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# ***Apprenticeships, Skills, Children and Learning Bill:*** **Committee Stage Report**

This is a report of the House of Commons Committee Stage of the Apprenticeships, Skills, Children and Learning Bill. It complements Research Papers 09/14 and 09/15 prepared for the Commons Second Reading debate.

The Bill deals with a wide range of matters including: apprenticeships; the right for employees to request time away for training; the dissolution of the Learning and Skills Council and the transfer to local authorities of responsibility for funding 16 to 18 education and training; the education of offenders; the creation of the Young Person's Learning Agency and the Skills Funding Agency; the legal identity of sixth-form colleges; a new regulatory body for qualifications (Ofqual); a new agency to carry out the non-regulatory functions currently performed by the Qualifications and Curriculum Authority; the accountability of children's services; intervention powers in respect of schools causing concern; a new parental complaints service; school inspection arrangements; a new negotiating body for school support staff pay and conditions; and provisions related to pupil and student behaviour.

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# I Introduction

The *Apprenticeships, Skills, Children and Learning Bill* was introduced in the House of Commons on 4 February 2009 as Bill 55 of session 2008-09, and received a Second Reading on 23 February 2009. It deals with a very wide range of matters including: a statutory framework for apprenticeships and the right for employees to request time away for training; the dissolution of the Learning and Skills Council and the transfer to local authorities of responsibility for funding 16 to 18 education and training; the education of offenders; the creation of the Young Person's Learning Agency (YPLA) and the Skills Funding Agency; the legal identity of sixth-form colleges; a new regulatory body for qualifications (Ofqual) and a new agency to carry out the non-regulatory functions currently performed by the Qualifications and Curriculum Authority; the accountability of children's services and changes to how early years providers are funded; intervention powers in respect of schools causing concern; a new parental complaints service; changes to school inspection arrangements; a new negotiating body for school support staff pay and conditions; and provisions related to pupil and student behaviour. Library Research papers 09/14 and 09/15, prepared for the Commons Second Reading debate, outline the main provisions of the Bill, as presented. The [Library's Bill gateway web pages](#) provide information on the progress of the Bill and links to relevant information.

There were sixteen sittings of the Public Bill Committee (PBC) between 3 March 2009 and 26 March 2009. Its membership is given in Appendix 1. The first five sittings of the PBC were evidence taking sessions. The Committee also received written evidence. On completion of the Committee Stage the Bill was reprinted as Bill 78 of 2008-09.

The programme motion provided for the Committee to meet on 31 March 2009 but the Committee completed its proceedings at the end of the sixteenth sitting, having sat from 9am on 26 March 2009 through to 12.25pm the following day (with several suspensions). Subsequently, Mr Gibb raised a point of order in the House and complained that the Government had refused to allow the Committee to adjourn, in order, he said, to punish Labour Members who had failed to attend the start of the morning sitting when Government amendments had been lost.<sup>1</sup> (These were technical amendments relating to Ofqual). On several occasions during the sixteenth sitting Ministers complained that the Committee was not making reasonable progress.<sup>2</sup> During the debate on clause 229 [Powers of members of staff to search pupils for prohibited items: England], the Schools Minister sought to move a closure motion but the Chairman declined to put the question.<sup>3</sup>

There was a large number of Government amendments, many of which were technical drafting changes. The Government announced at Second Reading that it would be tabling amendments on local authorities' obligations to deal with young people in custody, particularly in relation to those with learning difficulties. Several were duly tabled, but while some of these were added to the Bill in Committee, others were not, and are being reintroduced on Report.

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<sup>1</sup> HC Deb 30 March 2009 c671

<sup>2</sup> PBC 26 March 2009 cc 793, 820 and 835

<sup>3</sup> PBC 26 March 2009 c827. An earlier attempt had also been unsuccessful – cc 816-820

The following sections of the research paper give an overview of the Second Reading debate, note the main ways in which the Bill was amended, and highlight some of the most significant areas of debate, particularly on matters which divided the Committee. It is not however intended to be an account of every amendment and issue discussed; nor is it meant to be a summary of all contributions to the debate.

## **II Second Reading debate**

The Bill received its Second Reading on 23 February 2009. The debate was wide-ranging, reflecting the nature of the Bill. 37 Members made contributions. The Bill received Second Reading without a vote. A programme motion, also agreed without a vote, provided that proceedings in the Public Bill Committee were to be concluded no later than 31 March.

Ed Balls opened the debate for the Government. He commented on the progress made by the education system over the past decade, and said that the Bill was the next stage of reform to guarantee that every school is a good school, to give teachers the support and powers that they need, to provide excellent services for all families in every area, and to ensure that all young people and adults get first-class qualifications and skills. He said that the creation of the Skills Funding Agency would help employers by bringing all of the existing adult learning agencies under one roof and that the Bill would ensure apprenticeships were of high quality and benefit young people and employers alike. In response to an intervention from John Bercow, Mr Balls said that amendments would be tabled in Committee that would aim to strengthen the obligations on local authorities to provide education and training for young people in custody, in particular for those with learning difficulties.

For the Conservatives, Michael Gove highlighted proposals he welcomed, although he felt that overall the Bill lacked the “radicalism, coherence or passion” of earlier legislation, and would not meet the huge challenges facing young people. Noting the commitment to amendments on young offenders made by the Secretary of State in his opening speech, he questioned whether the Bill was “oven-ready”. He expressed concern about the rigour of examinations, and supported the creation of Ofqual to restore confidence in examinations. He asked for details about the use of the Secretary of State’s power under clause 138 to specify minimum standards. Other proposals he welcomed included the changes in the inspection regime for good schools, and the reform of Pupil Referral Units (PRUs). He welcomed the “direction of travel” on child care and specifically the provisions aimed at equity in funding across early years providers. He also welcomed the extension of powers to search students, but felt there were too many restrictions, and that it would be more appropriate to give head teachers a general search power for all materials that might destroy school order. Voicing the concerns raised by the Independent Academies Association, Mr Gove queried the Bill’s effect on the independence and autonomy of academies. Also, he expressed concerns about the increased bureaucracy that the Bill could create in the further education sector.<sup>4</sup> He broadly supported the measures on apprenticeships, although he argued that the

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<sup>4</sup> HC Deb 23 February 2009 c48

government was using the declaration of an entitlement to an apprenticeship to cover up a failure to deliver on previous targets for apprenticeship numbers.<sup>5</sup>

David Laws, for the Liberal Democrats, said the Bill's provisions (apart from those on apprenticeships) seemed to be a "rag-bag" of different proposals with no common theme other than, in many cases, that of centralising power and increasing the level of bureaucracy. He believed the Bill was deficient in tackling some of the continuing and entrenched disadvantages and inequalities in the education system. His speech focused on three broad areas: Ofqual; provisions that, in his opinion, would introduce central control of education and bureaucracy; and the Government's mechanisms for delivering improvements, powers of intervention and the way in which the YPLA will interrelate with academies. He raised the issue of Ofqual's independence, and the need for it to be able to monitor standards over time. Other areas of concern included the new school complaints procedures, and proposals for powers of search.

Barry Sheerman, the chair of the Children, Schools and Families Committee, spoke about monitoring standards, and the difficulties associated with making international comparisons. He emphasised the need for Ofqual to be a robust body, and said that this would depend upon the person who runs it. Backbenchers supported some of the school-related proposals such as the pupil attendance partnerships.<sup>6</sup> However, one Member felt strongly that the Bill did not cover important matters such as issues related to school admissions,<sup>7</sup> and another was concerned about the parliamentary scrutiny of such a wide-ranging Bill.<sup>8</sup>

The proposed new right for employees to request time to train was generally supported. There was some concern that many businesses provided it already and that it would therefore serve only to create administrative burdens.<sup>9</sup> Responding, John Denham said that the right would "directly address the problem in those workplaces where skills needs and training are not regularly discussed."<sup>10</sup> Some Members wanted the provisions to go further: there was call to create a right to time off for training that was not strictly work related,<sup>11</sup> and another to create eventually a guaranteed right to time off for training.<sup>12</sup>

The provisions relating to the establishment of the School Support Staff Negotiating Body were also generally welcomed. There was some concern however that the Bill would not guarantee national consistency in pay agreements<sup>13</sup> and also that the Secretary of State would be able to veto any agreement negotiated by the body.<sup>14</sup> Assurances were sought that the unions would have a strong role to play in the body's negotiations.<sup>15</sup>

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<sup>5</sup> HC Deb 23 February 2009 cc44-5

<sup>6</sup> HC Deb 23 February 2009 c89

<sup>7</sup> HC Deb 23 February 2009 c98

<sup>8</sup> HC Deb 23 February 2009 c99

<sup>9</sup> HC Deb 23 February 2009 c62

<sup>10</sup> HC Deb 23 February 2009 cc122-123

<sup>11</sup> HC Deb 23 February 2009 c88

<sup>12</sup> HC Deb 23 February 2009 c97

<sup>13</sup> HC Deb 23 February 2009 c52

<sup>14</sup> HC Deb 23 February 2009 c114

<sup>15</sup> HC Deb 23 February 2009 c52 and 112

In the remainder of the debate the machinery of government changes were mentioned by several Members<sup>16</sup> and debated at length by Tim Boswell<sup>17</sup> and David Willetts<sup>18</sup> both of whom highlighted the complexity of the new arrangements to be put in place and commented on the frequent restructuring of the FE sector, which Mr Willetts referred to as the Government “reorganising their own reorganisations”. David Chaytor<sup>19</sup> and Graham Stuart<sup>20</sup> also stressed the complicated relationships between the new bodies and the difficulties that this could cause for FE colleges. The provisions on sixth form colleges were welcomed by Members.<sup>21</sup>

The provisions to put Children’s Trusts on a statutory footing provoked mixed reactions from the Conservatives. John Bercow supported the proposals and believed that the Trusts could be “the vehicle for the very improvement that we all want”.<sup>22</sup> Graham Stuart however, remained unconvinced that the Trusts would be able to deliver adequate services without greater powers to allocate budgets. He added that if the proposals were to go ahead, he hoped “something positive comes out of them.”<sup>23</sup>

The Conservatives offered unequivocal support for the proposals for Sure Start children’s centres and stressed the increased importance of supporting children’s centres during turbulent economic times. Mr Stuart noted that the proposals on Sure Start had resulted in a rare consensus across the House.<sup>24</sup>

### **III Committee Stage**

#### **A. Apprenticeships and the right to request time to train**

The consideration of the Bill in Committee began on the afternoon of 10 March. The first amendment to be voted on was amendment [16]. This was moved by John Hayes for the Conservatives and would have included “training in the workplace” within the definition of an apprenticeship. Mr Hayes argued that the legislation as drafted did not include work-based training as a requirement. Parliamentary Under Secretary of State for Further Education, Siôn Simon, argued that the Bill already included safeguards that would ensure that “guided workplace learning forms part of the apprenticeship experience”. The amendment was defeated by 7 votes to 10.<sup>25</sup>

Government amendment [152] was discussed during the debate on clause 1. This would amend clause 4 to make it clear that the certifying authority in England would be the chief executive of Skills Funding. Amendment [151] was a consequential amendment to clause 1. The amendment was agreed.

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<sup>16</sup> Phil Willis c73 and 90, Sharon Hodgson c77, Dr Roberta Blackman-Woods c110

<sup>17</sup> HC Deb 23 February 2009 c81

<sup>18</sup> HC Deb 23 February 2009 c115

<sup>19</sup> HC Deb 23 February 2009 c101

<sup>20</sup> HC Deb 23 February 2009 c103

<sup>21</sup> David Chaytor c96 Kelvin Hopkins c112

<sup>22</sup> HC Deb 23 February 2009 c73

<sup>23</sup> HC Deb 23 February 2009 c104

<sup>24</sup> HC Deb 23 February 2009 c106

<sup>25</sup> PBC Deb 10 March 2009 c211



Technical Government amendments to clause 8 ([153] to [156]) were agreed. These would allow Welsh Ministers to designate the certifying authority in Wales, and to revoke that designation.<sup>26</sup>

Clause 9 deals with the contents of apprenticeship certificates. Both the Conservatives and Liberal Democrats put forward amendments ([19] and [234]) which would have required the name of the training institutions to be included on the certificate. The Conservative amendment would have also added the name of the workplace. John Hayes argued that this would be beneficial to employers. Stephen Williams added that apprentices would be proud to have the name of the company at which they trained on their certificate. Siôn Simon argued that the power to add information to the certificate was later in the Bill but that there were practical issues where apprentices had undertaken training with several providers. Amendment [19] was taken to a division and was defeated by 7 votes to 10.<sup>27</sup>

Amendment [20] to clause 10 was moved by John Hayes. This would have included a core definition of an apprenticeship within clause 10. The definition was “inspired” by that within the 2001 Cassels Report on Modern Apprenticeships.<sup>28</sup> The Cassels Report definition would have excluded programme-led apprenticeships and some level 2 apprenticeships and Mr Hayes argued that “most people believe that an apprenticeship would be a serious qualification if it was pitched at level 3”.<sup>29</sup> Siôn Simon argued that it would be potentially constraining and inflexible to have a definition of an apprenticeship within the Bill and that employers did not want one. The amendment was defeated by 6 votes to 9.<sup>30</sup>

The Government introduced a technical, drafting amendment [157] to clause 10 which would clarify that only one apprenticeship sector would be stated in each apprenticeship framework. This was agreed.

Amendment [21] on clause 11 was moved by John Hayes. This would have taken away the power to issue apprenticeship frameworks generally. Mr Hayes was concerned that this could lead to generic apprenticeships which would not be respected by employers. Siôn Simon said that the word “generally” in the clause did not mean “generic” and that there was no intention to create generic apprenticeships. The amendment was defeated by 6 votes to 10. The clause was agreed, including a Government amendment [158].

Clause 15 provides for transitional arrangements for the apprenticeships scheme in England. A Government amendment [159] was agreed that ensured that apprentices covered under the apprenticeship entitlement within part 4 of the Bill would also be covered by the transitional arrangements.<sup>31</sup>

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<sup>26</sup> PBC Deb 10 March 2009 c213

<sup>27</sup> PBC Deb 10 March 2009 c221

<sup>28</sup> Report of the Modern Apprenticeship Advisory Committee, *Modern Apprenticeships – the Way to Work*, September 2001, p9

<sup>29</sup> PBC Deb 10 March 2009 c227

<sup>30</sup> PBC Deb 10 March 2009 c232

<sup>31</sup> PBC Deb 12 March 2009 c248

Amendment [166] was made to clause 18. This corrected a misdrafting.<sup>32</sup> Amendments [167] to [172] were agreed to clause 20. These changes have the same effect for Wales as those made to Clause 15 on transitional arrangements in England.

John Hayes moved amendment [44] on clause 21. This would have specified that the persons that the Chief Executive of Skills Funding would need to consult on apprenticeship standards would include representatives of industry and education. Mr Hayes argued that the amendment would “go some way to allaying the fears of employers and others about the imposition of arbitrary standards”.<sup>33</sup> Stephen Williams agreed that it would be appropriate that the Bill specified employers and education providers as people to be consulted. Siôn Simon argued that the Bill already contained sufficient measures to ensure that the views of all parties were taken into account. The amendment was defeated by 5 votes to 9.<sup>34</sup>

Amendment [47] on clause 25 was defeated, without debate, by 5 votes to 9. This would have added workplace training to the requirements listed in the specification of apprenticeship standards.

Clause 35 concerns careers education and the promotion of apprenticeships to young people. John Hayes moved amendment [208]. He said that this would relate “advice on apprenticeships to consideration on apprenticeships as a path to a particular option.”<sup>35</sup> Stephen Williams said that this was one of the more important clauses of the Bill and that he supported the amendment. Jim Knight, for the Government, argued that the amendment was unnecessary as the clause would be “underpinned” by statutory guidance. The amendment was defeated by 6 votes to 9.<sup>36</sup>

Provisions on apprenticeships are also included in clauses 79 to 91. Amendment [107] to clause 79 was moved by John Hayes. It was debated along with new clause 8 which would introduce direct payments to employers who took on apprentices. Clause 79 sets out the functions of the Chief Executive of Skills Funding in respect of apprenticeships. Amendment [107] would require the Chief Executive to be responsive to employers’ needs. John Hayes said that the amendment aimed to “ensure that the NAS does what it is supposed to do”. He added that new clause 8 set out an alternative vision for rejuvenating apprenticeships. Jim Knight argued that the amendment was not necessary. It was withdrawn, although Mr Hayes said that he would press for a division on new clause 8.<sup>37</sup>

John Hayes moved amendment [204] on clause 81. Clause 81 concerns the co-operation between the National Apprenticeships Service (NAS) and local education authorities in providing apprenticeship places. This amendment, along with amendment [205] would have replaced “local education authorities” with “employers and education providers”. Mr Hayes said “employers are not given the weight that we need to give

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<sup>32</sup> PBC Deb 12 March 2009 c252

<sup>33</sup> PBC Deb 12 March 2009 c254

<sup>34</sup> PBC Deb 12 March 2009 c260

<sup>35</sup> PBC Deb 12 March 2009 c269

<sup>36</sup> PBC Deb 12 March 2009 c281

<sup>37</sup> New clause 8 was not called.

them to make the ambitions that lie at the heart of this Bill a reality” and that the amendment would cut away “the dead hand of local authority control and the excessive bureaucracy and red tape that would become synonymous with the proposed system”.<sup>38</sup> Jim Knight argued that local authorities would plan and commission training and education across the full range of options for 16 to 19 year olds and therefore the relationship between local authorities and the NAS was critical. The amendment was defeated by 5 votes to 9.

Government amendment [409] on clause 83 was debated. This would extend the entitlement to apprenticeship places to care leavers aged under 25. This was a commitment made in the *New Opportunities: Fair chances for the future* White Paper.<sup>39</sup> The amendment was agreed to.<sup>40</sup>

Clause 39 of the Bill would insert a new part 6A into the *Employment Rights Act 1996* to give eligible employees the right to request time to train from their employer. Schedule 1 of the Bill makes minor and consequential amendments to other Acts to allow the system to operate with the current employment law framework.

The Conservatives and Liberal Democrats were both concerned that the provisions relating to time to train would place a regulatory burden on employers who already considered such training requests. Both parties moved amendments [103 and 11] to try to limit the scope of the clause’s provisions to employers who did not already have in place arrangements for discussing training needs with employees.<sup>41</sup>

Nick Gibb, for the Conservatives, said that “it makes sense to try to ease the administrative and regulatory burden of the provision for those companies that already have exemplary training and appraisal processes in place.”<sup>42</sup> Similarly, Stephen Williams, for the Liberal Democrats, said that those businesses which do not do their best to provide training for their employees need a “legislative nudge”, whereas the regulatory burden should be eased for those that do provide such opportunities.<sup>43</sup> Siôn Simon said that the amendments “risk making the eligibility criteria too complicated” and said that “in essence” the Government want to “keep the decision over whether to exercise the right with employee.”<sup>44</sup> [103] was withdrawn and [11] was taken to a division, which was defeated by 5 votes to 8.

Two Government technical amendments [183 and 184] were both agreed to. [183] would clarify that regulation making powers under the clause are wide enough to enable regulations to be made about the rights of those who act as official companions (to someone making a time to train request) not to suffer detriment, and to make provisions protecting them from unfair dismissal.<sup>45</sup> [184] would ensure consistency of wording in the

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<sup>38</sup> PBC Deb 19 March 2009 c480

<sup>39</sup> HM Government, *New Opportunities: Fair chances for the future*, Cm 7533, January 2009

<sup>40</sup> PBC Deb 19 March 2009 c484

<sup>41</sup> PBC Deb 12 March 2009 cc282-3

<sup>42</sup> PBC Deb 12 March 2009 c285

<sup>43</sup> PBC Deb 12 March 2009 c286

<sup>44</sup> PBC Deb 12 March 2009 c289

<sup>45</sup> PBC Deb 12 March 2009 c297

clause, changing the application for a time to train request from being called a “learning support application” to a “Section 63D application.”

## **B. The machinery of government changes**

Provisions in the Bill would dissolve the Learning and Skills Council (LSC) and replace it with three new bodies: the Young Peoples Learning Agency (YPLA), the Skills Funding Agency (SFA) and the National Apprenticeship Service (NAS). The LSC’s functions with regard to 14–19 provision would pass to local authorities. During the Committee Stage of the Bill Members moved numerous amendments to probe the structure of the new system that was being created and to tease out details of the functions of the new bodies and the relationships between them. There was significant repetition in the debates as each new body overlapped with the others and the same issues arose in relation to each.<sup>46</sup> The main areas of concern that were repeated during debates were the increase in bureaucracy and the complicated network of stakeholders and providers that was being formed.<sup>47</sup> Mr Hayes, Shadow Minister for Lifelong Learning, Further and Higher Education, frequently expressed his concern that the new system would not be streamlined and would be costly and complicated.<sup>48</sup>

### **1. LEA functions**

The debate on LEA functions in Part 2 of the Bill began with Annette Brooke moving amendment [250], a probing amendment aimed at clarifying the use of the word ‘reasonable’ in clause 40 in relation to the provision of education and training. Ms Brooke was concerned that the Bill’s provisions could be ‘inferior’<sup>49</sup> to past provisions. Jim Knight, the Minister for Schools and Learners, reassured members that ‘reasonable’ provision did not impose a lesser duty<sup>50</sup> and the amendment was withdrawn.

During the debate on amendment [4] to clause 40 the Minister stated that guidance would be issued to local authorities setting out how they should carry out the duties set out in the Bill.<sup>51</sup> This guidance was also referred to in a later debate about the meaning of the phrase ‘disproportionate expense’.<sup>52</sup>

Two amendments were put to a vote during the debate on clause 40; the first of these [260]<sup>53</sup> attempted to have the provision of specific A level subjects included in the Bill; this was intended to provide a ‘minimum standard of provision’.<sup>54</sup> The Minister stated that it would ‘not be possible for individual schools or colleges to deliver the full 14-19 entitlement in isolation’. This amendment was defeated by 5 votes to 11.<sup>55</sup>

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<sup>46</sup> PBC Deb 17 March 2009 c401

<sup>47</sup> PBC Deb 19 March 2009 c457

<sup>48</sup> PCB Deb 17 March 2009 c390-391

<sup>49</sup> *ibid* c305

<sup>50</sup> *ibid* c306

<sup>51</sup> *ibid* c310

<sup>52</sup> *ibid* c313, the Minister stated that it would ultimately be for a court to decide what is ‘reasonable’ and ‘disproportionate’.

<sup>53</sup> *ibid* c315 moved by Nick Gibb

<sup>54</sup> *ibid* c315

<sup>55</sup> *ibid* c321

The second division was on amendment [213] moved by Mr Hayes, which attempted to streamline the working arrangements for the SFA and local authorities by removing responsibility for apprenticeships from local authorities and giving it to the SFA; this would reduce the number of bodies with which the NAS had to work.<sup>56</sup> Amendment [216] to clause 43, which was moved later in the sitting, had a similar streamlining purpose and aimed to transfer the responsibility for the provision of suitable education for named individuals to the YPLA from local authorities.<sup>57</sup> Both of these amendments were in response to comments made in the evidence sessions by bodies such as the British Chambers of Commerce about the ‘bureaucratic muddle’<sup>58</sup> that the Bill could create. In response to amendment [213] the Minister said that the Bill would not give local authorities more control over colleges and explained how the new system would work with regard to apprenticeships.<sup>59</sup> Ms Brooke voiced concerns that apprenticeships should be genuine positions<sup>60</sup> – the Minister said that he would look further into that aspect and possibly table an amendment on Report.<sup>61</sup>

Amendment [213] was defeated by 5 votes to 10<sup>62</sup> and amendment [216] was withdrawn.

The Government made several technical amendments to clause 40 that were consequential on the acceptance of amendment [282] which inserted a new section 13(6) into Schedule 2 relating to learning difficulty assessments for persons subject to a detention order.<sup>63</sup>

The working of sub-regional groupings was debated in relation to amendment [118] to clause 40 moved by Ms Brooke. The Minister stated that local authorities would come together in sub-regional groupings that would reflect the travel patterns of learners.<sup>64</sup> He further said that sub-regional groups should not be legally designated to preserve flexibility. Clause 40 was agreed as amended.

The debate on amendment [118] to clause 43 raised the issue of college independence. Mr Hayes voiced concern that provisions in clause 43 could result in LEAs exerting authority over further education colleges by requiring them to provide education for specified individuals. The amendment attempted to address this issue by giving responsibility for providing further education for named individuals to the YPLA rather than local authorities.<sup>65</sup> The Minister reassured the Committee that the powers in clause 43 were not ‘about giving local authorities more control over colleges’, and he said that colleges would remain autonomous.<sup>66</sup> Clause 40 was agreed without amendment.

Clause 46 on work experience was agreed with one consequential amendment.

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<sup>56</sup> *ibid* c322

<sup>57</sup> *ibid* c335

<sup>58</sup> *ibid* c322

<sup>59</sup> PCB Deb 17 March 2009 c325

<sup>60</sup> *ibid* c326

<sup>61</sup> *ibid*

<sup>62</sup> *ibid* c329

<sup>63</sup> *ibid* c 330

<sup>64</sup> *ibid* c335

<sup>65</sup> *ibid* c337

<sup>66</sup> *ibid* c338

## 2. Young Peoples Learning Agency (YPLA)

The debate on the YPLA, in Part 3 of the Bill, began with Mr Hayes moving amendment [239] to clause 57 which aimed to make the YPLA a part of the SFA and Mr Gibb moving amendment [105] which would limit the staff of the YPLA to 500.<sup>67</sup> The amendment moved by Mr Hayes had a similar purpose to amendments that he had moved during the earlier sessions and were another attempt to 'minimise the bureaucracy'<sup>68</sup>, and to probe the character of the YPLA. The ensuing debate covered similar ground to the debate on LEA functions.

Mr Gibb voiced concerns about the transitional cost of the restructuring and commented on the lack of data on costs in the impact assessment.<sup>69</sup> Mr Laws, the Liberal Democrat spokesperson for Children, Schools and Families, expressed concerns about future cost of the YPLA.<sup>70</sup>

In response to the amendments Mr Knight, the Minister pointed out that amendment [239] would in effect recreate the Learning and Skills Council; he then outlined the arrangements for the new body.<sup>71</sup> The Minister further stated that a framework for consultation would be published shortly to help local authorities with commissioning provision.<sup>72</sup> With regard to staffing the Minister said that the YPLA board needed flexibility to manage its staff and that he did 'not expect a reduction in head count', although he did not anticipate that the organisations would take on significant numbers of staff.<sup>73</sup> The Minister gave a commitment to update the Committee on figures and said that when the Bill went to the Lords there would be a refreshed impact assessment.<sup>74</sup> He assured the Committee that the measure would be cost-neutral.<sup>75</sup> The amendments were withdrawn and clause 57 was agreed without amendment.

The Committee moved to debate Schedule 3 which contained detailed provisions on the YPLA. Three substantive Government amendments were agreed to Schedule 3, the first of which was Government amendment [319] which changed the requirements for the appointment of members to the YPLA, so that ordinary members were appointed by the Secretary of State.<sup>76</sup> Other technical amendments were agreed which would provide that the Chief Executive was an employee of the YPLA and that conditions of service of members (other than the Chief Executive) were determined by the YPLA with the approval of the Secretary of State. The Conservatives said that they were concerned about increasing the Secretary of State's power over appointments and moved an amendment to strengthen further education sector representation on the YPLA board.<sup>77</sup>

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<sup>67</sup> *ibid* c381

<sup>68</sup> *ibid* c382

<sup>69</sup> *ibid* c 383

<sup>70</sup> *ibid* c385

<sup>71</sup> *ibid* c386-387

<sup>72</sup> *ibid* c387

<sup>73</sup> *ibid* c388

<sup>74</sup> *ibid* c389

<sup>75</sup> *ibid*

<sup>76</sup> *ibid* c392

<sup>77</sup> *ibid* c391 Amendment 121,

In response the Minister said that the amendment was not necessary as appointments could be regulated by the Office of Commissioner of Public Appointments.<sup>78</sup>

The other substantive Government amendments were [322] and [327] which made changes to the tenure of 'ordinary' board members of the YPLA (tenure would be three years) and to the remuneration of the Chief Executive (to be determined in accordance with conditions of service in paragraph 5 of the Schedule).<sup>79</sup> Several consequential and drafting amendments were also made and Schedule 3 was agreed as amended.

The debate on clause 58 included another amendment by Mr Hayes which attempted to streamline the new reorganisation by making the YPLA provide resources under guidance from the SFA.<sup>80</sup> The Minister explained again the rationale behind the new system; the SFA was intended to provide a demand led system for adult skills and the YPLA would be concerned with a 'planned, commissioned' provision for 16-19 year olds and they would be very different.<sup>81</sup> The amendment was withdrawn and the clause as amended (amendments on youth detention) was agreed.

The final clauses on the YPLA were agreed with a few consequential amendments mostly relating to youth detention and the Minister gave a brief outline of the consultation process to be used in the case of intervention powers in relation to clause 70.<sup>82</sup>

### 3. Academy arrangements

Clauses 74 to 76 make provision to enable the transfer from the Secretary of State to the proposed new YPLA of certain functions in relation to academies, city technology colleges (CTCs) and city colleges for the technology of the arts (CCTAs). The only change to these provisions was a technical drafting Government amendment [291] to clause 74.<sup>83</sup> There was, however, a wide-ranging debate on the independence of academies, their performance management and oversight. The Conservatives and Liberal Democrats were unconvinced that the YPLA would be the best body to oversee the academies programme. The committee divided on the question that clause 74, as amended, stand part of the Bill, which was agreed by 9 votes to 6.<sup>84</sup>

Nick Gibb proposed several amendments to protect the autonomy of academies. His lead amendment [24] sought to make oversight by the YPLA voluntary for each academy, and another amendment [26] sought to enshrine in legislation that the objective of the YPLA would be to maintain the autonomy of academies. Mr Gibb withdrew amendment 24, but pressed amendment 26 to a division. It was defeated by 9 votes to 6.<sup>85</sup> Jim Knight said if the proposed arrangements were voluntary, the YPLA would potentially carry out functions for only some academies, and that the Department

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<sup>78</sup> *ibid* c395

<sup>79</sup> *ibid* c395-397

<sup>80</sup> *ibid* c398

<sup>81</sup> *ibid* c401

<sup>82</sup> PCB Deb 19 March 2009 c423

<sup>83</sup> PBC Deb 19 March 2009 c453-4

<sup>84</sup> PBC Deb 19 March 2009 c453-4

<sup>85</sup> PBC 19 March 2009 c453

would have to continue to carry out functions for the others. He said that would result in duplication of roles and functions, and inefficiencies and inconsistencies. He also noted that the YPLA would provide more responsive regionally based support to academies. When pressed by Mr Laws about the number of regional offices, the Minister said that he would expect the regional structure to be coterminous with the Government Office regions, but that if the position was different he would let the committee know.<sup>86</sup>

Other Conservative amendments discussed included one to ensure that the YPLA would not have functions related to the monitoring and assessment of academies [25], and another to give a right of appeal to the Secretary of State if an academy believed that the YPLA was taking unreasonable decisions [339]. Responding, the Minister stressed that the Secretary of State will retain responsibility for the regulatory framework for all academies, and will take responsibility for key decisions such as terminating a funding agreement, appointing additional governors and developing academy policy.<sup>87</sup> He also stressed that if an academy believed the YPLA was acting unreasonably it would be able to complain to the Secretary of State.<sup>88</sup>

David Laws outlined his support for elements of the academies programme. While he acknowledged that it would not be appropriate for an expanded programme to be run by a Minister, he questioned whether the proposed YPLA was the best structure or whether an alternative should be put in place at a local level.<sup>89</sup> Mr Laws outlined amendments [391 and 392] that sought to ensure that the YPLA could not enter into a funding agreement with an academy on behalf of the Secretary of State. Responding, the Minister confirmed that the Government had no intention of requiring the YPLA to enter into funding agreements with academies, and that the Secretary of State would continue to carry out such functions. Mr Knight added that, even if it were decided that the YPLA should negotiate funding agreements in the future, by law the contact would still be with the Secretary of State, and he stressed that the YPLA would simply act as an agent.<sup>90</sup>

Nick Gibb moved an amendment [27] (subsequently withdrawn) to clause 75 to ensure that the YPLA would support the successful establishment of academy sixth forms. The Minister said that the YPLA would reach any decision on academy sixth-form places by having regard to the policy guidance provided by the Secretary of State.<sup>91</sup>

#### **4. Chief Executive of Skills Funding**

The debate on Part 4 of the Bill on the Chief Executive of Skills Funding began with the Committee scrutinising Schedule 4. Mr Gibb moved amendment [106] which would restrict the number of employees to 1,800.<sup>92</sup> Mr Gibb expressed his concern that the Bill was 'sowing the seeds of two very large new bureaucratic empires'.<sup>93</sup> Stephen Williams,

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<sup>86</sup> PBC 19 March 2009 c446

<sup>87</sup> PBC 19 March 2009 c446

<sup>88</sup> PBC 19 March 2009 c447

<sup>89</sup> PBC 19 March 2009, c430-4

<sup>90</sup> PBC 19 March 2009, c448

<sup>91</sup> PBC 19 March 2009 c455

<sup>92</sup> PCB Deb 19 March 2009 c456

<sup>93</sup> *ibid* c457



the Liberal Democrat spokesperson for Innovation, Universities and Skills, said that he was concerned that the Bill 'established the office of the Chief Executive of Skills Funding rather than setting out the nature of the organisation over which he or she will preside'.<sup>94</sup> The Parliamentary Under-Secretary of State for Innovation, Universities and Skills, Sion Simon, responded that it was not normal to name agencies in legislation and he explained that the SFA would be a different type of executive agency to others as the statutory power would be vested in the statutory office holder.<sup>95</sup> Mr Simon then returned to the issue of transition costs and said that he would undertake to write to members with details that were not included in the impact assessment.<sup>96</sup> Finally with regard to accountability the Minister explained that the Chief Executive would be a civil servant accountable to the permanent secretary at the Department for Innovation, Universities and Skills (DIUS).<sup>97</sup> The Schedule was agreed without amendment.

Education and training for persons aged over 19 was debated during scrutiny of clauses 93-95. Clause 93 related to provision of facilities; Mr Williams moved amendment [117] to expand the definition of education in clause 93 to include apprenticeships.<sup>98</sup> Mr Simon responded that clause 93 prioritised qualifications that would improve life chances for people with very few skills, and added that including apprenticeships would cause funding problems as it would mean that training costs for apprenticeships would be paid for out of the public purse.<sup>99</sup> However he sympathised with the amendment. The amendment was withdrawn and clause 93 was added to the Bill unamended.

Amendment [201] to Schedule 5 was used to debate alternative qualifications such as IGCSEs and the Cambridge pre-U; the amendment was then withdrawn.

Schedule 5 and clauses 94, 95 and 97 were agreed unamended. Clause 98 was agreed with one consequential amendment relating to amendment [278] on learning difficulty assessment for persons in detention.

One Opposition amendment<sup>100</sup> was moved to clause 99 on performance assessments which would impose a duty on the Chief Executive to consult when adopting or developing schemes under the clause; it was supported by the Liberal Democrats.<sup>101</sup> Mr Simon responded that it would be unfair on other bodies not named in the amendment and that the need for consultation would vary.<sup>102</sup> Mr Hayes wanted to ensure that the Bill was 'tightly worded' and pushed the amendment to a vote which was defeated on a division by 6 votes to 8.<sup>103</sup>

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<sup>94</sup> *ibid* c459

<sup>95</sup> *ibid* c461

<sup>96</sup> *ibid* c462

<sup>97</sup> *ibid* c463

<sup>98</sup> PCB Deb 24 March 2009 c501

<sup>99</sup> *ibid*

<sup>100</sup> Amendment 136

<sup>101</sup> *ibid* c514

<sup>102</sup> PCB Deb 24 March 2009 C515

<sup>103</sup> *ibid* c518

Clauses 101-113 were agreed without amendment. During a short debate on clause 111 Mr Simon gave an assurance that learners over 19 with learning difficulties would 'continue to be a priority'.<sup>104</sup>

Clause 116 had one amendment moved [364], which would require the Chief Executive to ensure that providers worked closely with employer bodies in utilising funding.<sup>105</sup> Mr Simon stated that he supported the thrust of the argument but that the amendment was not necessary. The amendment was defeated on a division by 6 votes to 8.<sup>106</sup>

Clause 119 contained provisions on data sharing, Mr Gibb moved amendment 30 that would prevent information sharing without the consent of the person concerned.<sup>107</sup> The Minister for Schools and Learners, Mr Knight, responded that there were 'normal safeguards' in place and that amendment could risk funding decisions of the SFA, YPLA and the NSA being flawed because they might be based on incomplete or misleading data.<sup>108</sup> The amendment was defeated on a division by 6 votes to 8.<sup>109</sup>

In the clause stand part debate on clause 119 the Government moved amendment [422] and new clause 20, which would replace clause 119. New clause 20 differed from clause 119 in only two respects: that local authorities' existing statutory powers to share information would not be widened and that 'Chief Executive's staff' would include staff appointed by the Chief Executive.<sup>110</sup> Amendment [422] would allow the successor body to the LSC to receive information for purposes of administering the education maintenance allowance. New clause 20 was formally added to the Bill during the sixteenth sitting.<sup>111</sup>

Clause 20 and Schedule 6 relating the dissolution of the LSC was agreed with one minor amendment.

Schedule 7 contained the details of transfer schemes for LSC staff. Jeff Ennis moved amendment [423] which aimed to ensure that substantial detrimental changes to staff terms and conditions would be seen as a breach of contract.<sup>112</sup> This amendment was prompted by correspondence from LSC staff. Mr Simon made a commitment that the 'Cabinet Office statement of practice – COSOP - and a fair deal for pensions will inform and guide' practices.<sup>113</sup> He also said that he would return to this issue on Report.<sup>114</sup> The amendment was withdrawn and Schedule 7 agreed.

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<sup>104</sup> *ibid* c521

<sup>105</sup> *ibid* c522

<sup>106</sup> *ibid* c525

<sup>107</sup> *ibid* c526

<sup>108</sup> *ibid* c529

<sup>109</sup> *ibid* c530

<sup>110</sup> *ibid* c531

<sup>111</sup> PBC 26 March 2009 cc 886-7

<sup>112</sup> *ibid* c532

<sup>113</sup> *ibid* c538

<sup>114</sup> PBC Deb 24 March 2009 c539

## C. Education and training for offenders

### a. Young offenders

As announced at second reading, the Government tabled a series of amendments and new clauses on offender education. Those added to the Bill included two amendments [340 and 341] designed to strengthen the duty to secure education for young offenders. They would require LEAs to take additional factors into account when deciding whether the education was suitable to meet young offenders' reasonable needs – for example, the desirability of allowing them to complete courses they had started.<sup>115</sup> In addition, new clause 19 (agreed to without division)<sup>116</sup> would amend the *Education Act 1996* so that an LEA's duty to maintain a statement of special educational needs for a child would be suspended while a child was in juvenile custody. However, the statement would have to be reviewed and revived on release. Sarah McCarthy-Fry said this represented a "significant improvement" for children in custody (as statements were currently not always picked up on release), whilst recognising the practical problems of arranging highly specialised provision when the majority of children spend only short periods in custody.<sup>117</sup>

However, there were also some Government amendments and new clauses which were inadvertently not added to the Bill. The Government had tabled two amendments to leave out clause 49 (which puts a duty on the home local authority to promote fulfilment of learning potential in custody on release) and clause 50 (which requires Youth Offending Teams to notify the home LEA when a young offender has been detained). New clause 17 (which would have replaced clause 49) would have strengthened the requirements for young offenders with special education needs. New clause 18 (which would have replaced clause 50) would have ensured that the Youth Offending Team would also have to inform the host LEA about detention, and would have to tell both LEAs about transfers and release. In the event, however, the Committee agreed to clauses 49 and 50 without amendment, and consequently new clauses 17 and 18 were not selected.<sup>118</sup> These have been re-tabled for the report stage.<sup>119</sup>

The Conservatives tabled a number of amendments to clause 47, which sets out the LEA's duty to provide education for young people in detention. Several were probing amendments, which would have placed the duties on the Young People's Learning Agency (YPLA) rather than the LEA. John Hayes argued that this would be preferable to passing young people between different LEAs.<sup>120</sup> Sarah McCarthy-Fry said that, while the YPLA would play a vital role in supporting LEAs, the Government's purpose was for clear accountability for education in juvenile custody aligned with the mainstream sector.<sup>121</sup> The main amendment was negated on division by 5 votes to 10.<sup>122</sup> Another

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<sup>115</sup> Amendments 340 and 341, agreed to without division; see PBC Deb 17 March 2009 c366

<sup>116</sup> PBC Deb 26 March 2009 c882

<sup>117</sup> PBC Deb 17 March 2009 c371

<sup>118</sup> PBC Deb 17 March 2009 c372 and 373; see [Public Bill Committee Proceedings](#) 26 March 2009

<sup>119</sup> as New Clauses 14 and 15, see [Notices of Amendments given on Friday 17 April](#)

<sup>120</sup> PBC 17 March 2009 c347

<sup>121</sup> PBC 17 March 2009 c354

<sup>122</sup> PBC 17 March 2009 c360

Conservative amendment<sup>123</sup> would have added a requirement for a minimum of 30 hours of education to be provided in youth detention. Nick Gibb said this was “essential” given the poor education suffered by most young people in custody.<sup>124</sup> Sarah McCarthy-Fry said she would consider how the statutory guidance could be worded, but that it was not necessary to put the requirement in the Bill.<sup>125</sup> The amendment was negated on division by 6 votes to 9.<sup>126</sup>

#### **b. Adult offenders**

Government amendments to clause 92,<sup>127</sup> designed to help deal with the problem of people aged under 19 detained in adult prisons, were agreed to without division.<sup>128</sup> Under clause 92, the Chief Executive of Skills Funding must have regard to a number of factors when securing education for people aged 19 or over in adult detention. Amendments 346 and 347 add a duty to have regard to the desirability of those under 19 having certain “core” and “additional” entitlements (as set out in the 1996 Act).<sup>129</sup> In the debate on learning aims for adult offenders which followed<sup>130</sup>, the Liberal Democrats moved an amendment to include apprenticeships explicitly as one of the educational or vocational courses which might be provided.<sup>131</sup> For the Government, Siôn Simon was sympathetic to the concerns, but did not think that this should be included in the Bill.<sup>132</sup> In the debate on clause 96<sup>133</sup> (which deals with encouragement of education and training for those in adult detention), Mr Simon undertook to look into the issue of possible follow-through by the home local education authority for 18 and 19 year olds in custody who do not have special educational needs, but still needed a lot of support.<sup>134</sup> This was in response to concerns raised by Annette Brooke.

### **D. Transport for persons of sixth form age**

Clauses 51 to 53 relate to transport for students of sixth-form age. LEAs are required to consult young people and their parents on their transport policy statements, and to make provision for complaints about how their transport responsibilities have been carried out. The clauses were agreed to without amendment. Annette Brooke, for the Liberal Democrats, moved an amendment [125] (subsequently withdrawn) to require authorities to have regard to any guidance issued by the Secretary of State about the timing and manner of consultations, and to require local authorities to make available to those consulted such information as may be prescribed. Sarah McCarthy-Fry said that the amendment was not necessary as the Secretary of State would issue guidance setting

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<sup>123</sup> Amendment 99

<sup>124</sup> PBC Deb 17 March 2009 c361

<sup>125</sup> PBC Deb 17 March 2009 c363

<sup>126</sup> PBC Deb 17 March 2009 c365

<sup>127</sup> Now clause 84 in the amended Bill

<sup>128</sup> PBC Deb 24 March 2009 cc499

<sup>129</sup> PBC Deb 24 March 2009 cc495-9

<sup>130</sup> on clause 93 (now clause 85 under the amended Bill) and schedule 5

<sup>131</sup> Amendment 117, PBC 24 March 2009 cc499-502

<sup>132</sup> PBC Deb 24 March 2009 c502

<sup>133</sup> Now clause 88 in the Bill as amended in Public Bill Committee

<sup>134</sup> PBC Deb 24 March 2009 c508

out what will be expected of local authorities when carrying out consultations.<sup>135</sup> Annette Brooke probed whether a local authority should have a duty to provide affordable transport. Various associated issues were discussed including inconsistencies in provision from different local authorities, access to education and skills training in rural areas, whether colleges can and should fund transport provision, and travel arrangements for students 19 to 25 with learning difficulties. The Minister said that while the Government agreed that affordable transport was integral for access to education and training, it believed that current legislation provided the right balance between protecting the interests of young people and giving local authorities flexibility to direct resources to local priorities. She said that while colleges can provide discretionary support in hardship cases, the Government does expect them to fund transport provision routinely. She also noted that guidance related to people aged 19 to 24 with learning difficulties would be strengthened to include an explicit reference to consider a young person's wider needs, including transport.<sup>136</sup> Annette Brooke also argued that students with learning difficulties up to the age of 25 should have the same rights of redress as persons of sixth-form age. The Minister said that she would reflect further on the matter.<sup>137</sup>

## **E. Sixth Form Colleges (SFCs)**

Three substantive amendments were moved to Schedule 8 which contained the detailed provisions on SFCs. Amendment [28] aimed to remove the '80 percent over compulsory school age' requirement for designation as a SFC and replace it with 'is reasonable to classify the institution as a SFC'. This amendment was prompted by concerns from the Association of School and College Leaders.<sup>138</sup> Ms McCarthy-Fry replied that only three SFCs had less than the 80 percent required for designation and that the threshold was chosen to protect the essential nature of these institutions, and added that the Sixth Form Colleges Forum was broadly supportive of the requirement.<sup>139</sup> Amendment [29] aimed to reduce the five year period before application for re-designation as a SFC. Ms McCarthy-Fry responded that this period was necessary to ensure stability in the sector.<sup>140</sup> Amendment [363] would remove the ability of local education authorities to appoint members to the governing bodies of SFCs, the purpose of this being to retain the independence of these colleges. Ms McCarthy-Fry stated that this provision was replicating an existing power and was useful if extra capacity or expertise were needed on a governing body; however she also said that the power to appoint governors to SFCs had never been used by the LSC.<sup>141</sup> All the amendments were withdrawn.

Mr Gibb moved new clause 6 which aimed to reduce bureaucracy in SFCs. Ms McCarthy-Fry said that she was sympathetic towards the amendment and that the Government had done much to reduce bureaucracy without the need for legislation.<sup>142</sup>

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<sup>135</sup> PBC Deb 17 March 2009 c377

<sup>136</sup> PBC Deb 17 March 2009 c376

<sup>137</sup> PBC Deb 17 March 2009 c379

<sup>138</sup> PBC Deb 24 March 2009 c539

<sup>139</sup> *ibid* c540

<sup>140</sup> *ibid* c541

<sup>141</sup> *ibid* c545

<sup>142</sup> *ibid* c548

She said that she would write to Mr Hayes with details of actions taken to reduce burdens on schools and reassured the Committee that the Government was committed to the independent status of SFCs which could remain as they were if they wished and not be re-designated.<sup>143</sup> Schedule 8 was agreed.

## **F. The Office of Qualifications and Examinations Regulation (Ofqual)**

Clauses 124 to 165 and schedules 9 and 10 contain the provisions relating to Ofqual.

### **a. Government amendments**

There was a large number of Government amendments, many of which were technical drafting changes. Sarah McCarthy-Fry moved an amendment [497] to schedule 9 relating to the conditions of service of Ofqual staff, and outlined the effect of other Government amendments, which she said were mostly technical, and where they made material changes, those changes were not great.<sup>144</sup> Amendment 497 was agreed to, and other technical drafting changes to schedule 9 [498 and 499] were made.<sup>145</sup> Nick Gibb was particularly concerned about three of the Government amendments the Minister had outlined – amendment 446 relating to Ofqual's powers to enter premises to inspect or copy documents including electronic records (which was discussed in more detail and agreed later in the proceedings<sup>146</sup>); amendment 464 on Ofqual's powers related to 'guided learning hours' for qualifications (which was agreed to later in the proceedings<sup>147</sup>); and amendment 487 (which was agreed to later<sup>148</sup>). Sarah McCarthy-Fry said amendment 487 clarified (for the purposes of clause 149 [power to provide information to other qualifications regulators]) that Ofqual will not have to provide information to itself.

At the beginning of the fifteenth sitting on 26 March 2009, three Government amendments [429, 430 and 431] to clause 125 were defeated. Following a tied vote on a fourth Government amendment [432], the chairman cast her vote with the Noes, and that amendment was defeated. Earlier, Sarah McCarthy-Fry had described the proposed amendments as part of 35 related technical amendments. There was also a tied vote on the question that clause 125 stand part. The chairman voted with the Ayes.<sup>149</sup>

Government New Clause 23 was added to the Bill.<sup>150</sup> This allows awarding bodies to surrender their recognition for specific qualifications. Consequential amendments, including a mirror provision relating to Wales, were agreed [amendments 506, 508 and

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<sup>143</sup> *ibid* c549

<sup>144</sup> PBC Deb 24 March 2009 c576-80

<sup>145</sup> PBC Deb 24 March 2009 c580-1

<sup>146</sup> PBC Deb 26 March 2009 c636-38

<sup>147</sup> PBC Deb 26 March 2009 c663-65

<sup>148</sup> PBC Deb 26 March 2009 c676

<sup>149</sup> PBC Deb 26 March 2009 c607-9

<sup>150</sup> PBC Deb 26 March 2009 c887

512].<sup>151</sup> Technical amendments to clauses 130 and 131 [amendments 442 and 443] ensure that Ofqual's powers to set criteria for recognitions and general conditions will apply to components of qualifications.<sup>152</sup> Several drafting amendments were made to clause 133 to clarify that an independent review of Ofqual's decision to cap fees or withdraw recognition may be carried out by an individual or a body (the original wording had suggested that only an individual could carry out the review).<sup>153</sup> Similar amendments were made in relation to other clauses.<sup>154</sup>

Several amendments were made to the accreditation provisions contained in clauses 136 and 137. The main effect of the changes is to ensure that, if Ofqual revises accreditation criteria, the accreditation of qualifications under the previous version of the criteria will cease, unless Ofqual decides otherwise. This would mean that when Ofqual amends criteria, an awarding body will have to submit a revised version of the qualification for accreditation against the new criteria, unless Ofqual has determined that this is unnecessary. A qualification that is not re-credited could no longer be awarded. However, Ofqual can make saving or transitional provision. Mr Laws said that in effect there would be a retrospective element for accredited qualifications and that the provisions could lead to instability. The Committee divided on the question that clause 137, as amended, stand part. The question was agreed by 10 votes to 2.<sup>155</sup>

Sarah McCarthy-Fry explained that Government amendments made to clause 138 [Power of the Secretary of State to determine minimum requirements (for qualifications)] fell into two categories. First, those to ensure that the Secretary of State can vary a determination provided he publishes and gives notice of it to Ofqual [amendments 453, 454, 456 and 458]. The Minister stressed that the measure would not be used very often but would allow the Government to change the high-level requirements over time as the curriculum evolves. In the second category was amendment [455] that added Ofqual's functions under clause 131 – the power to set general conditions – to the list of functions that Ofqual must exercise when implementing a determination made under clause 138.<sup>156</sup>

Various Government amendments were made to clauses 139 and 140 relating to provision for 'guided learning hours' for qualifications.<sup>157</sup> The provisions are linked to the raising participation age duties contained in the *Education and Skills Act 2008*. Ofqual's power to withdraw recognition of an awarding body contained in clause 145 was amended to ensure that it applies where a body is recognised to award or authenticate credits in respect of components of qualifications [amendment 482].<sup>158</sup>

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<sup>151</sup> PBC Deb 26 March 2009 c627

<sup>152</sup> PBC Deb 26 March 2009 cc628-30 and c 635

<sup>153</sup> PBC Deb 26 March 2009 cc635-6

<sup>154</sup> PBC Deb 26 March 2009 c674, for example.

<sup>155</sup> PBC Deb 26 March 2009 c638-42

<sup>156</sup> PBC Deb 26 March 2009 c656 - 62

<sup>157</sup> PBC Deb 26 March 2009 c662-66

<sup>158</sup> PBC Deb 26 March 2009 c674

Government New Clause 24 was added to the Bill.<sup>159</sup> It imposes a duty on Ofqual not to impose or maintain unnecessary regulatory burdens, and is similar in effect to section 72 of the *Regulatory Enforcements Sanctions Act 2008*.<sup>160</sup>

**b. Significant areas of debate that did not lead to the Bill being amended**

***Membership, governance and independence of Ofqual***

The Liberal Democrats tabled several amendments to schedule 9 aimed at providing greater independence in the appointment of Ofqual board members and key staff, in how Ofqual operates, and in relation to its accountability. David Laws moved the lead amendment [50] (subsequently withdrawn) that sought to make ordinary members of the Ofqual board Crown appointments. He pressed amendment 59 to a division having explained that the amendment would remove the duty on Ofqual to review its committees every five years. He said that Ofqual should make such decisions rather than use the Bill to ‘micro-manage’ Ofqual. The amendment was defeated by 8 voted to 6.<sup>161</sup>

Other Liberal Democrat amendments that were discussed included: amendments to remove the Secretary of State’s powers to appoint and dismiss the deputy chairman of Ofqual and to place those powers with the ordinary members of the board [51 and 52]; to remove the power of the Secretary of State to dismiss ordinary members of the board and place that power with the fellow members of the board [53]; to enable Ofqual to appoint the first chief executive rather than the Secretary of State [54]; to give Ofqual the power to set conditions of service of the first chief executive [amendment 55]; to remove the Secretary of State’s power to approve appointments and conditions of Ofqual chief executives and give it to the Children, Schools and Families (CSF) Committee [57] and to give the CSF Committee the power to approve the number of staff members of Ofqual, their conditions of service and remuneration [58].<sup>162</sup>

Nick Gibb expressed concern about what he described as falling examination standards, and wanted Ofqual to be required to examine the evidence on standards over time. He argued that Ofqual board members should be independent of the educational establishment. The amendments he tabled included: a requirement for the board to have one member who is a member of another regulatory body [197]; a requirement for the chief regulator and chief executive to be full-time positions [198]; provision to prevent anyone with a financial or occupational interest that might conflict with the objectives of Ofqual from serving on its board [40]; and provision to add ‘failure to ensure the standard of regulated qualifications is maintained’ to the grounds for the chief regulator to be removed from office [385], which was defeated by 8 votes to 6.<sup>163</sup> Other issues raised by Mr Gibb included the need for transparency about the pay, pension, expenses and contracts of the chief regulator, chief executive and ordinary members of Ofqual [416 and 417], and the appointment and removal of the chief executive [418 and 419]. Mr

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<sup>159</sup> PBC Deb 26 March 2009 c887

<sup>160</sup> PBC Deb 26 March 2009 c675-6

<sup>161</sup> PBC Deb 24 March 2009 c580-1

<sup>162</sup> PBC Deb 26 March 2009 c549-56

<sup>163</sup> PBC Deb 24 March 2009 c576



Gibb argued that the Secretary of State should have the power not only to appoint the first chief executive but all subsequent ones – a view not shared by David Laws.<sup>164</sup>

Responding to questions about whether the annual salary and pension contributions of the chief regulator and chief executive will be included in the annual report of Ofqual, Sarah McCarthy-Fry said that Ministers would look at what will be in the annual report and refer back to the matter as the legislation progresses. Later in the debate she added that salary and pension contributions will be included in the annual accounts though she did not know if that information would go into the annual report.<sup>165</sup>

### ***Objectives of Ofqual***

There was a wide-ranging debate about Ofqual's role in relation to educational standards. Clause 125 sets out five strategic objectives for Ofqual, concerning: qualifications standards, assessments standards, public confidence, awareness, and efficiency. Mr Laws moved amendment 60 to add to Ofqual's objectives overall responsibility for educational standards and performance. The amendment was negatived by 8 votes to 7.<sup>166</sup> Another amendment tabled by the Liberal Democrats sought to place a duty on Ofqual to carry out sample testing annually in selected subjects, and to report on changes in educational standards over time, comparing not only the standards in any one year with those of previous years, but also comparing standards in the UK with those in other OECD countries [61]. Other Liberal Democrat amendments included provision to add to Ofqual's objectives for assessments standards a duty to ensure that its regulated assessments<sup>167</sup> allowed for the monitoring of changing standards [62]; to ensure that Ofqual would review changes in assessments standards to date [63]; to ensure that, under the public confidence objective, Ofqual would have to demonstrate its independence and objectivity [64]; to place an additional duty on Ofqual to carry out cohort testing to assess changes in standards over time [65]; and to add to the public confidence objective an assessment of standards over time [219]. Mr Laws raised the issue of how attainment and achievement tables are collated, and whether they should be published by Ofqual in order to promote public confidence in them [427 and 428].<sup>168</sup>

Nick Gibb referred to studies which, he said, demonstrated that standards in the main public exams had been slipping over the years. He therefore tabled amendment 36 to make Ofqual's qualifications standards explicit by adding a specific duty to maintain standards. The amendment was negatived by 8 voted to 7.<sup>169</sup> He tabled another amendment to add a requirement to maintain standards as part of the assessments standards objective [37]. Other amendments tabled by Mr Gibb sought to require Ofqual to set out a range of comparators with qualifications in other countries [41 and 42]; and to include in the assessments standards objective the requirement to promote the development of regulated assessment arrangements that give a reliable indication of the

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<sup>164</sup> PBC Deb 24 March 2009 c556-62

<sup>165</sup> PBC Deb 24 March 2009 c568 and c569

<sup>166</sup> PBC Deb 24 March 2009 c603-4

<sup>167</sup> i.e. national curriculum and early years foundation assessment arrangements

<sup>168</sup> PBC Deb 24 March 2009 c581-590

<sup>169</sup> PBC Deb 24 March 2009 c591 and 604

level of knowledge a child has amassed as well as his/her level of achievement [139]. He stressed the value of acquiring knowledge. Mr Gibb proposed adding to the assessments standards objective a requirement for Ofqual to publish annually its methodology for determining whether standards had been maintained over 20, 10 and 5 year periods [38]. He also tabled amendments to provide for Ofqual to conduct surveys of secondary school students and teachers asking whether they believe that students work harder to gain specified qualifications [31 and 39]; to ensure that Ofqual publishes the criteria that it uses to make judgements on the efficiency of regulated qualifications [43 and 81]; to provide a timeliness objective to ensure that Ofqual carries out its functions in a timely manner [335]; and to broaden the scope of the efficiency objective to include a market for regulated qualifications [557].<sup>170</sup>

Sarah McCarthy-Fry said that the proposed amendments specified too much detail about how Ofqual should work, or gave Ofqual too broad a remit, or simply duplicated provisions already in the Bill. She noted in relation to amendments providing for surveys [31 and 39] that Ofqual may well wish to carry out such work, and that the Bill already empowers it to do so. On the amendments relating to standards, she said that the Government would expect Ofqual to publish evidence underpinning its conclusions on the maintenance of standards and, where appropriate, to consider lessons from other countries. But, she said, the Government did not want to pre-judge the best way for Ofqual to gather or present evidence. In relation to achievement and attainment tables, she said that while it was appropriate for Ofqual to look at how those qualifications are scored, those provisions do not need to be in the Bill mainly because the tables are not statutory. She said that the tables are being reviewed as part of the development of school report cards, and that Ministers would discuss with interim Ofqual what its and, perhaps, QCDA's role should be under the new arrangements for the provision of information on school performance. In relation to Ofqual's performance against objectives, she said that Ofqual intends to identify measurable success criteria and report on them, and that the Government will ask it to consider commissioning, after three years, an independent review of the reforms. She said that Ofqual's role will be to monitor standards of qualifications and assessments, and to ensure that they are consistent, but not to monitor standards of performance as such a remit would be too wide. On the issue of sample testing, she said that Ofqual might want to use it in relation to its objectives, e.g. to check the consistency of a qualification, but that the wider standards of performance would not be within its remit. She said that other proposals in the tabled amendments were not necessary.<sup>171</sup>

Later in the proceedings there was a debate about what should be included in Ofqual's annual report. In response to amendment [7] moved by Mr Laws (subsequently withdrawn) to put a specific requirement in clause 162 that Ofqual report on the extent to which it met its objectives, the Minister made it clear that Ofqual would be expected to define specific and measurable criteria for its objectives and to report on them. Another amendment [70] proposed by Mr Laws sought to include in Ofqual's annual report its assessment of changes in educational standards and performance and how they

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<sup>170</sup> PBC Deb 24 March 2009 c593-98

<sup>171</sup> PBC Deb 24 March 2009 c598-601

compare with other countries; the amendment was defeated by 9 votes to 4.<sup>172</sup> The Minister stressed that Ofqual must concentrate on its key role of regulating qualifications and assessments, and not be distracted by wider questions about measuring standards.

### ***General duties of Ofqual***

Liberal Democrats and Conservatives were concerned about the requirement in clause 126 for Ofqual to have regard to the need to ensure that the number of regulated qualifications is appropriate. Mr Laws felt there was a risk of removing some qualifications that learners valued, and was particularly concerned about learners' choice. Nick Gibb believed the role of Ofqual was to safeguard standards and not to limit the number of qualifications, and that there should be a genuine market in qualifications reflecting what employers, universities and students valued. Several amendments were tabled to clause 126. These included an amendment [554] (subsequently withdrawn) moved by Mr Laws to state that the principal duty of Ofqual would be to promote the interests of learners. Mr Laws also proposed a complementary amendment [66] to require Ofqual to maximize choice for pupils and learners, which was negatived by 10 votes to 8. Nick Gibb moved an amendment [413] to remove Ofqual's duty to ensure that the number of regulated qualifications is appropriate. Sarah McCarthy-Fry stressed that this requirement on Ofqual was needed so it could tackle unnecessary duplication of qualifications. The amendment was negatived by 10 votes to 8.<sup>173</sup>

There was also concern about the requirement in clause 126(6) for Ofqual to have regard to such aspects of Government policy as the Secretary of State may direct. Mr Laws moved an amendment [521] (subsequently withdrawn) to delete the requirement. Responding, Sarah McCarthy-Fry put on record that Ofqual will not be required to endorse Government policy or consult the Government on its decisions, or temper its judgements to reflect Government policy, and she gave examples of how the requirement in clause 126(6) might be used.<sup>174</sup>

### ***Recognition of awarding bodies***

David Laws moved an amendment [221] to provide for review arrangements if Ofqual refuses an application for recognition. Sarah McCarthy-Fry said that she anticipated that Ofqual would establish review arrangements, and with that reassurance the amendment was withdrawn.<sup>175</sup> Mr Laws also raised the issue of the need for Ofqual to consult before setting or revising criteria for recognition, and moved an amendment [222] (subsequently withdrawn) to provide that recognised awarding bodies would be consulted. Sarah McCarthy-Fry said that no regulator would ignore the views of those it regulates, and that she would expect Ofqual to consult those bodies.<sup>176</sup>

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<sup>172</sup> PBC Deb 26 March 2009 c682-90

<sup>173</sup> PBC Deb 26 March 2009 c609-616

<sup>174</sup> PBC Deb 26 March 2009 c617-624

<sup>175</sup> PBC Deb 26 March 2009 c626-627

<sup>176</sup> PBC Deb 26 March 2009 c633-635

***Power of Secretary of State to determine minimum requirements for qualifications***

David Laws moved an amendment [532] to restrict the Secretary of State's power (contained in clause 138) for use only in exceptional circumstances. Sarah McCarthy-Fry said that while she had some sympathy with the concern that Ministers should not make frequent changes to qualifications, and that determinations should only be used occasionally, she thought it would not be appropriate to put the proposed restriction in the Bill; instead, a memorandum of understanding on clause 138 should be relied upon. Mr Laws pressed his amendment to a vote, and it was defeated by 10 votes to 2.<sup>177</sup> Other amendments tabled included one [533] to require the Secretary of State to agree with Ofqual the circumstances in which he could make a determination specifying minimum requirements in respect of a qualification, and to publish the terms of the agreement. The Minister said that there could not be a legal duty on the Secretary of State to agree something with Ofqual as this could, in effect, veto the use of his power.<sup>178</sup>

***Ofqual's powers to give directions to recognised bodies***

David Laws referred to the past disagreements between awarding bodies over setting grade boundaries for GCSE science. He wanted to ensure that Ofqual would have unambiguous powers to direct a recognised body to set standards in a specified qualification on a particular occasion at a specified level. He moved an amendment [8] (subsequently withdrawn) to provide for this in clause 144. Sarah McCarthy-Fry said that the power already existed in clause 144(2). There was also discussion about whether Ofqual should have a power to fine an awarding body; Mary Creagh (Labour) tabled an amendment [559] to provide for this. The Minister said that she was well aware that Ofqual had asked for this power; that she would reflect further on the matter, and discuss it with the awarding bodies and Ofqual.<sup>179</sup>

***Ofqual's functions to review regulated assessment arrangements***

There was discussion about Ofqual's functions under clause 153 in relation to regulated assessment arrangements, i.e. national curriculum and early years foundation stage assessments. Nick Gibb referred to last summer's problems with national curriculum tests, and moved an amendment [380] to require Ofqual, in undertaking its reviews, to look particularly at standards and delivery of assessments. Sarah McCarthy-Fry said that Ofqual would already have to do this to fulfil its statutory objectives. The amendment was negatived by 10 votes to 5.<sup>180</sup>

**G. Qualifications and Curriculum Development Agency**

Clauses 166 to 183 and associated schedules replace the Qualifications and Curriculum Authority with the Qualifications and Curriculum Development Agency (QCDA), which will take over QCA's non-regulatory functions.

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<sup>177</sup> PBC Deb 26 March 2009 c643-662

<sup>178</sup> PBC Deb 26 March 2009 c655

<sup>179</sup> PBC Deb 26 March 2009 c667-674

<sup>180</sup> PBC Deb 26 March 2009 c675-682

**a. Government amendments**

In addition to technical amendments made to schedule 11, amendment 490 removed clause 170(5), which had made explicit provision for QCDA 's functions in relation to key and basic skills qualifications. Sarah McCarthy-Fry explained that QCDA could carry out these functions under clause 175. Amendments [491, 492 and 494] were made to clause 171 [Assistance etc. in relation functions of Ofqual] to provide for QCDA to assist Ofqual in setting criteria where a section 138 determination has been made, and to clarify that any QCDA assistance to Ofqual does not include financial assistance.<sup>181</sup> An amendment [493] to clause 174 ensures that QCDA keeps under review all assessment arrangements that fall within its remit, including national curriculum and early years foundation stage assessment arrangements.<sup>182</sup> A number of amendments were made to schedule 12 including: an amendment [501] to provide that QCDA is to be a public body for the purposes of the *Local Authorities (Goods and Services) Act 1970*; amendments to take account of the change of name of QCD to QCDA; an amendment [503] to provide for Welsh Ministers to develop criteria for the accreditation of, and to accredit, different forms of qualifications; and various other amendments for co-operation and joint working to ensure that there is a consistent approach to qualifications regulation and development across England, Wales and Northern Ireland, while retaining the Three Countries Qualifications Framework arrangements. Several amendments were made in relation to the powers of Welsh Ministers. Amendment 507 allows Welsh Ministers to co-operate, work jointly and form joint committees with other relevant authorities whose functions are similar to any of the qualifications functions of the Welsh Ministers.<sup>183</sup>

**b. Significant areas of debate that did not lead to the Bill being amended**

Concern was expressed about whether QCDA as a non-departmental public body will be sufficiently independent from the Government. Mr Laws moved an amendment [144] (subsequently withdrawn) to make the Children, Schools and Families Select Committee (rather than the Secretary of State) responsible for approving the appointment and conditions of service of the chief officer of QCDA. Sarah McCarthy-Fry stressed that QCDA will have the same status as QCA currently has, and will be at arm's length from Ministers.<sup>184</sup> There was some discussion about QCDA's statutory objective, and Nick Gibb repeated his concerns about what he described as a drift away from knowledge to skills in qualifications and the curriculum. He moved an amendment [34] to change QCDA's statutory objective to promoting quality and 'rigour' (rather than 'coherence') in education and training. The amendment was defeated by 9 votes to 4.<sup>185</sup> David Laws moved an amendment [146] to ensure that all qualifications approved by QCDA and Ofqual would have to be funded by the Secretary of State irrespective of any advice from the Joint Advisory Committee for Qualifications Approval. Mr Laws explained that the provision would enable high quality qualifications used in the private sector to be used in maintained schools, and would act as 'a safety valve when the Government's

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<sup>181</sup> PBC Deb 26 March 2009 c698-704 and c709

<sup>182</sup> PBC Deb 26 March 2009 c709

<sup>183</sup> PBC Deb 26 March 2009 c713-716

<sup>184</sup> PBC Deb 26 March 2009 c690-92

<sup>185</sup> PBC Deb 26 March 2009 c693-698

qualifications offer does not do the right job.’ The amendment was defeated by 9 votes to 2.<sup>186</sup>

Maria Miller raised concerns about the early years foundation stage (EYFS), and explained that the amendments tabled by the Conservatives sought to ensure clarity about where the responsibility lies for the curriculum as applied in schools and early years providers. She moved an amendment [548] (subsequently withdrawn) to require QCDA to publish an annual review of the curriculum, which, she said, would provide an important opportunity to assess the EYFS. The Minister accepted that while it may be appropriate for QCDA to publish regular reports on the curriculum, there was no reason to put a requirement for it to do so in the Bill.<sup>187</sup>

David Laws argued that all schools should have the freedom academies have to innovate in the curriculum, and moved a probing amendment [147] on why academies are not included within QCDA’s remit. The amendment was defeated by 12 votes to 2.<sup>188</sup>

## H. Children’s Services

The Bill’s provisions concerning children’s services seek to strengthen the arrangements for Children’s Trusts and Sure Start Children’s Centres by putting them on a statutory footing, and would make changes to how early years providers are funded. The provisions were debated by the Public Bill Committee at its 16<sup>th</sup> sitting on 26 March 2009. During the debate on Children’s Trusts, Maria Miller, the Conservative Shadow Minister for Family, described the changes as ‘economical’ and argued that they fell short of the proposals that had been put out for consultation.<sup>189</sup> She tabled a number of amendments which would affect the duties of Children’s Trust and their relevant partners. She also expressed her disappointment that the Government had put ‘important proposals on children’s centres, nursery funding, and early years foundation stage’ in a Bill that was predominately concerned with education, resulting in those matters being ‘overshadowed and curtailed.’<sup>190</sup>

### a. Summary of divisions

#### *Academies as relevant partners of Children’s Trusts*

During the debate on the clauses concerning children’s services, Maria Miller moved an amendment [195] to remove academies from the list of additional relevant partners that would be under a duty to co-operate with children’s services authorities under the Children’s Trust arrangements. She contended that treating academies in the same way as other schools would risk their autonomy and ‘undermine those very important freedoms, which will make academies successful for children.’<sup>191</sup>

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<sup>186</sup> PBC Deb 26 March 2009 c699-703

<sup>187</sup> PBC Deb 26 March 2009 c704-709

<sup>188</sup> PBC Deb 26 March 2009 c710-713

<sup>189</sup> PBC Deb 26 March 2009 c717

<sup>190</sup> PBC Deb 26 March 2009 c737

<sup>191</sup> PBC Deb 26 March 2009 c718

The amendment was not supported by the Liberal Democrats. Their spokesperson, Annette Brooke, expressed her surprise that the Conservatives wished to exclude academies since they would be dealing with 'some of our most vulnerable and disadvantaged children'.<sup>192</sup>

The Parliamentary Under-Secretary of State for Schools and Learners, Sarah McCarthy-Fry, stated that, although she understood the motivation behind the amendment, Children's Trusts were too important for academies not to be involved in them. She explained that the aim of the Bill was not to fetter the autonomy of academies but to empower them and enable them to contribute to local decision-making on how support service are made available to their pupils.<sup>193</sup>

Ms Miller was not convinced by the Minister's response and the amendment was pressed to a division. The amendment was defeated by 3 votes to 11.<sup>194</sup>

### ***Private, voluntary and independent providers of children's services***

Maria Miller moved an amendment [190] to clause 185 which would place a statutory duty on Children's Trusts Boards to take account of the views of private, voluntary and independent (PVI) providers of children's services when planning and commissioning services.<sup>195</sup> Ms Miller explained that, although PVI providers may not be full statutory partners of Children's Trusts, the issue needed to be considered and looked at further given the significant role played by the sector in the provision of specialist support for children. She believed that there needed to be 'a clear pointer' to Children's Trust Boards indicating that the PVI sector 'is absolutely key' to the implementation of plans and the future provision of services.<sup>196</sup>

The amendment was supported by the Liberal Democrats, whose spokesperson, Annette Brooke commented that it made a great deal of sense to ensure that the views of PVI providers were taken into account.<sup>197</sup>

The Minister assured the Committee that the sectors would be 'fully engaged in the strategic planning and commissioning of services' since the *Children Act 2004* allows other bodies to be included in Children's Trust arrangements.<sup>198</sup> She explained that statutory guidance requires PVI providers to be represented in Children's Trusts activities and for their views to be considered. She added that further supplementary guidance would be issued to accompany the Bill which would emphasise the importance of involving the PVI sector on the Boards.<sup>199</sup>

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<sup>192</sup> PBC Deb 26 March 2009 c719

<sup>193</sup> PBC Deb 26 March 2009 c722

<sup>194</sup> PBC Deb 26 March 2009 c724

<sup>195</sup> PBC Deb 26 March 2009 c726

<sup>196</sup> *ibid*

<sup>197</sup> PBC Deb 26 March 2009 c728

<sup>198</sup> The provision is contained in section 10(c), *Children Act 2004*

<sup>199</sup> PBC Deb 26 March 2009 c729

Maria Miller was not convinced that current provisions sufficiently involved the sector and pressed the amendment to a vote. The amendment was defeated on division by 5 votes against 9.<sup>200</sup>

**b. Other areas of debate**

***Children and Young Person's Plans***

Maria Miller moved an amendment [193] to clause 185 which would add a duty on the Children's Trust Boards to monitor the implementation of the Children and Young People's Plans (CYPP).<sup>201</sup> The intention behind the amendment was to ensure that the Boards were more than just talking shops and played an active role in improving children's lives. It was grouped with a further amendment [192] which would make it explicit that the Director of Children's Services was responsible for implementation of the CYPP.<sup>202</sup> The Minister contended that the Bill, as drafted, held members of the Board accountable for shared outcomes and extended responsibility for the CYPP to the whole Board. Although the amendments were not pushed to a vote, Ms Miller remained concerned about the powers and accountability of the Board. She added that she may return to the issue at a later stage.<sup>203</sup>

***Children's centres***

A number of amendments were tabled to clause 186, including amendments requiring a duty on children's centres to provide: support for families,<sup>204</sup> particularly disadvantaged families;<sup>205</sup> health visitors;<sup>206</sup> and outreach services.<sup>207</sup> In response to the amendments the Minister stressed the importance of flexibility for children's centres so that the provision of services could be determined locally according to the needs of a particular area. None of the amendments was pressed to a division.

In response to an amendment [400] to clause 187 to create a unified system of inspection for early years, childcare and other services provided by children's centres, the Minister informed the Committee that Ofsted would be consulting on the inspection regime for children's centres and would be considering how to integrate inspection of a variety of services.<sup>208</sup>

***Safeguarding children***

David Laws moved new clause 21 which would require a child subject to a section 47 investigation to be seen separately from parents and carers by a keyworker. Section 47 investigations under the *Children Act 1989* are carried out by local authorities and

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<sup>200</sup> PBC 26 Deb March 2009 c730

<sup>201</sup> PBC 26 Deb March 2009 c732

<sup>202</sup> *ibid*

<sup>203</sup> PBC Deb 26 March 2009 c736

<sup>204</sup> PBC Deb 26 March 2009 c741, amendment 406

<sup>205</sup> PBC Deb 26 March 2009 c748, amendment 404

<sup>206</sup> *ibid*

<sup>207</sup> PBC Deb 26 March 2009 c748, amendment 370

<sup>208</sup> PBC Deb 26 March 2009 c753



concern children who: are subject to emergency protection orders or police protection; have breached a curfew notice; or are suffering or likely to suffer, significant harm.

Mr Laws explained that currently legislation did not require children to be seen separately but statutory guidance did require children's social care to conduct separate interviews with a child subject to concern.<sup>209</sup> Mr Laws stressed that seeing a child separately was central to the effective protection of children. He pointed to findings of the Serious Case Review conducted into the death Baby P, in which inspectors had raised concerns that children suspected of being abused were not properly heard or able to speak up without fear.<sup>210</sup>

The Minister acknowledged that the new clause was an important one on a matter the Government took 'very seriously'.<sup>211</sup> However, she explained that statutory guidance in the form of *Working Together to Safeguard Children* already gave local authorities and social workers the necessary powers to take appropriate action in section 47 investigations.

Mr Laws stated that it had been important to air the issue and, although the Liberal Democrats might return to it, the clause was withdrawn.<sup>212</sup>

### **c. Early Years provision: budgetary framework**

There were no Government amendments to clause 190, which provides the necessary budgetary framework for the use of a single funding formula for all early year settings. Maria Miller introduced a probing amendment [526] (subsequently withdrawn) about how the arrangements would work, and highlighted the financial problems the private, voluntary and independent (PVI) sector had experienced. Ms Miller spoke about the importance of having diverse child care provision, and moved an amendment [524] (subsequently withdrawn) to require local authorities to promote a range of different types of providers. She also argued that local authorities be required to consult PVI providers when allocating funds.<sup>213</sup>

## **I. Schools causing concern**

Clause 191 and schedule 13 make provision in England for teachers' pay and conditions warning notices. Corresponding provision is made for Wales in clause 193 and schedule 14. Clause 192 relates to the Secretary of State's powers to require LEAs in England to obtain advisory services in specified circumstances. A Government amendment [426] was made to schedule 14 to reverse a restriction that the Bill would have imposed in relation to some Welsh voluntary-aided schools that were causing concern. The Minister explained that the restriction would have prevented the diocesan or other appropriate

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<sup>209</sup> Every Child Matters, *Working Together to Safeguard Children*, 2006

<sup>210</sup> PBC Deb 26 March 2009 c892

<sup>211</sup> *ibid*

<sup>212</sup> PBC Deb 26 March 2009, c893-4

<sup>213</sup> PBC Deb 26 March 2009 c760-767

body from appointing additional governors if the LEA and Welsh Ministers had both already done so.<sup>214</sup>

David Laws expressed concern that powers would be given to the Secretary of State to intervene in local authorities without a proper basis of proof that the authorities were failing, and he questioned whether the powers will be used fairly. He moved an amendment [148] (subsequently withdrawn) to transfer responsibility from the Secretary of State to Ofsted for determining whether a local authority has a disproportionate number of low-performing schools. Jim Knight said that the Secretary of State would consult Ofsted, where necessary, but that the amendment would fetter his ability to act swiftly and effectively to support local authorities to remedy school performance.<sup>215</sup>

## **J. Complaints: England**

Clauses 194 to 209 make provision for a new school complaints scheme for parents and young people. The new complaints system will be operated by the Local Commissioner (the Local Government Ombudsman), and will be introduced as a pilot.

### **a. Government amendments**

An amendment [534] was agreed to permit the Local Commissioner to disclose information obtained during an investigation to the Parliamentary Commissioner for Administration or the Information Commissioner.<sup>216</sup> Another amendment [536] prohibits a Local Commissioner from investigating a complaint against a school where s/he is a governor, has a child who is or was a pupil within the past five years, or has worked.<sup>217</sup>

Several new clauses relating to the complaints scheme were added to the Bill. New Clause 25 ensures that statements, communications and other publications made by the Local Commissioner and other parties during investigation into a complaint cannot be used to sue for defamation. New Clause 26 places a duty on the Local Commissioner and the Parliamentary Commissioner for Administration to consult and disclose to one another when a complaint s/he is investigating may relate to a matter the other is also investigating. New Clause 27 enables the Local Government Ombudsman to make decisions about how to organise parental complaint arrangements locally.<sup>218</sup>

### **b. Significant areas of debate that did not lead to the Bill being amended**

Nick Gibb moved an amendment [72] (subsequently withdrawn) to require the Secretary of State to specify which powers and functions of a head teacher would fall within the scope of the new complaints system. Jim Knight said that this would be set out in regulations under clause 194(2), and that there will be consultation on what they might include. Another amendment [73] proposed by Mr Gibb related to complaints about the disciplining of pupils. He wanted such matters to be excluded from the remit of the

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<sup>214</sup> PBC Deb 26 March 2009 c778

<sup>215</sup> PBC Deb 26 March 2009 c771-778

<sup>216</sup> PBC Deb 26 March 2009 c798

<sup>217</sup> PBC Deb 26 March 2009 c801

<sup>218</sup> PBC Deb 26 March 2009 c797-99 and c88-90

complaints system, and pressed the amendment to a division. It was defeated by 8 votes to 3. On the issue of disciplining pupils, the Minister stressed that permanent exclusions would not come within the new complaints system but complaints about fixed-term exclusions should.<sup>219</sup>

David Laws was deeply sceptical about this part of the Bill. He favoured deleting it, and giving the powers of overseeing a complaint to the local authority. He moved an amendment [425] (subsequently withdrawn) to ensure that those making complaints would not have it held against them. The Minister said that the statutory guidance would make clear that complainants must not suffer any negative discrimination. Mr Laws was also concerned that there should be consistency in the way complaints are dealt with across different schools, including foundation schools and academies. The Minister said that there is already a robust complaints procedure for academies but that there is provision in the Bill to bring academies into the complaints scheme in the future.<sup>220</sup>

David Laws and Conservative Members expressed concern about vexatious or malicious complaints. Mr Laws moved an amendment [2] to make it explicit that the Local Commissioner could decide not to investigate on the ground that a complaint was vexatious or malicious. The amendment was negated by 8 votes to 3.<sup>221</sup>

## **K. School Inspections**

Clause 210 makes provision to defer a routine inspection and have a new light-touch interim statement where a school's performance is judged to be good or outstanding. Nick Gibb moved an amendment [79] to clause 210 to ensure that the Chief Inspector could only make an interim statement for a school that has provision for pupils with special educational needs if it has first been assessed by an inspector trained in assessing SEN. The amendment was defeated by 8 votes to 3. Mr Laws moved an amendment [150] to provide for an interim statement in respect of a non-maintained school to be sent to the LEA. The Minister said the Bill makes provision for an interim statement to be sent to the LEA in respect of a school it maintains, and in respect of a non-maintained school when it provides funding for pupils to attend the school. He added that LEAs could gain access to any other reports, as they will be published on the Ofsted website. The amendment was defeated by 8 votes to 1.<sup>222</sup>

## **L. School Support Staff Negotiating Body**

Clauses 212-228 and schedule 15 of the Bill would create a new statutory body to be known as the School Staff Negotiating Body (SSSNB). Although amendments to this part of the Bill were tabled, they were either withdrawn, not called or not selected. These clauses of the Bill and schedule 15 were therefore all agreed to without amendment.

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<sup>219</sup> PBC Deb 26 March 2009 c778-89

<sup>220</sup> PBC Deb 26 March 2009 c789-92

<sup>221</sup> PBC Deb 26 March 2009 c793-97

<sup>222</sup> PBC Deb 26 March 2009 c802-8

Nick Gibb, for the Conservatives, moved an amendment [377], which sought to add a provision into schedule 15 (2) to require equal numbers of school support staff employee organisations and school support staff employer organisations to be represented on the new negotiating body.<sup>223</sup> He said that this would “ensure that the SSSNB is not dominated by one side or the other in negotiations”.<sup>224</sup> The Minister for Schools and Learners, Jim Knight, confirmed that the body’s constitution, which will be set up by the Secretary of State, will allow organisations representing school support staff employees and employers to agree collectively the numbers who will represent each side, up to a maximum of 15 on each side. The amendment was withdrawn.<sup>225</sup>

Sharon Hodgson (Labour) moved an amendment [538] (subsequently withdrawn) which would have removed sub-clause 215(3) which allows the SSSNB to submit a matter in an agreement presented to the Secretary of State only if it has obtained prior consent from the Secretary of State to submit it. The amendment followed concern that in negotiations, issues may arise at a late stage which would need to be included in an agreement. The Minister said that he would reflect on whether clause 215(3) was necessary and, if not, would consider an amendment at Report stage.<sup>226</sup>

## **M. Behaviour-related provisions**

### **1. Powers to search pupils for prohibited items**

Clause 229 extends the powers of a member of staff to search pupils for illegal drugs, alcohol and stolen property. (The power to search for offensive weapons already exists.)

Opposition parties unsuccessfully sought to widen the scope of the clause which, they argued, was too restrictive on the items for which searches could be made. Nick Gibb moved an amendment [209] to allow the power of search where there are reasonable grounds for suspecting a pupil may have an item that may harm other pupils, staff or teachers. The amendment was negatived by 8 votes to 3. Other amendments tabled by Mr Gibb sought to insert in the clause provision for a member of staff in determining reasonable grounds for a search to have access to CCTV footage [337], and to give a power of search for any item that is prohibited by published rules of the school. David Laws agreed, and also spoke to his own similar amendment [14]. In particular Mr Laws was concerned about hard pornography being marketed or spread within a school. Responding, Sarah McCarthy-Fry explained the reasons for not having a longer list of items or a more general power. First, she wanted to ensure that any potential interference with a pupil’s rights under Article 8 of the European Convention of Human Rights was reasonable and proportionate. Secondly, alcohol, controlled drugs and stolen property were the items schools were most likely to want to search for; she said the evidence did not suggest that a power to search for pornography was needed. The Minister assured Members that it would be permissible for school staff to view CCTV

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<sup>223</sup> PBC Deb 26 March 2009 c809

<sup>224</sup> PBC Deb 26 March 2009 c809

<sup>225</sup> PBC Deb 26 March 2009 c810

<sup>226</sup> PBC Deb 26 March 2009 c813

footage to establish whether a pupil had brought a prohibited item into the school, and that this would be made clear in revised guidance.<sup>227</sup>

The conduct of searches and the safeguards provided for in the clause were discussed. Nick Gibb moved an amendment [88] (subsequently withdrawn) seeking exemptions from the requirement that the person conducting the search must be of the same sex as the pupil. He said that an exception would be necessary in small primary schools where the teachers are of one sex, and on school trips if there is no member of staff of the same sex as the pupil being searched. The Minister stressed the importance of the safeguards, and noted that the guidance on school visits says that, if a power of search is needed, the police should be called.<sup>228</sup> Amendments tabled by Conservatives and Liberal Democrats on the role of school security staff undertaking searches were discussed.<sup>229</sup>

## **2. Reporting and recording the use of force**

Clause 233 makes new provision to require the governing body of a school in England to ensure that a procedure exists for recording significant incidents where a member of staff has used force on a pupil, and for such incidents to be reported to the pupil's parents.

Nick Gibb and David Laws expressed serious concern about the provision, and spoke to a group of amendments seeking to limit the requirements placed on schools. Nick Gibb moved an amendment [86] (subsequently withdrawn) to remove the requirement on a governing body to ensure that there is a procedure to record each significant incident in which a member of staff uses force on a pupil. While acknowledging the right of parents to be informed about incidents at school, Mr Gibb stressed the need for some discretion on the part of head teachers and governing bodies in reporting an incident to parents. He referred to an example where a child may be at risk of abuse at home, and reporting the incident directly to the parent might put the child at further risk. David Laws believed that clause 233 would be counter-productive, and could lead to a great deal more bureaucracy for schools. Sarah McCarthy-Fry noted, amongst other things, that the requirement to inform parents is also subject to a wider requirement to safeguard children, and that a report to parents need not come directly from the school but in some instances could go through social services. She said that guidance will make it clear what the provisions mean in practical terms for school governing bodies.<sup>230</sup>

## **3. School behaviour partnerships**

Clause 235 places a duty on maintained secondary schools and academies to make arrangements to co-operate on promoting good pupil discipline and behaviour and improving attendance. A technical Government amendment was made.<sup>231</sup> Several amendments were moved by the opposition parties and subsequently withdrawn. Nick Gibb noted that the majority of schools are in partnerships and, while he wanted to

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<sup>227</sup> PBC Deb 26 March 2009 c820-34

<sup>228</sup> PBC Deb 26 March 2009 c839-43

<sup>229</sup> PBC Deb 26 March 2009 c843-47

<sup>230</sup> PBC Deb 26 March 2009 c848-57

<sup>231</sup> PBC Deb 26 March 2009 c873

encourage partnerships, he did not want to force schools into such arrangements. David Laws supported the Government's approach to school partnerships but did not want a great deal of bureaucracy. Mr Laws asked about extending the requirement to include Pupil Referral Units (PRUs). Sarah McCarthy-Fry said that regulations will place a duty on PRUs to co-operate in partnerships.<sup>232</sup> There was debate on the extent to which schools will be free to decide about which schools they wish to co-operate with. The Minister assured Members that the Government do not wish to prescribe the exact composition of individual partnerships. She said that schools will not be told which other schools they must work with, rather they will decide that in collaboration with schools in their area and with the local authority; but she stressed that all schools must be in partnerships. The Minister said she was sympathetic to the aims behind amendments to ensure that pupils learn in a safe, secure and well-ordered environment, and to ensure that partnerships co-operate to secure a reduction in exclusions of SEN pupils; however, she said that the issues are already addressed through existing statutory provisions or in guidance.<sup>233</sup> Mr Gibb also moved an amendment [388] (subsequently withdrawn) to require partnerships to make home-school-contacts a condition for school admission. The Minister was strongly opposed to this proposal.<sup>234</sup>

#### **4. Short-stay schools**

There was some debate on re-naming PRUs 'short stay schools', with Nick Gibb moving an amendment [97] (subsequently withdrawn) to introduce a different name.<sup>235</sup>

### **N. Miscellaneous**

Government amendments [560 and 561] and Government New Clause 28, which related to recoupment, were not selected for debate. This was a consequence of the proceedings on the Bill being completed before the programmed sitting on 31 March 2009.<sup>236</sup>

There were a few Government technical and drafting amendments made to the general provisions relating to orders and regulations, repeals and revocations and commencement. A couple of these relate to Wales.<sup>237</sup>

In relation to clause 237 (on information about local authority expenditure), Nick Gibb moved a probing amendment [78] (subsequently withdrawn) to debate the building design of schools under the Building Schools for the Future programme. The issue of the acoustic quality of new schools buildings was raised, and there was also a more general discussion about funding for special educational needs.<sup>238</sup>

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<sup>232</sup> PBC Deb 26 March 2009 c857-62

<sup>233</sup> PBC Deb 26 March 2009 c866-73

<sup>234</sup> PBC Deb 26 March 2009 c871-73

<sup>235</sup> PBC Deb 26 March 2009 c873-76

<sup>236</sup> PBC Deb 26 March 2009 c880-1

<sup>237</sup> PBC Deb 26 March 2009 c881

<sup>238</sup> PBC Deb 26 March 2009 c876-80

David Laws proposed New Clause 1 (subsequently withdrawn) to give young people in sixth-forms or further education colleges access to free lunches on the same basis as in the schools sector.<sup>239</sup>

## **IV Appendix: Members of the Public Bill Committee**

Chairmen: Mr. Christopher Chope, Mrs. Joan Humble

Blackman, Liz (Erewash) (Lab)  
 Brooke, Annette (Mid-Dorset and North Poole) (LD)  
 Butler, Ms Dawn (Brent, South) (Lab)  
 Creagh, Mary (Wakefield) (Lab)  
 Ennis, Jeff (Barnsley, East and Mexborough) (Lab)  
 Gibb, Mr. Nick (Bognor Regis and Littlehampton) (Con)  
 Hayes, Mr. John (South Holland and The Deepings) (Con)  
 Hodgson, Mrs. Sharon (Gateshead, East and Washington, West) (Lab)  
 Knight, Jim (Minister for Schools and Learners)  
 Laws, Mr. David (Yeovil) (LD)  
 McCarthy-Fry, Sarah (Parliamentary Under-Secretary of State for Children, Schools and Families)  
 Miller, Mrs. Maria (Basingstoke) (Con)  
 Seabeck, Alison (Plymouth, Devonport) (Lab)  
 Sharma, Mr. Virendra (Ealing, Southall) (Lab)  
 Simon, Mr. Siôn (Parliamentary Under-Secretary of State for Innovation, Universities and Skills)  
 Stuart, Mr. Graham (Beverley and Holderness) (Con)  
 Thornberry, Emily (Islington, South and Finsbury) (Lab)  
 Walker, Mr. Charles (Bromley) (Con)  
 Wiggin, Bill (Leominster) (Con)  
 Williams, Stephen (Bristol, West) (LD)

Committee Clerks: Chris Shaw, James Davies

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<sup>239</sup> PBC Deb 26 March 2009 c882-86