houses of Parliament before coming into effect. Mr Wright was not convinced of the need for new entrants to the 16 to 19 market. He said that amendment 194 would address the suitability of persons to be members of an academy trust.

Responding, Mr Gibb said that the Government welcomed chains of academies but within sensible parameters. Turning to the specific amendments, he stressed that the Government took very seriously its role in scrutinising potential free school and academy sponsors. He referred to the 'rigorous approval process' and 'a range of due diligence checks' on those who wish to open a free school or sponsor an academy, and he pointed out that the previous Government had not considered parliamentary approval for the criteria used to enter into academy arrangements to be necessary, and that neither did the present Government.[211] Other Opposition amendments included amendment 195 to probe the Minister on whether 16 to 19 academies would have a role in the education of children below the age of 16, and amendment 196 to probe the Government's thinking on what is meant by an alternative provision academy.[212] Clause 51 was ordered to stand part of the Bill.

Opposition amendment 198 to clause 52 sought to probe the Government's intentions about the inspection regime for the 16 to 19 academies and alternative provision academies. Mr Gibb said that both new types of academies would be inspected and that the Government intend to use the delegated power in clause 52(2) to make the necessary legal provision. He noted that the situation was not entirely straightforward for alternative provisions academies, and that he was awaiting an Ofsted review on whether all non-PRU alternative provision should and could be inspected. However, he said that the Government would ensure that all alternative provision academies would be inspected but he wanted to wait for the Ofsted findings. He said that he intended to provide the House with further detail on the consequential changes to be made under clause 51 and 52 at a later stage in the passage of the Bill.[213] Another Opposition probing amendment (197) sought to remove the order-making power to amend primary legislation ('Henry VIII powers') contained in clause 52. Mr Gibb said that he appreciated the concerns felt about such a power but said that it would be subject to the affirmative procedure, and reiterated that further details about the consequential amendments would be made available. Both of the probing amendments to

---

209 PBC 31 March 2011 cc880-81
210 PBC 31 March 2011 cc 881
211 PBC 31 March 2011 cc881-85
212 PBC 31 March 2011 cc885-88
213 PBC 5 April 2011 c892 and also 31 March 2011, c888

clause 52 were withdrawn. The clause was ordered to stand part of the Bill and schedule 12 was agreed.[214]

Academy orders

Clause 53 would amend the *Academies Act 2010* so that in the case of a foundation or voluntary school with a foundation that is underperforming and eligible for intervention, the Secretary of State would not issue an academy order unless he had consulted the appropriate religious body, in the case of schools designated with a religious character, along with the trustees and any person who appoints foundation governors in the case of any foundation or voluntary school. After a short debate in which the Minister argued that intervention would work best if done in collaboration, the clause was ordered to stand part of the Bill.[215]

Clause 54 would make provision relating to consultation on conversion to an academy, including where a school is eligible for intervention and in the case of a federated school. Opposition amendments 218 and 219 sought to ensure that consultation would take place before an application for an academy order was made. Mr Brennan raised the issue of consulting pupils' parents, the local authority or other interested local groups. Responding, Mr Gibb said that schools would be in the best position to decide when and how a consultation should take place. He did not think it necessary to require consultation before applying for an academy order, and explained that

> Academy orders are simply a procedural milestone that make it possible for the Secretary of State to sign academy arrangements; they do not require that he goes on to do so. Consultation is important before a school becomes an academy, but a school becomes an academy when the funding agreement comes into effect, rather than when the academy order is issued.[216]

On the issue of who should be consulted, the Minister said that for consultation to be meaningful it should 'include all those who have an interest.' However, he said he would resist establishing in legislation a list of who should be consulted. Mr Brennan did not press this amendment but said that the Opposition remained extremely concerned about the Government's attitude to consultation.[217] The issue of consultation was debated on another Opposition amendment (220) that sought to add the local authority to those who, under the clause, may consult on whether a maintained school that is eligible for intervention should be converted to academy status. Mr Gibb said that this was not necessary. During the debate, Mr Stuart raised the issue of selection in grammar schools that convert to academies, and the Minister set out the position where grammar schools become academies.[218]

The issue of consultation was debated further on a group of Opposition amendments. The lead amendment (221) provided specifically for parents of registered pupils, school staff and the local authority to be consulted. Mr Gibb reiterated that the Government did not want to put in place a prescriptive list. Mr Brennan pressed the amendment to a division and it was defeated by 10 votes to 7. Clause 54 was agreed to stand part of the Bill.[219]

Clause 55 relates to federated schools wishing to convert to academy status. Mr Brennan moved amendment 222 to probe Ministers on the level of support required in a federated governing body for academy arrangements. Mr Gibb said that the current position was

---

[214] PBC 5 April 2011 cc891-93
[215] PBC 5 April 2011 c894
[216] PBC 5 April 2011 c897
[217] PBC 5 April 2011 cc895-99
[218] PBC 5 April 2011 cc899-901
[219] PBC 5 April 2011 cc902-4

unnecessarily bureaucratic, and that he wanted to make the process easier for federated schools to convert to academy status. Referring to a policy statement he had circulated to the Committee, he set out the detail of the proposals:

> We propose to amend regulations so that the proportion of governors required to make a decision is proportionate to the number of schools in a federation. The group of governors would need to comprise at least three members, and it would also need to include at least half the governors who represent the school that wishes to leave the federation. By that we mean parent governors elected to represent the particular school, foundation governors appointed for that school, staff governors working at that school and the school's head teacher, when he is a governor. That means that for a federation of two schools, at least half the federated governing body would be required to approve the application to convert, while for a federation of three schools, at least a third would be required and so on. Prescribing a minimum without taking into account the number of schools in a federation does not seem appropriate, which is why the Government have proposed this proportionate approach.[220]

Mr Brennan said that as his amendment was probing, he would not press it to a division but that he was concerned about the possibility of the proposals triggering 'local ill-feeling and that a minority interest locally could act in a way that was not conducive to the interests of all children in an area.' Clause 55 was ordered to stand part of the Bill.

Clause 56 would make changes relating to the transfer of property, rights and liabilities when a school converts to an academy. An Opposition probing amendment (223) sought to find out more about the Government's intentions. Mr Gibb said that section 8 of the *Academies Act 2010* ensures that the process of converting a maintained school to an academy cannot be frustrated by delays or disagreements on the part of the local authority or a governing body on the transfer of their property rights and liabilities, and that clause 56 would make a minor amendment to that section, clarifying that such rights and liabilities include rights and liabilities relating to staff. He welcomed the opportunity 'to make it clear, publicly, that there will be no undermining of staff rights.' He said that the clause would not change the legal position on rights of staff, and that the rights of staff, when transferring from the employment of a maintained school to an academy trust, are protected by TUPE regulations. Clause 56 was ordered to stand part of the Bill.[221]

Other provisions relating to academies

Clauses 57 would make provision relating to new and expanded educational institutions. Opposition amendment 224, subsequently withdrawn, sought to restrict the ability of selective schools to become academies, and to probe whether it would be possible under the clause for selective schools to widen their age range if they became academies. Responding, Mr Gibb said that the intention of the amendment would be to prevent the expansion of an existing selective school by an extension to its age range. He said that the effect would be to prevent the Secretary of State assessing the impact on other local educational institutions of any academy or free school proposals that envisage new provision within an existing selective school - for example, proposals for new all-age provision that incorporated an existing grammar school. He set out in detail the circumstances in which it would be possible to expand existing selective provision. Clause 57 was ordered to stand part of the Bill[222]

---

[220] PBC 5 April 2011 c906
[221] PBC 5 April 2011 cc907-8
[222] PBC 5 April 2011 cc909-12

Clause 58 relates to the position of reserved teachers[223] in the case of voluntary controlled or foundation schools with a religious character converting to academies. Mr Gibb explained in some detail the changes the clause would make, and the clause was ordered to stand part of the Bill.[224]

Clause 59 would give effect to schedule 13 which re-enacts and amends existing provisions in respect to school land. Additional powers would be given to the Secretary of State to transfer the publicly funded land of maintained schools to academies, whilst ensuring that the public interest in land at academies continues to be protected. In the clause 59 stand part debate, Members raised a wide range of questions on the intentions behind extending the Secretary of State's powers, and the effect of the change on the ability of local authorities to manage their school estates and also to use land for other community purposes. Responding, Mr Gibb said that the schedule would mostly re-enact existing provisions, and amend the existing provisions in respect of school land, in order to give the Secretary of State additional powers to ensure that publicly funded land is available for free schools, and to protect land at academies, including free schools, that has been provided or improved at public expense. He stressed that the availability of land was the key impediment to new schools being set up by local groups, and that he was 'unapologetic about using powers to make land available for new schools to meet local needs, when that land is no longer needed by existing schools.' However, he sought to reassure Members on a number of points raised, and he stressed that he was not trying to take land away from schools but that the provisions relate to where land is not needed for the school. Clause 59 was ordered to stand part of the Bill.[225]

The Opposition proposed a group of probing amendments (227, 228 and 229) to schedule 13. Moving the lead amendment, Mr Brennan said that he wanted to probe whether there was anything in the provisions that might result in a 'land grab'. In particular, he gave the example of where a local authority acquires land from a former independent school which it plans to use to provide housing. Mr Gibb said that such use would be outside the scope of the provisions, which 'relate to existing, publicly owned land being used for the purposes of a school.' He added that 'it is reasonable that local authority land that has been used for a school, but is no longer being so used, should be available for a new free school if suitable proposals come forward.'

Other Opposition probing amendments sought to introduce a requirement for independent arbitration before the Secretary of State could make a direction (amendment 230), and to require regulations relating to certain land provisions to be subject to the affirmative procedure (amendment 231). Responding to the first of these Mr Gibb thought that differences of opinion could usually be resolved locally. He said that the overriding objective was to make land available, where appropriate, to free schools: he did not want an additional layer of regulation and procedure. Responding to the other amendment, he said that the affirmative resolution would not be merited as the policies were laid out clearly in the Bill and that the regulations would be practical and administrative only. Mr Brennan did not press his amendments but said that the Opposition would want to have a much more detailed look at the regulations. Schedule 13 was agreed.[226]

Clause 60 would bring objections to admission arrangements for academies within the remit of the Schools Adjudicator. Mr Brennan moved amendment 232, subsequently withdrawn, to prescribe in the primary legislation the range of potential objectors to the admission arrangements for academies. Mr Gibb said that the amendment was not necessary as the

---

[223] teachers who are specifically appointed and selected on the basis of their ability to give religious education
[224] PBC 5 April 2011 cc913-15
[225] PBC 5 April 2011 cc915-24
[226] PBC 5 April 2011 cc924-27

clause would give the Secretary of State the power to make regulations, and he assured the Committee that the range of objectors would be the same for both maintained schools and academies. More generally, Mr Brennan argued that if the Minister wanted an 'across-the-board' approach to schools it would be better to have provisions relating to academies in primary legislation rather than in their funding agreements. Clause 60 was ordered to stand part of the Bill. Clause 61 [*Academies: minor amendments*] was ordered to stand part of the Bill, and the associated schedule 14 was agreed.[227]

2.8 Post-16 education and training

Abolition of Young People's Learning Agency for England (YPLA)

Clauses 62-64 of the Bill will abolish the YPLA and repeal the relevant provisions in the *Apprenticeships, Skills, Children and Learning Act 2009*. The functions of the YPLA will be discharged by the Secretary of State through a new non-statutory agency within the Department for Education, the Education Funding Agency (EFA).

Mr Wright in moving his amendments 'questioned the capability and capacity of the new department' to cope with its work load in the light of the expanding academies programme.[228] Amendments 233 and 234 would require the Secretary of State to produce a report for Parliament before the abolition of the YPLA setting out arrangements for funding and resources.

In reply Mr Gibb set out the Government's approach to the funding system and the proposed changes.[229] He said that by 'bringing all the arms length bodies' into the Department there would be 'access to shared services' and by transferring YPLA staff and property they would keep 'capacity and expertise'. On funding he said that the EFA was likely to operate a system close to the current one with an annual 16 to 19 funding statement, accompanying guidance and individual funding agreements between the Secretary of State and each academy. He also said that the EFA's 'core purpose was funding and finance' and that the EFA would 'not be responsible for issues such as school improvement or monitoring failing schools'.[230]

Mr Wright said that he was not reassured and that the individual funding agreements for potentially thousands of academies could turn into a 'major administrative and logistical nightmare'.[231] Mr Gibb responded that they were trying to 'replace the complex calculation of academies' funding' and simplifying the formula was a key component of trying to introduce streamlined efficiencies into that process'.[232] Mr Wright said that he was not reassured and would return to the issue on Report. He withdrew the amendment and clause 62 was ordered to stand part of the Bill.

One technical Government amendment was made to clause 63 and the clause was ordered to stand part of the Bill without debate.

Schedule 15 contained consequential amendments resulting from the abolition of the YPLA. Government amendment 209 removed references to the YPLA from various other Acts. Mr Wright moved an amendment to remove a paragraph in the schedule which would make local authorities have regard to guidance issued by the Secretary of State. After a

---

[227] PBC 5 April 2011 cc928-32
[228] PCB 5 April 2011 c934 (22nd sitting afternoon)
[229] PCB 5 April 2011 c933-934
[230] PCB 5 April 2011 c936
[231] PCB 5 April 2011 c936
[232] PCB 5 April 2011 c937

reassurance by Mr Gibb that this paragraph was a necessary consequence of the abolition of the YPLA and would not impose additional bureaucracy the amendment was withdrawn.[233]

Five further consequential Government amendments[234] were made and schedule 15 as amended was agreed. Clause 64 and schedule 16 were then ordered to stand part of the Bill without debate.

Apprenticeships

Clause 65 would remove the duty, due to begin in 2013 under *ASCLA 2009*, to provide an apprenticeship place to all qualified young people who want one.[235] Instead, a new requirement will be introduced to prioritise funding for young people who have already secured an apprenticeship place. This new 'apprenticeship offer' will come into effect by 2013 and applies to England only.

Iain Wright, Shadow Minister, expressed concern that the new offer would not provide the same encouragement to young people at the start of their careers as the old offer. John Hayes, the Minister with responsibility for apprenticeships, stated that the new offer would be more 'realistic' as the government cannot tell employers who to hire as an apprentice, but can ensure that funding for the training element of apprenticeships is provided.[236]

Amendment 65, moved, and subsequently withdrawn, by Graham Stuart sought to remove the provision that allows the Secretary of State to suspend the apprenticeship offer in relation to a specific skill or occupation for up to two years. Mr Stuart stated that the Minister had provided him with assurances on the use of the provision. The Minister himself stated that it was something he 'will look at closely again during the passage of the legislation'.[237]

Clause 65 and schedule 17 were ordered to stand part of the Bill.

Clause 66 provides that the Secretary of State will designate who will issue apprenticeship certificates in England. It is intended that this authority will be delegated to the relevant sector skills councils who issue apprenticeship frameworks for their sector.[238] Amendments 78 and 237, moved by Graham Stuart and Iain Wright respectively, were withdrawn following assurances from the Minister that future government guidance issued to certifying authorities, as required by this clause, will ensure a high standard in the certification of apprenticeship achievements.[239]

Clause 66 was ordered to stand part of the Bill.

Iain Wright moved new clause 12, intended to increase the number of apprenticeship places in the public sector. It would have introduced requirements that firms awarded contracts by public authorities must have shown a commitment to skills, training and apprenticeships. Following commitments made by the Minister, Mr Wright withdrew the clause.[240]

---

233 PCB 5 April 2011 c940
234 Numbers 210 to 214
235 Young people are defined as all those aged 16-18 and those aged 19-24 who are either care leavers or have a disability or learning difficulty.
236 See Written Evidence E101 submitted jointly by DfE and BIS for more background to this clause.
237 PBC 5 April 2011 c942
238 See Written Evidence E99 submitted jointly by DfE and BIS for more background to this clause.
239 PBC 5 April 2011 cc946-9
240 PBC 5 April 2011 cc986-8

The Chief Executive of Skills Funding

Consultation by Chief Executive of Skills Funding

Clause 67 alters the power of the Chief Executive of the Skills Funding with regard to the conduct of consultations, it gives the Secretary of State power to direct the Chief Executive to consult with specified people on matters associated with the performance of his functions. No amendments were moved to clause 67 and a short clause stand part debate was held to clarify its purpose. Mr Wright voiced concerns that the clause would allow the Secretary of State to direct the chief executive of the Skills Funding about whom to consult and this could inject political bias into consultations.[241] Mr Hayes replied that the clause aimed to widen the consultation process and did not prohibit any consultation that the Chief Executive might consider appropriate. He said that it was important that stakeholders could approach Ministers who could then pass on directions to the Chief Executive. He said that the clause would encourage the widest possible consultation, where and when appropriate.[242] The clause was agreed.

Functions of the Chief Executive of Skills Funding

Clause 68 brings into effect proposals in the Skills Strategy document, so that the entitlement to fee remission for a first full vocational qualification at level 2 and specified qualifications at level 3 is restricted to those aged over 19 and under 24.

Two amendments were moved to clause 68 on the changes to fee remission. Mr Wright moved the amendments saying that this clause would 'effectively reduce the range of courses provided for free' and lowers the age for which young people could access courses from 25 to 24.[243] The amendments were intended to stop these reductions and to maintain the current entitlements to fee remission. Mr Wright said that the clause could cause difficulties for disabled learners and other students who take longer to complete their courses.

Mr Hayes responded saying that 'in the current fiscal climate we simply cannot fund everything that in ideal terms we would like to'.[244] He said that public investment would be focused where its impact could be maximised – on young adults and those with poor levels of literacy and numeracy. He said for learners aged 24 and over taking level 3 qualifications there would be a wider package of changes and that funding would move to a more 'progressive free loan system'.[245] He said that this approach could be justified because the income premium for individuals completing level 3 qualifications could be high and in some cases 'roughly equivalent to that of a graduate'.[246] Mr Hayes said that wanted to support the most disadvantaged learners such as those doing basic skills and adult and community learning.

Mr Wright said that these arguments disregarded people in need of upskilling and he was disappointed with the responses, but he acknowledged the Ministers commitment to skills and withdrew the amendment.

Another amendment was moved to reinstate the powers of local authorities to develop skills strategies in conjunction with employers.[247] Mr Hayes responded that skills should be developed sectorally and in step with the economy, not geographically, and he said that the

---

[241] PCB 5 April 2011 c950
[242] PCB 5 April 2011 c951
[243] PCB 5 April 2011 c952
[244] PCB 5 April 2011 c952
[245] PCB 5 April 2011 c953
[246] PCB 5 April 2011 c953
[247] PCB 5 April 2011 c954

provisions would cut down on bureaucracy. Mr Wright disagreed but withdrew the amendment. Clause 68 was agreed.

Raising the participation age

The legislation relating to raising the participation age to 18 would be retained but clause 69 would give the Secretary of State flexibility as to the timing of the commencement of enforcement provisions. Mr Brennan was concerned that the clause could 'water down' the provisions, and moved amendment 241 to ensure that a number of the provisions would be brought into force by order. Responding, Mr Gibb emphasised that the Government remained fully committed to raising the participation age to 17 in 2013, and to 18 in 2015. However, he said that the Government wanted to review the need for the enforcement process for pupils and parents annually, and if it were considered appropriate to commence the enforcement powers the Government would do so but, he said, enforcement would always be a last resort. The Government aspired to full participation, but without enforcement. He agreed with Mr Stuart, who had said that criminalising young people for failure to engage in education and training would not initially be the right approach. Mr Gibb said that he wanted young people to participate because they recognised the benefits. Clause 69 was ordered to stand part of the Bill.[248]

2.9 Student Finance

Student loans: interest rates

Clause 70 amends the power given to the Secretary of State in section 22(4) of the *Teaching and Higher Education Act* 1998 to make regulations setting interest rates. Section 22(4)(a) provides that the rates set must be no higher than the rates required to maintain the value of the loan in real terms, or the amount specified for low interest rate loans, whichever is the lower. Clause 70 gives the Secretary of State wider powers to set interest rates on student loans in regulations, provided that the rates set do not exceed those commercially available.

Mr Wright moved amendment 245 and new clause 14, the amendment would allow borrowers of loans to repay their loans in advance of the term date and the new clause would require the Secretary of State to prepare and publish annual reports on student finance. Mr Wright began the debate by stressing the importance of the clause and commenting on the use of the Education Bill for these proposals:

> The clause is incredibly important, but it has frankly not had the publicity that I thought that it would. I imagine that that is because it is tagged, somewhat incongruously, on to an education Bill, and I will discuss whether that is the appropriate legislative vehicle in a moment.[249]

Mr Hendrick suggested that the Government was trying to 'sneak the measure thorough quietly'.[250] The importance of this provision was repeated throughout the debate on this clause.

Mr Wright stated that the clause would give the Secretary of State 'wide and substantial powers to set interest rates' and it would move 'the policy of the Government away from zero rates of real interest to one where the real interest rate would be 3% above RPI'.[251] He also said that a real rate of interest would affect access to higher education:

---

[248] PBC 5 April 2011 cc955-57
[249] PCB Twenty-second Sitting 5 April 2011 (afternoon) c958
[250] PCB 5 April 2011 c958
[251] PCB 5 April 2011 c958

> the trebling of tuition fees from the current level up to £9,000 has received more coverage than the interest rates set on the loans, but I still think that the real rate of interest will act as a barrier for bright kids from poorer backgrounds contemplating university.[252]

A wide ranging debate followed on the Government's proposals for the reform of higher education and student funding. Mr Stuart outlined the new student finance system and highlighted its 'progressiveness'.[253] Mr Wright responded that graduates would face a 'high level of debt' over a 'longer period' and that a real rate of interest of '3 percentage points above RPI which is currently running incredibly high', would act as a 'massive disincentive' to people contemplating university.[254] Mr Stuart countered that 'it is debt but not as we know it'.

Mr Wright then discussed the Department for Business, Innovation and Skills' model of higher education funding, saying that there was a 'strong relationship between the level of fees charged, the interest rate on loans, as in clause 70, and the amount of money available from the Government to higher education for research funding and student numbers'.[255] He said that incorrect assumptions about any aspect of the business model – such as average fee levels - would have implications for other parts and he claimed that the Government 'have their sums wrong.'[256] Mr Wright said that fees of £9,000 would be the norm and that this would make the Government's model and the points in clause 70 about interest rates, 'completely and utterly unsustainable'.

Mr Hayes said that it was not possible to speculate on what universities would charge as fee levels would depend on satisfying access requirements. Mr Wright continued by discussing the consequence of using resource accounting and budgeting (RAB) on the departmental expenditure limit and then repeated the accusation that the Government's model failed to take into account higher fee levels.[257] He further said that higher fees would increase public spending by increasing the total value of loans and by reducing the likelihood that graduates would repay debts in full.[258] Mr Wright said that higher fees might mean that the 'real rate of interest charged to graduates would have to rise quite sharply' and clause 70 would allow this to happen.[259]

The debate on higher education funding continued with Mr Wright quoting statistics from the Office of Budget Responsibility stating that there was a 'massive hole in the higher education budget' and that this would lead to rises in interest rates, cuts to student numbers or reductions in research grants. He said that a fee loan of £9,000 would require a real interest rate of 5.2% and given the current high rate of RPI, this would create an additional barrier to many students.[260]

Mr Wright finished his introductory speech by explaining that new clause 14 would allow Parliament to consider these matters fully and express an opinion. Amendment 244 would ensure that changes to interest rates were scrutinised on the floor of the House. He said that amendment 245 would impose conditions on early repayment of loans, this measure had been raised previously by the Secretary of State.

---

[252] PCB 5 April 2011 c958
[253] PCB 5 April 2011 c959
[254] PCB 5 April 2011 c959
[255] PCB 5 April 2011 c960
[256] PCB 5 April 2011 c960
[257] PCB 5 April 2011 c962
[258] PCB 5 April 2011 c963
[259] PCB 5 April 2011 c963
[260] PCB 5 April 2011 c964

Mr Hayes responded to the speech by stating that it was the Browne review, which was established under the Labour Government, which had recommended a change in the contributions of learners and that Lord Mandelson had hinted at a fee rise by saying that education was 'not cheap.' [261] He said that there needed to be a change in the balance of payments from individuals, graduates and others and the Government.

Mr Hendrick pointed out that the context of the present reforms was different to that under the previous Government, in that this time 'most of the teaching grant has been removed' and the 'student has been asked to fill that shortfall' and Mr Brennan expressed concern about the scheme's affordability.[262]

Mr Hayes replied to the amendments saying that negative procedures provided a 'clear and suitable level of parliamentary scrutiny' for higher education matters. He said that imposing a requirement for an affirmative procedure for interest rates and regulations would be excessive and put pressure on time and resources.[263] He also said that the Government would provide maximum opportunity for consideration of the higher education white paper. With regard to penalties for early repayment of loans he said that it was 'not the right time to introduce conditions', but he gave a commitment to consult on the issue.[264] Mr Hayes said that new clause 14 would 'not add value' as it was Government policy that public finances should be reviewed independently by the Office for Budget Responsibility.

Having addressed the specific amendments the debate widened to cover other issues in higher education such as different modes of studying for degrees, issues affecting part time students and mature students and access to higher education. The Minister replied that the Bill was about legislation and that these broader issues were currently being studied by the Business, Innovation and Skills Committee.

The debate returned to the issue of fees and Mr Hayes stressed the difference between the cost of university and the price of university by pointing out that many universities planned to offer fee waivers and discounts and he commented that not all students took up the full loan, he emphasised that the changes should be considered as an 'entire package'.

Mr Wright responded by saying that because the white paper had not been published there was a 'fog of uncertainty' about many issues and that these provisions on interest rates on student loans should not be in the Bill.[265]

Ms Creasy voiced concern about a 'gap in financing' for higher education that had been raised by the Business, Innovation and Skills permanent secretary in a session before the Public Accounts Committee.[266] Mr Hayes acknowledged that there was a gap in funding and he said that this was the reason for the establishment of the Browne review and why there was a need to look at new ways of funding. Ms Creasy countered that the gap in funding was the result of the differential between the fees that were presumed and the actual fees that were being clarified and she wanted to know if changing interest rates was a way of plugging the gap. Mr Hayes repeated that as fees were not known it was hard to 'come by any definitive judgements about the scale of the gap and how it could be filled'.[267] He said that higher education reforms were a package, the first part of the package was tuition fee

---

[261] PCB 5 April 2011 c965
[262] PCB 5 April 2011 c966 - Mr Hendrick
[263] PCB 5 April 2011 c968
[264] PCB 5 April 2011 c968
[265] PCB 5 April 2011 c972
[266] PCB 5 April 2011 c961 and 973
[267] PCB 5 April 2011 c974

changes, the second part was introducing progressive rates of interest and the final part was the white paper and he that the 'shape and character of higher education would change'.[268]

Mr Hendrick pressed the Minister on fee levels saying that as the trend was for fees of £9,000 or close to £9,000 would the Minister for Universities and Science intervene to 'influence or manipulate fees'.[269] Mr Hayes said that 'not even a majority of universities had made clear what they would charge' and it was hard to reach definitive conclusions about the effect that fees might have on public finances. He said that it was right to consider these issues to put the Bill in context, but the Bill was not about those issues.

Mr Wright returned to amendment 244 saying that the Government's proposals were different to the Browne review recommendations - the Browne review proposed 'a real rate of interest of 2.2% for those earning above the threshold with a safeguard to ensure that those making relatively small repayments did not see the balance of their loan increase'.[270] Mr Wright accused the Government of introducing a 'free for all' on the real interest rate. He said that the Committee was being asked to consider an important piece of legislation with only half the story and he said that the matter was so important that it should be discussed in a full Committee of the House. On amendment 245 on early repayment penalties he said that the promise of an impact assessment was some degree of concession, but he wanted more information as the business model was 'inherently flawed' and the Committee was being asked to make important decisions, that would affect many constituents, on inadequate information.[271] Mr Durkan agreed with the Shadow Minister and said that he was not reassured by the Minister and he said that the worries of the Members had not been dispelled.

Mr Hayes tried to reassure members saying 'the powers do not determine the rate of interest so they do not relate to the gap'. Mr Durkan said that 'bland assurances that the changes will not seriously cost people in real-life terms simply do not add up'.

After only one hour and fifteen minutes of debate the Committee divided on the amendments and the division was lost by one vote – ayes 8, noes 9. The Committee divided on clause stand part and the clause was also agreed to by 8 votes to 9.[272]

Limit on student fees: part-time courses

Clause 71 amends the definition of "course" in section 41(1) of the *Higher Education Act* 2004 to remove the exclusion of part-time courses from that definition. This change will allow the Secretary of State to cap the amount that higher education institutions can charge part-time students in fees, as can currently be done in relation to full-time courses.

No amendments were tabled to this clause and a short debate was held on the clause stand part motion. During the debate Mr Wright asked if future regulations on part-time fees could be subject to the affirmative resolution procedure.[273] Ms Munn then spoke to express her concern about the availability of information on fees for prospective part-time students, loans for part-time students and the repayment of these loans. She was worried that students would have insufficient information on fees and loans and that students might have to start repaying fees before they finished their course.[274]

---

[268] PCB 5 April 2011 c974
[269] PCB 5 April 2011 c974
[270] PCB 5 April 2011 c976
[271] PCB 5 April 2011 c977
[272] PCB 5 April 2011 c978
[273] PCB 5 April 2011 c979
[274] PCB 5 April 2011

Mr Hayes responded saying he agreed with the points made by Ms Munn and that draft regulations would be issued. He then made further concessions saying that he intended to ask Ministerial colleagues to make adequate time available for the higher education white paper to be debated in the House and that the original impact assessment would be updated.[275] He refused however to agree the use of the affirmative resolution procedure for the regulations.

Mr Wright thanked the Minister for his concessions and pressed him on a date for the white paper debate. He also said that he hoped the debate would be held in Government time and could be voted on, and repeated his desire for using the affirmative procedure for the regulations.[276] Mr Hayes said that there would not be a vote on the debate as this was not necessary for a white paper, but he said that there would be a proper debate on higher education. Mr Wright said that the concessions were welcome but did not go far enough and he pressed for a division. The clause was agreed by 9 votes to 7.

2.10 Powers of National Assembly for Wales

Clause 72 would have amended Part 1 of schedule 5 to the *Government of Wales Act 2006* to give the Welsh Assembly Government the power to make measures in relation to professional standards for the school workforce, regulation of the school workforce, and the recruitment and training of the school workforce. Clause 73 would have given the Welsh Assembly Government the powers to make measures in relation to the funding of pre-16 education or training.

Speaking against the clauses, Mr Gibb explained that following the 'yes' vote in the Welsh Devolution Referendum, the Assembly had approved an order to bring enhanced law-making powers into force on 5 May 2011, and that therefore the clauses were no longer needed. Clauses 72 and 73 were disagreed to.[277]

2.11 General provisions

A technical amendment (201) was made to clause 74 which was consequential to an earlier amendment (200) that was made to schedule 11.[278] Clause 74, as amended, was ordered to stand part of the Bill. Clauses 75 and 76 were also ordered to stand part of the Bill.[279] Government amendments (242 and 243) made minor and technical changes to clause 77 relating to the extent of the Bill's provisions. Mr Gibb explained:

> They remove subsection (2) from the clause and make the necessary changes to subsection (1) in consequence of that removal. Subsection (2) states:
>
> "Sections 21 and 22, and Schedule 6"—
>
> which amend the governance structure of Ofqual and revise its standards objective—
>
> "also extend to Northern Ireland."
>
> However, subsection (4) states:
>
> "An amendment or repeal made by this Act has the same extent as the provision to which it relates."

---

[275] PCB 5 April 2011 c980
[276] PCB 5 April 2011 c981
[277] PBC 5 April 2011 cc982-83
[278] PBC 31 March 2011 cc870-71 and 5 April 2011 c983
[279] PBC 5 April 2011 c983

> That means that it already has the effect of extending those provisions to Northern Ireland, so subsection (2) is unnecessary. Amendment 243 removes subsection (2) from the Bill and amendment 242 tidies up subsection (1) to reflect that removal.[280]

Clause 77, as amended, was agreed. Clause 78 was amended to remove the commencement provisions relating to clauses 72 and 73.[281] Clause 78, as amended, was ordered to stand part of the Bill. Clause 79 was ordered to stand part of the Bill.

The Bill, as amended, was published as Bill 180.

[280] PBC 5 April 2011 cc983-4
[281] PBC 5 April 2011 c984

Appendix 1 – Membership of the Committee

The Committee consisted of the following Members:

Chairs: Mr Charles Walker , Hywel Williams

Boles, Nick (Grantham and Stamford) (Con)
Brennan, Kevin (Cardiff West) (Lab)
Creasy, Stella (Walthamstow) (Lab/Co-op)
Duddridge, James (Lord Commissioner of Her Majesty's Treasury)
Durkan, Mark (Foyle) (SDLP)
Fuller, Richard (Bedford) (Con)
Gibb, Mr Nick (Minister of State, Department for Education)
Glass, Pat (North West Durham) (Lab)
Gyimah, Mr Sam (East Surrey) (Con)
Hayes, Mr John (Minister for Further Education, Skills and Lifelong Learning)
Hendrick, Mark (Preston) (Lab/Co-op)
Hilling, Julie (Bolton West) (Lab)
McPartland, Stephen (Stevenage) (Con)
Munn, Meg (Sheffield, Heeley) (Lab/Co-op)
Munt, Tessa (Wells) (LD)
Rogerson, Dan (North Cornwall) (LD)
Stuart, Mr Graham (Beverley and Holderness) (Con)
Wright, Mr Iain (Hartlepool) (Lab)

Committee Clerks: Sarah Thatcher and Richard Ward