



Education Bill: School-related Lords' Amendments

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Section Social Policy Section

The House of Commons will consider Lords' Amendments to the *Education Bill* on 14 November 2011. A full list of the [Lords' Amendments to the Bill \(House of Commons Bill 248\)](#) has been published together with [Explanatory Notes](#) (248 – EN); hardcopies are available from the Vote Office. The Lords' Amendments and the Explanatory Notes relate to [HL Bill 67](#) and need to be read in conjunction with it. The [Library Bill gateway](#) web pages provide references to the debates on the Bill.

This Library Standard Note highlights some of the main Lords' Amendments on school-related matters. It does not cover every single amendment nor does it cover Lords' amendments on other areas covered by the Bill such as apprenticeships, further education and students (the details of library clerks who cover those subjects are given at the end of this note).

Contents

1	Introduction	2
2	Functions of the Secretary of State in relation to teachers (interim prohibition orders).	3
3	Restrictions on reporting alleged offences by teachers (teacher anonymity)	4
4	Office of Qualifications and Examinations Regulation (Ofqual): enforcement powers	5
5	Duty to co-operate	7
6	Children & Young People's Plan	7
7	School admissions	7
8	School governing bodies	8

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9	School Inspections	8
10	Academies	10
11	Special educational needs: direct payments	11
12	Library subject specialists	11

1 Introduction

Background on the Bill as presented in the House of Commons was provided in [House of Commons Library Research Paper 11/14](#), dated 3 February 2011. A summary of the House of Commons Second Reading debate and Public Bill Committee debates was provided in [House of Commons Library Research Paper 11/37](#), 5 May 2011. Background on the Bill as introduced in the House of Lords was provided in [House of Lords Library Note LLN/2011/20](#), dated 9 June 2011.

The [Library Bill gateway](#) web pages provide references to the debates on the Bill.

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In the House of Lords, the Bill was considered at Second Reading, during 11 Grand Committee sittings, four Report days, and at Third Reading. At the end of the Third Reading debate, Lord Hill of Oareford, the Parliamentary Under-Secretary of State for Schools, reflected on the main changes made to the Bill in the Lords. He also noted that the Government had given commitments to use statutory guidance or regulations to address concerns raised about behaviour and discipline and about careers education – two areas that had been particularly controversial.

As a result of the detailed scrutiny to which the Bill and I personally have been subjected, however painful at times, it is a better Bill. We have brought forward a number of amendments in response to concerns that have been raised on Ofqual enforcement powers, the duty to co-operate, admissions and inspections, teacher anonymity, colleges, apprenticeships and direct payments. As my noble friend Lady Walmsley said, we have also committed to use statutory guidance or regulations to address concerns raised about behaviour and discipline, careers and part-time students in HE. So I would like to thank in particular my noble friends Lady Walmsley, Lady Brinton and Lady Sharp for their advice, which has helped us. I thank, too, the noble Baroness, Lady Jones of Whitchurch, who I hope will pass on my thanks to the noble Baroness, Lady Hughes of Stretford, for the constructive challenge that they have provided throughout. There have been very important contributions on this Bill from all sides, and from the Cross Benches-particularly on SEN issues and the duty to co-operate-and from the Bishops' Benches, which have underlined the important role that faith schools play across our education system.

I am particularly grateful for one piece of advice that I received from my noble friend Lord Lucas, which I thought summed up our deliberations on this Bill. It is a quote from John Stuart Mill, who must have been sitting in Committee when he said:

"Education, in its largest sense, is one of the most inexhaustible of all topics ... and notwithstanding the great mass of excellent things which have been said respecting it, no thoughtful person finds any lack of things both great and small still waiting to be said".

I thought that was a pretty good summation of our debate.¹

The following notes provide further details of the main school-related changes.

2 Functions of the Secretary of State in relation to teachers (interim prohibition orders).

An interim prohibition order is an order that may be imposed quickly to prevent a teacher from undertaking teaching work while their case is being considered prior to a final decision by the Secretary of State.

In Grand Committee, Government amendments were made in response to recommendations made by the Lords' Delegated Powers and Regulatory Reform Committee. The effect of the amendments would be to provide that the Secretary of State may only make an interim prohibition order where he or she considers it necessary in the public interest to do so, and that an order must be reviewed every six months if the teacher concerned applies for such a review. The changes were outlined by Lord Hill during the debate in Grand Committee (my emphasis added):

The key question is that posed by the noble Lord, Lord Puttnam; namely, what should replace the GTCE if one accepts that it has not delivered in the way that he and others had hoped at its beginning?

Perhaps I may set out what we are proposing. It is, in essence, the following. A smaller, more cost-effective body, the teaching agency, would deal only with matters of misconduct. Hearings would be heard by a panel made up of representatives of the profession and independent lay people, with a right of appeal, as now, to the High Court.

Issues of incompetence would be dealt with separately. I have always thought that that the [General Teaching Council for England] GTC's current sanction for incompetence was a surprisingly nuclear option. Rather than a slow, cumbersome process that led painfully to a national process and ultimately-for 15 teachers-to barring from the profession, we think it would be better to have a much more flexible, local system whereby issues are resolved more quickly. We can all think of people who have not made a go of it with one employer, but who flourished somewhere else. We are therefore keen to move to a system with all the same protections in employment legislation whereby employers can exercise judgment, address problems more swiftly, and help teachers to improve.

We have been carrying out a review of the professional standards for teachers, which will give employers clearer national benchmarks for performance and conduct. We are currently consulting on simplified arrangements for performance management and tackling poor capability. That will streamline the system and remove the current duplication that employers have found is a barrier to tackling performance issues. We

¹ Lords Third Reading, HL Deb 9 November 2011 c330

will also strengthen the training and support available to school leaders, so that head teachers and aspiring heads are better prepared for their management role through a revised national professional qualification for headship. We think that these measures will leave the powers to deal with teacher incompetence in a more appropriate place and help head teachers to exercise those powers more effectively than the current regulatory system does.

So far as conduct is concerned, none of this is to say that we think there is no role for a national regulator. On the contrary, we are clear that where teachers are guilty of serious misconduct, they should be referred to the national regulator for potential barring from the profession. That mechanism is cumbersome for head teachers and the regulator, because every case where a teacher is sacked for misconduct must be referred, even though the vast majority of these cases do not warrant barring. The new arrangements will be more effective by giving employers discretion, while still ensuring that the most serious cases are referred. **Where cases are referred to the regulator, the Bill gives the Secretary of State a new power to make interim prohibition orders. This power was always intended for use in the very rare cases where it is in the public interest to bar an individual from teaching while an investigation is underway. Amendments 64AA, 65A 65B and 65C have been tabled by the Government in response to your Lordships' Delegated Powers and Regulatory Reform Committee's recommendations that the safeguard for this power be put in the Bill.**

Noble Lords have asked for reassurance that the element of discretion that we are introducing will not lead to a weaker and less consistent system. It is of course important that the new system protects pupils and maintains confidence in the teaching profession. Let me say straight away that the proposals make no change to the duty on all schools to refer any cases of serious misconduct relating to children to the Independent Safeguarding Authority.

I should also draw your Lordships' attention to the fact that the Bill provides for referrals to the Secretary of State from members of the public. Where a parent or other member of a community disagrees with the judgment of a head teacher who has not referred a teacher dismissed for serious misconduct, they may make the referral themselves. This provides a further safeguard that teachers in the most serious cases will not in some way slip through the net.²

3 Restrictions on reporting alleged offences by teachers (teacher anonymity)

In debate in Grand Committee, Peers raised a number of concerns about the provisions relating to restrictions on reporting alleged offences by teachers (clause 13).³ Responding, the Government introduced amendments at Lords' Report Stage. These were summarised by Lord Hill of Oareford as follows:

I should like to speak briefly to this and the other government amendments which make up the majority of this group. A number of these amendments were prompted by the debate about Clause 13 that we had in Grand Committee. My noble friend Lord Phillips and a number of other Peers were concerned that the way the clause was drafted might lead a judge to place undue weight on the welfare of the teacher involved when considering applications to lift reporting restrictions. It was not our intention to skew the judge's consideration to the disadvantage of the pupil, or pupils, who had made the allegation.

² Grand Committee, Third Day, HL Deb 4 July 2011 GC 64-67

³ Grand Committee, Fourth Day, HL Deb 6 July 2011 GC 144-178

Amendment 44 therefore makes it clear that courts must have regard both to the welfare of the teacher and to the alleged victim of the offence when deciding whether to lift reporting restrictions. My noble friend was also concerned that the clause could lead to one-sided reporting of an allegation. It provided that the written consent of the individual about whom allegations had been made should be a defence to a charge of breaching the restrictions. However, that could lead to a situation where a teacher defended himself publicly against an allegation while those making the allegation were unable to respond.

We thought that my noble friend Lord Phillips was right to say that when a teacher is responsible for a publication identifying him or her as the subject of an allegation, then restrictions should lift and other parties should then be able to publish their side of the story. Amendment 49 and the consequential Amendments 53 and 54 make this change. The remaining amendments are technical improvements to the drafting of parts of Clause 13 following discussions between officials at the Department for Education and officials at the Lord Chief Justice's office. They do not represent a change to the policy intention behind the clause.

Amendment 42 clarifies that tentative allegations that a teacher may be guilty of an offence should be treated in the same way as firmer allegations that they are guilty. Amendment 43 and consequential Amendments 45, 46 and 50 clarify that applications for reporting restrictions to lift should be made to the magistrates' court, with appeals going to the Crown Court. Amendment 50 and the paving Amendment 47 help the clause more accurately to reflect our original policy intention that reporting restrictions should lift automatically when a teacher is charged. I beg to move.⁴

The amendments were agreed.⁵

4 Office of Qualifications and Examinations Regulation (Ofqual): enforcement powers

The Government introduced new clauses to strengthen Ofqual's powers to ensure that recognised awarding bodies comply with conditions.

One of the changes would enable Ofqual to impose fines on awarding bodies. Peers had questioned whether Ofqual's powers were sufficient to deal with a situation such as arose in the summer when there were numerous errors in awarding bodies' examination papers. Lord Hill outlined what the amendments would do and how the powers would be used:

The key point made by my noble friend Lord Lingfield and others in the Grand Committee debate on 13 July was that Ofqual currently has only two types of sanctions available to it: first, the power to direct an awarding body to comply with a condition; and, secondly, the ultimate-and rather nuclear-sanction of partial or full withdrawal of recognition, which in effect would prevent an awarding body from offering a qualification to maintained schools.

Obviously, those are strong powers. First, Ofqual can require awarding bodies to put things right by giving those bodies a direction; but that will often be only after they have gone wrong, so that is after the candidate has endured the two hours of stress that resulted from unsolvable problems in the paper they were sitting. Secondly, Ofqual can, in practice, strip an awarding body of the ability to offer its qualifications to the market. That certainly sounds like a strong incentive on awarding bodies not to make mistakes and to comply with Ofqual's conditions, but taking such a step could have a

⁴ Report, First day debate, HL Deb 18 October 2011 c264

⁵ Ibid., cc277-280

very disruptive impact on the whole system, as schools and colleges would have to switch providers and the courses they are teaching. Ofqual is under a duty to act appropriately and proportionately, so, given this impact, it would be able to do that in practice only if faced with an extremely serious or extremely persistent breach of a condition.

For breaches of conditions that are unlikely to trigger Ofqual's nuclear sanction of withdrawal of recognition-and the errors we saw from those awarding bodies in the summer are of that kind-there is little Ofqual can currently do to impose a serious consequence that would act as a deterrent or encourage compliance. That, in essence, is why we are introducing Amendment 56 and Amendment 57, which gives similar powers to Welsh Ministers who are the regulator of qualifications in Wales. The amendments give Ofqual the power to impose a variable monetary penalty on an awarding organisation that fails to comply with a recognition condition. I hope I can give reassurance to my noble friends Lady Sharp and Lady Brinton, who had some concerns about this that have also been raised by Pearson. As a multinational it is concerned-and I understand that concern-that Ofqual's fines could take a proportion of its global turnover, of which only a small proportion is generated from the provision of qualifications in this country.

As is the case for other regulatory bodies that have the power to impose a monetary penalty, the method of calculating the relevant turnover for these purposes will be determined in accordance with an order made by the Secretary of State, which will be subject to the affirmative procedure. There will be a full 12-week consultation on these rules with interested parties, including the awarding organisations. I can also confirm that our intention is that the definition of turnover would be limited to just that turnover generated by activity that Ofqual regulates, and would not encompass turnover from unregulated international activity. Stating that there is a 10 per cent cap in the Bill is common to other regulators.

This new power to fine will help concentrate minds at the awarding bodies and send a clear signal to students and the wider public that the exam boards will face consequences where they get things wrong. The clauses include safeguards in line with regulatory best practice to ensure that this new power is used appropriately and proportionately, including a cap on the maximum amount; clear procedures for notification that must be followed; independent appeals arrangements; and the requirement for a full consultation by Ofqual before they can be implemented.

As the legislation currently stands, there are circumstances in which an awarding body may have breached one of Ofqual's conditions but Ofqual would not be able to use any of its enforcement powers. Parliament has given Ofqual a set of objectives that it requires Ofqual to secure. To secure these objectives, it has given Ofqual the ability to set conditions which it can require awarding bodies to meet and sanctions which in theory it can rely upon if awarding bodies are not complying. However, the legislation as drafted inadvertently means that Ofqual is not simply free to use its sanctions when a condition is breached as is the case with other similar regulators. Instead it also has to meet additional higher-level hurdles that are not in place for other regulators: namely, that the failure to comply prejudices, or is likely to prejudice, either the proper award of any qualification or learners seeking such a qualification.⁶

The amendments were agreed.⁷

⁶ Lords Report, Second Day, 24 October 2011 cc 564-67

⁷ Ibid., cc571-4

5 Duty to co-operate

In response to a great deal of concern about clause 30, which would have removed the duty on schools to co-operate with children's trusts to improve pupils well-being, the Government decided to remove the clause from the Bill.⁸

6 Children & Young People's Plan (CTPP)

Clause 31 would have removed the requirement for maintained schools and Schools Forums in England to have regard to the CYPP. Responding to concerns, the Government decided to remove the clause.⁹

7 School admissions

The Government introduced several amendments at Lords Report stage in response to concerns raised in Grand Committee about the proposed changes on school admissions. The Bill would have removed a requirement on local authorities to send to the schools adjudicator annual reports about school admissions in their areas. This provision was removed from the Bill so that local authorities would have to continue to send reports to the schools adjudicator.

A new clause inserted into the Bill would allow any body or person to refer an objection concerning the admission arrangements of any state-funded school to the schools adjudicator. Lord Hill outlined the changes as follows.

My Lords, after our discussions about admissions on Monday, I move to a number of government amendments which achieve two important things. The first introduces an important new clause that makes it possible for anyone to object to a school's admission arrangements by referring an objection to the office of the schools adjudicator. His duty to consider all concerns that are raised to him in this way remains. This new clause builds on Clause 62, which extends the adjudicator's remit to include all academies and free schools so that admissions to all state-funded schools will be covered by the same organisation. Our other amendments relate to the issue we discussed on Monday about national oversight of and accountability for the admissions system. Our Clause 34 would have removed a duty on local authorities to send their annual report on admissions in their area to the adjudicator. This is because in the statutory code we are placing that duty on local authorities to report locally to local people.

However, during Committee I listened with care to noble Lords' concerns about the adjudicator not getting these reports to help flesh out his and the Secretary of State's national picture on admissions. Noble Lords were worried that, without these reports, the adjudicator would see admissions only where things have gone wrong or might have gone wrong whereas these reports also set out the areas where things are going right, which is the vast majority. Noble Lords were concerned that this would remove a thread of accountability running from schools through local authorities through the adjudicator to the Secretary of State, which was not our intention. So we are addressing that concern with Amendments 64 to 67. They place a duty on local authorities to send their reports to the adjudicator in addition to being published locally. This will ensure his national oversight and he will continue to be able to take these reports into account when deciding whether to investigate a school's admission arrangements. I hope that noble Lords will agree that our moves on admissions are

⁸ Lords Report, Second Day, HL Deb 24 October 2011 cc 633-37

⁹ Lords Report, Second Day, HL Deb 24 October 2011 c637

aimed at achieving and promoting fair access and that these amendments will help achieve that end. I beg to move.¹⁰

8 School governing bodies

In Grand Committee, the Government introduced amendments to clause 37 to require a maintained school governing body to include a staff governor (in addition to the head teacher) and a local authority governor. Lord Hill said:

The current complex regulations can sometimes get in the way of some governing bodies, and the main purpose of Clause 37 is to free up the constitution of maintained school governing bodies. We also want to amend the relevant regulations to minimise prescription around the proportions of governors required from each category. We believe that the governing body is best placed to determine what will work best for them locally and that this is an important point—the current governing body should decide on any change to its constitution. As I said, the changes that we are proposing are permissive. The noble Baroness, Lady Jones, asked me about that, and that is the answer—no governing body will be required to change if it does not think it is in the best interests of the school.

As I have said, our wish is to minimise prescription, but having listened to the concerns expressed in another place—which I know my noble friend Lady Walmsley shares - we are bringing forward two government amendments. I accept that there are strong views that maintained school governing bodies should be required to include an elected staff governor, other than the head teacher, and one local authority governor whose skills will assist the governing body. We propose that when a local authority governor post becomes vacant, the governing body should liaise with the local authority to identify a suitable candidate for appointment. The governing body should be able to ask a local authority to make a different nomination if its original one does not have the skills required by the governing body.¹¹

9 School Inspections

Clause 39 relates to the exemption of schools from regular inspection. Government amendments introduced in the Lords provide that any subsequent change to the first set of regulations made in relation to these arrangements would require the affirmative procedure:

Lord Hill of Oareford: My Lords, in Committee, while I think that there was a general acceptance of the idea of focusing inspection more intelligently, a number of concerns were raised about some of the specific provisions in Clause 39. I said that I would reflect on these and report back. In my letter of 14 October to the noble Baroness, Lady Hughes of Stretford, I set out our policy intention and the changes that Ofsted will make to strengthen the arrangements in response to particular concerns that were raised.

The principle of proportionality is already a feature of the current inspection system with more frequent inspections for satisfactory and inadequate schools, and intervals of up to five years for good and outstanding schools. The intention behind Clause 39 is to take this to the next logical step by replacing the requirement for all schools to receive a routine inspection with an approach based on rigorous risk assessment that triggers inspection of outstanding primary and secondary schools where necessary. Clause 41 seeks to apply a similar approach for the inspection of outstanding FE providers.

¹⁰ Report Third Day, HL Deb 26 October 2011 cc757-761

¹¹ Grand Committee, Eight Day, HL Deb 20 July 2011 GC 464-5

In Committee, the noble Lord, Lord Hunt of Kings Heath, raised a particular concern that regulations made under the new powers introduced at Clause 39 could extend the categories of schools not requiring routine inspection to cover, for example, all academies or all faith schools without appropriate scrutiny. While we have been very clear about our intentions to use the new power to exempt only outstanding schools, I accept the general point made by the noble Lord, which is why I have tabled Amendments 74 and 75. They provide that any subsequent changes to the first set of regulations made under the new power - a draft of which was shared with the House as indicative regulations in March, exempting outstanding mainstream primary and secondary schools - will require parliamentary approval through the affirmative procedure. Amendments 81 and 82 offer the same commitment in relation to FE providers. I hope that these amendments remove any doubt about the Government's intentions and any concern about a hidden agenda, and provide sensible and effective safeguards.

The noble Lord, Lord Hunt of Kings Heath, was also worried about the performance of some outstanding schools dropping and I understand that concern too. Our response to that point has not been to move away from the principle of greater proportionality but to look again at the question of risk assessment and the triggers that would cause an inspection to take place. Risk assessment already takes account of a range of information, including pupil attainment and progress, attendance, evidence of poor performance gathered through survey visits, warning notices issued by local authorities, views from parents, including through Ofsted's recently launched parent view online questionnaire, and any complaints.

An inspection may occur where, for example, achievement was judged to be less than outstanding and has not improved; where particular groups of pupils are not making good progress; where attendance is significantly below average and not improving; or where Ofsted undertakes a survey visit and identifies concerns. A decision to inspect will also take account of the views of parents, local authorities, funding agencies and others in the local area.

Inspection of outstanding schools based on risk assessment has in effect been trialed in the past academic year using flexibility on the timing of inspections that exist within the current arrangements. Ofsted has been visiting only those schools that had been identified as showing signs of potential decline through Ofsted's risk assessment process. The national data for outstanding schools show that around a third drop their inspection grade on re-inspection, a point raised by the noble Lord, Lord Hunt of Kings Heath. But with the 72 schools that Ofsted targeted through risk assessment, two thirds have declined, including 11 that have dropped to "satisfactory" and three that were "inadequate". This shows that Ofsted's approach does effectively identify schools that have slipped back and all those schools have now gone back into the pool for routine inspection. Those 72 schools represent around 2 per cent of all outstanding schools but to provide additional assurance that Ofsted's risk assessment will be sufficiently widely drawn, we have agreed with Her Majesty's Chief Inspector that the risk assessment threshold should be such that it identifies at least 5 per cent of outstanding schools and outstanding further education providers for re-inspection every year. I hope that this provides noble Lords with some reassurance.

In addition, we have also reflected on concerns expressed in Committee about the possible detrimental effect of a change of head teacher. Both we and Her Majesty's Chief Inspector accept that this is a risk factor. We all know how central a head's role is in the ethos and achievement of a school. So we have agreed that while annual risk assessments will normally start three years after the previous inspection, this will be brought forward where there is a change of head teacher. Building on this, Ofsted will trial a new approach whereby HMI will engage directly with the new head teacher to

discuss the school's performance and improvement priorities, which is a move that a number of noble Lords will welcome. HMI will also consider the progress of outstanding schools at its regular meetings with local authority directors of children's services. I have also agreed that for outstanding FE providers with leadership changes this matter will be discussed at regular meetings between Ofsted and the funding agencies.

Ofsted has powers to investigate complaints from parents and will continue to use these as a mechanism for determining whether and when to inspect a school. This will play an even more important part in intelligence-gathering in future. Last week Ofsted launched a new system to gather parents' views more generally and outside inspection. Parent View enables parents to register views about their child's school at any time using an online questionnaire. Results will be published and the information will act as an additional source of intelligence for Ofsted when it undertakes risk assessments of individual schools. The Education Select Committee report published earlier in the year emphasised the importance of using Ofsted surveys to look at excellent practice and spread that through the system. To ensure that we are able to capture best practice, Ofsted will continue to visit outstanding schools and further education providers for those surveys. It is likely that the vast majority of outstanding secondary schools will experience such visits within a five-year period and around a quarter of primary schools will also be visited. As I mentioned before, these visits will also inform Ofsted's risk assessment.

Clauses 39 and 41 build greater proportionality into the inspection arrangements in line with our determination that in future inspection should be targeted where it is needed most and where it will have the greatest impact on provision and standards, but Ofsted will take a cautious approach in relation to risk assessment. The new commitment to inspect more than double the proportion of schools that were identified through risk assessment last year reinforces this. In the interests of the many successful schools and further education providers that are doing well, I ask noble Lords to accept the government amendments which provide additional assurance about the scope of these measures. I beg to move.¹²

Other consequential amendments were also agreed.¹³

10 Academies

Various amendments were made relating to academies.¹⁴ The details are given in the Explanatory Notes and relevant parts of the Lords' debates are noted below. The amendments included:

- alternative provisions academies;¹⁵
- the transfer of publicly funded land and provision to ensure safeguards are statutory rather than contractual;¹⁶
- academy orders;¹⁷ and,
- academy admission arrangements.¹⁸

¹² Report Third Day, HL Deb 26 October 2011 cc777-783

¹³ Report Fourth Day, HL Deb 1 November 2011 c1210

¹⁴ Including in Grand Committee, Ninth Day, HL Deb 12 September 2011 GC 164-172

¹⁵ Grand Committee, Tenth Day, HL Deb 14 September 2011 GC 230-5

¹⁶ Grand Committee, Tenth Day, HL Deb 14 September 2011 GC 259-60

¹⁷ Report, Fourth Day, HL Deb 1 November 2011 c1169

¹⁸ Report, Fourth Day, HL Deb 1 November 2011 c1180

11 Special educational needs: direct payments

At Report Stage the Government introduced new clauses to the Bill to allow pathfinder areas to test the use of direct payments for meeting special educational needs.¹⁹ Further details are given in [Library Standard Note SN/SP/5917](#).

12 Library subject specialists

Schools – Christine Gillie

Early years and childcare – Manjit Gheera

Further education, students – Susan Hubble

Media and reporting restrictions – Philip Ward

¹⁹ HL Deb 1 November 2011 cc1197-1201 and c1210-11