PARLIAMENTARY DEBATES

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Public Bill Committee

EDUCATION BILL

Twenty-first Sitting

Tuesday 5 April 2011

(Morning)

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Saturday 9 April 2011

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: †Mr Charles Walker, Hywel Williams

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

Sarah Thatcher, Richard Ward, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 5 April 2011

(Morning)

[Mr Charles Walker *in the Chair*]

Education Bill

Written evidence to be reported to the House

E 112 SCORE

E 113 Anne M Chew

E 114 Calderdale Council's Children and Young People Scrutiny Panel

E 115 The Independent Schools Council (ISC)

E 116 Stonewall

E 117 The Education Law Practitioners' Group

E 118 Department for Education [Clauses 8 and 9]

E 119 Office of the Children's Commissioner

E 120 Vernon Riley

E 121 CASE (Campaign for State Education)

E 122 Open University

Clause 52

Consequential amendments: 16 to 19 Academies and alternative provision Academies

9 am

Mr Iain Wright (Hartlepool) (Lab): I beg to move amendment 198, in clause 52, page 43, line 3, at beginning insert—

'(A1) The Secretary of State must by regulations ensure the periodic inspection by the Chief Inspector of 16 to 19 Academies and Alternative provision Academies.'.

Good morning and welcome back to the Committee's deliberations, Mr Walker. It is customary—with your permission and leniency—for me in this Committee to wish members of my family a happy birthday. May I deviate slightly and wish my hon. Friend the Member for Walthamstow a happy birthday? I hope that she has a very good day, and I cannot think of a better present for her than to sit in Committee with all of us for seven hours thinking about the Bill.

Amendment 198 requires an inspection of the new types of academies. What are the Minister's intentions about the Ofsted inspection regime for those new academies? In particular, might any of them immediately fall into the new inspection category of exempt institutions, which he will recall that we discussed under clauses 39 and 41? If so, what safeguards are in place to ensure that quality is unaffected by the conversion to academy status? I hope that the Minister will respond to my concerns.

The Minister of State, Department for Education (Mr Nick Gibb): Welcome to our penultimate sitting on our final day, Mr Walker.

I am sympathetic to the concerns of the hon. Member for Hartlepool that the new types of academy that the Bill will create should be inspected by Ofsted. I am pleased to be able to reassure him that it has always been our intention that the two new types of academy will be inspected. We intend to use the delegated power in clause 52(2) to make the necessary legal provision.

For alternative provision academies, the situation is not entirely straightforward. Pupil referral units are inspected by Ofsted, but some alternative providers are not inspected due to their legal status or small size. Only those providers that have at least five full-time pupils on roll are required to be registered as an independent school and so inspected by Ofsted. In 2010, Ofsted was commissioned to review and report on whether all non-pupil referral unit alternative provision—that is, voluntary and private providers—should and could be inspected. Ofsted is due to report its findings this spring. In any case, I reassure hon. Members that we will ensure alternative provision academies are inspected in line with the position in the maintained sector, but we want to do so in the light of Ofsted's findings.

As I set out in the policy statement that I circulated on last Wednesday—at 12.4 pm—and as I explained to hon. Members in our debate on Thursday on amendments to clause 51, I intend to provide the House with further detail on the consequential changes that we will make under clauses 51 and 52 at a later stage in the passage of the Bill.

The hon. Gentleman raised the issue of exemptions. If free schools are established, they will be inspected. As newly established free schools, they will not have been expected, so they will not be exempt. I hope that, with those few words, the hon. Gentleman will withdraw his amendment.

Mr Wright: I thank the Minister for his response. He has provided a degree of reassurance. I look forward to the imminent publication of Ofsted's review. On that note, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Wright: I beg to move amendment 197, in clause 52, page 43, leave out lines 5 to 11.

The amendment would remove the Henry VIII power. As the Minister will appreciate, in legislation such power should always be used sparingly and only in unavoidable and exceptional circumstances. If the amendment were not accepted, will the hon. Gentleman inform us what use the Government will make of the provisions? When does he anticipate such power being used? Our proposal is a probing amendment, and I hope he will be able to provide us with some reassurance.

Mr Gibb: I understand the hon. Gentleman's desire to scrutinise closely the intentions behind the clause, and I hope that he will have found helpful the policy statement that I circulated last week. I wish to reassure him and members of the Committee that the power relates only to changes to legislation that are consequential to the creation of 16 to 19 and alternative provision academies. It will be used to make provision for what

existing legislation is to apply, or not as appropriate, to each of the new types of academy. How the new educational institutions will fit into the existing legal framework is complex. We shall have to consider legislation relating to maintained schools, independent schools, sixth-form colleges, pupil referral units, schools generally and academies, which is why we need additional time to ensure that we get matters right.

The concerns expressed by the hon. Gentleman about the element of power that we are taking under the clause, to which he refers correctly as a Henry VIII clause, to enable us to amend primary legislation are entirely proper. To raise such concerns is something that I did when in opposition, too. It is only with reluctance that we have put such provisions in the Bill. However, I hope that such fears are allayed by the fact that we have made the exercise of the power subject to the affirmative procedure so that both Houses would be required to debate the specific proposals when they are brought forward.

As I said in Committee on Thursday, we are working on the consequential amendments and I will be happy in response to the worries raised by the hon. Gentleman to provide more detail of our proposals later during the passage of the Bill through the House. With those reassurances, I hope that the hon. Gentleman will withdraw the amendment.

Mr Wright: The Minister's tone was very helpful and reassuring. The policy statement that he provided last week was helpful by putting on the record his intentions. His willingness to make sure that the affirmative procedure is used with regard to such aspects of the Bill is positive and welcome. I look forward to hearing further details as the Bill progresses through the House and, based on what he has said, I am reassured by his determination to make sure that the power will be limited to the specific aspect to which he referred. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 52 ordered to stand part of the Bill.

Schedule 12 agreed to.

Clause 53

ACADEMY ORDERS: INVOLVEMENT OF RELIGIOUS BODIES ETC

Question proposed that the clause stand part of the Bill.

Kevin Brennan (Cardiff West) (Lab): I apologise for correcting your pronunciation of the word "schedule", Mr Walker. It might help H*ansard* if I explain that the way to remember it is that the British love a shed, and that to pronounce it the other way is an Americanism.

The Minister for Further Education, Skills and Lifelong Learning (Mr John Hayes): Presumably, on that basis, the Americans love a sked, whatever that is.

Kevin Brennan: I am not sure about that. Mr Walker, it is good to have you back in the Chair on this last day of our proceedings in Committee, before we take what we might call a pause at the end of the Committee stage. I do not know about you, Mr Walker, but often when I pause something I want to rewind a little, and perhaps that is what the Government should do with this Bill, as well as with the Health and Social Reform Bill.

Clause 53 states:

"Before making an Academy order…in respect of a foundation or voluntary school that has a foundation, the Secretary of State must consult—

(a) the trustees of the school,

(b) the person or persons by whom the foundation governors are appointed, and

(c) in the case of a school which has a religious character, the appropriate religious body."

The clause also requires similar consultation in respect of any decision by the Secretary of State not to grant an academy order. As we are having a clause stand part debate, will the Minister explain to us the purpose of the clause?

Mr Gibb: I am happy to do that. Clause 53 amends the Academies Act 2010 so that in the case of a foundation or voluntary school with a foundation that is underperforming and eligible for intervention, the Secretary of State will not issue an academy order unless he has consulted the appropriate religious body, in the case of schools designated with a religious character, along with the trustees and any person who appoints foundation governors in the case of any foundation or voluntary school. The Government recognise the enormous contribution that different religions have made to the education of children in this country. We believe that it is important that religious bodies such as the diocesan authorities are aware of concerns in relation to any of their schools that are consistently underperforming.

It will also be important and of course valuable to seek the trustees' and religious authorities' views on the best way to improve the schools, including whether an academy conversion is the right solution. In many cases, such bodies will have made a significant investment in the school—for example, by the provision of land and buildings—and it is therefore right that this investment and partnership in the provision of education is recognised and reflected in our processes. In many cases, the religious authority will own the land on which the school sits, and consultation and co-operation will therefore already be necessary if conversion is to be successful. We recognise that in all cases intervention will work best if it is done in collaboration, which is what the clause aims to reflect.

The clause also ensures that whenever the Secretary of State issues an academy order in respect of a foundation or voluntary school that has a foundation, he must give a copy of the order to the trustees of the school, the person appointing the foundation governors and, in the case of schools with religious character, the appropriate religious body. If the Secretary of State decides not to make an academy order following an application by any of those schools, he will also have to inform those parties of his decision and the reasons for it.

Good communication between trustees, religious authorities and the Government in respect of the schools is vital, which is why the clause ensures that those bodies receive notice of any academy orders that have been made for applications for conversion that have been rejected. It also allows diocesan boards of education and other religious authorities to continue to keep an informed strategic view across all their schools.

Question put and agreed to.

Clause 53 accordingly ordered to stand part of the Bill.

Clause 54

ACADEMIES: CONSULTATION ON CONVERSION

Kevin Brennan: I beg to move amendment 218, in clause 54, page 44, line 20, leave out

'is converted into an Academy'

and insert

'applies for an Academy Order'.

The Chair: With this it will be convenient to discuss amendment 219, in clause 54, page 44, leave out lines 23 to 25.

Kevin Brennan: The amendments seek to ensure that there is proper consultation prior to the application by a school to become an academy. As it stands, the clause would allow a school to convert to an academy without consulting the pupils' parents, the local authority or other interested local groups. The NASUWT told us:

"these provisions enable parents, the local community and the publicly accountable local authority to be omitted entirely from the process of decision making to convert to an academy or to establish a free school."

We need to understand the Minister's thinking in introducing the clause. Does he not think that consultation with parents and local bodies is not only desirable, but crucial to making decisions that best reflect local needs? If he does not think it crucial, how will the Secretary of State be sufficiently well informed to make a right, proper, fair and reasonable decision when he grants an academy order?

Will the Minister explain why he is excluding parents? Again, their rights are being ignored in the Bill. They are being deprived of a voice in a crucial decision that affects their child. Is he concerned that local consultation might result in the opinion that a school should not convert to academy status?

9.15 am

The NUT told us:

"it is entirely illogical that consultation may take place after the Academy order has been made. Such an exercise would be wholly cynical and not 'consultation' in any meaningful and genuine sense of the word, but rather 'information' after the event."

Given that some kind of consultation is required before a school enters into academy arrangements, how does the Schools Minister define the minimum level? With whom should the minimum level of consultation take place? For example, would it count as consultation under the provisions if a chair of governors spoke to a head teacher about plans while holding the pen in their hand to sign the academy agreement?

Again, the NUT told us that the clause

"contains an unwelcome and curious provision which would permit a proposed Academy provider, who clearly has a vested interest in the outcome, to carry out the consultation on conversion to academy status."

What will the Minister do to mitigate those risks?

There are some serious concerns about the Government's general attitude towards consultation, particularly with teachers, who are the employees of schools. That was highlighted in a letter that the Minister's colleague, Lord Hill—another Education Minister—sent out before Christmas. He wrote to head teachers to warn about what would happen if they decided that, in their professional judgment, it would be a good idea and in the best interest of their school community to honour the national terms and conditions of members of staff on converting to academy status. He wrote:

"The existence of any such agreement will be a significant factor in the assessment the Secretary of State will make before deciding whether or not to enter into a funding agreement for an Academy."

So much for head teachers' professional freedom; they may think that something is in the best interests of their school, but then they get a warning shot across their bows from Lord Hill, who says that if they have that kind of relationship with their local staff, they can pretty much forget any application for academy status in the current round.

Richard Fuller (Bedford) (Con): The hon. Gentleman makes some interesting points about teachers' participation in decisions to convert to an academy. We heard in the evidence sessions from the head of the NASUWT, Chris Keates, who felt that it was entirely appropriate for her member teachers to strike as part of the process of an academy conversion. Does the hon. Gentleman agree with that suggestion?

Kevin Brennan: Whether people carry out industrial action is a matter for them. Generally, it is not a good idea for teachers to go on strike for the obvious reason—the impact that has on pupils. The hon. Gentleman should understand, however, that if he were experiencing a change that could significantly affect his pay and conditions, he would be very interested in the outcome, and he would want to discuss it.

My point is that the Minister, Lord Hill, took the trouble to write to all head teachers. Believe it or not, that is something that a Minister cannot just do. There is a presumption in the Department against sending stuff out to head teachers. There was when I was a Minister there, and I am sure there still is. We do not want to burden head teachers with lots of letters and e-mails. There is a presumption in situ against doing that. Lord Hill took the trouble to breach that presumption and wrote to head teachers—people who are trusted to make their own professional judgment—to say "Do not, if it is your local choice to apply for academy status, under any circumstances enter into an agreement to honour national pay and conditions, because we will consider that a mark against you in the decision-making process." It is a blot in a head teacher's copy book if they decide to do that. At that moment, the Government's mask slipped, and we saw how they regard professionals, including head teachers.

Returning to the amendments, there is serious concern about the Government's attitude to consultation. There is the question of what the Government regard as the desirable minimum level of consultation. Does the minimum level include consulting parents? Does it include consulting other local interests, including a democratically elected local body? Perhaps the Minister can give us some clarity on that.

Mr Gibb: Clause 54 amends section 5 of the Academies Act 2010 to ensure that where a school is eligible for intervention, the consultation on becoming an academy

can be carried out by people with whom the Secretary of State proposes to enter into academy arrangements, as an alternative to the school's governing body. Consultation is facilitated in those circumstances.

Amendments 218 and 219 seek to achieve the same end: their aim is to ensure that consultation takes place before an application for an academy order is made, whereas currently consultation can take place at any point prior to conversion, either before or after the order, or the application for the order, is made. Members of the Committee will remember that we had significant debate about consultation in both Houses during the passage of the Academies Bill. I think that both the Government and the Opposition are agreed that a thorough, open and fair consultation is important; where we may differ is on our approaches to how that consultation should be captured in legislation and carried out in practice.

As we said during the passage of the Academies Bill—this is still our position—schools are in the best position to determine when and how that consultation should take place. Having the flexibility to consult before or after an academy order, or an application for an order, is made allows each school to determine when it has sufficient information on which to consult, and at what point during the process it wants to do so. We do not think that it is necessary to require consultation before applying for an academy order. Academy orders are simply a procedural milestone that make it possible for the Secretary of State to sign academy arrangements; they do not require that he goes on to do so. Consultation is important before a school becomes an academy, but a school becomes an academy when the funding agreement comes into effect, rather than when the academy order is issued. I hope I have reassured the hon. Member for Cardiff West on that issue.

The hon. Gentleman asked why parents are not included in the list of consultees. Parents are not excluded from those who should be consulted. We expect schools to consult them as a matter of course. We do not want to be prescriptive about who should be on the list. We want the consultation to be meaningful and to include all those who have an interest. Once we have a list of the groups that we think should be consulted, however, it raises the question of why other groups are not included. If the consultation is not appropriate, the Secretary of State will not allow conversion.

Kevin Brennan: Will the Minister outline the circumstances in which it would not be appropriate to consult parents?

Mr Gibb: It is not for me to come up with such scenarios. As I said, I would expect parents to be consulted. The point is that if we start to list all the people whom we expect to be consulted, or if we list just parents and not other residents or groups that may have an interest, people will ask, "Why have those groups been omitted?" The important point is that the school determines whom it thinks it is appropriate to consult. The Secretary of State will look at the consultation process, and if he feels that it was not appropriate or adequate, he will simply not allow the conversion.

Kevin Brennan: The Minister cannot give us an example of when it would not be appropriate to consult parents, and he says that he would expect parents to be consulted. That is a pretty clear statement on the record, and it means that if parents are not consulted, the consultation may be challenged legally.

Mr Gibb: I would expect that to be the case anyway. What we are resisting in Committee today is the concept of establishing in legislation a list of who should be consulted. The moment we put a single group anywhere in the Bill or in regulations, we prompt the question of who is omitted, which will cause greater problems.

Richard Fuller: I appreciate the Minister giving way. I urge him not to listen to the Siren voices from the Opposition Benches that wish him to put in a list of potential consultees. We are all aware of the previous Government's understanding of what consultation meant —a thin veneer of supposed democratic accountability for decisions already made by bureaucracy. We are also aware that consultation can often be used by those who wish to impede the opportunity for people to set up a free school or an academy in their local community. If the Minister were to listen to those Siren voices and doled out a list of people who should be consulted, it would give ammunition to those who wished to stop the advance of educational opportunity for people in our country.

Mr Gibb: My hon. Friend makes the point better than I could have done, so I am grateful to him for putting those comments on the record. I think I have covered all the points raised by the hon. Member for Cardiff West, and on that basis, I urge him to withdraw the amendment.

Kevin Brennan: I am conscious that we will come to the issue of parents in a later amendment, so I will not press the amendment to a vote. I will reflect on what the Minister said about the amendment, but I put on record that we remain extremely concerned about the Government's attitude towards consultation; the hon. Member for Bedford sums up that attitude by saying that consultation is just another form of bureaucracy, rather than a form of democratic accountability. That is an unfortunate attitude, and one that will come back and bite the Government.

Richard Fuller: I appreciate the hon. Gentleman giving way, and his parody of what I said. I was trying to make two points. First, under the previous Government, consultations too often turned into precisely what he was saying. Many of us feel that that was the case. Secondly, we want consultation to be meaningful, and not to be an impediment to progress. The Minister's approach provides the flexibility to ensure that we get the best of both worlds.

Kevin Brennan: To coin a phrase, I think that that is just a thin veneer over the attitude that lies underneath, which is currently causing great problems for the Government on the issue of health; they believe that they can get away with bringing about major changes without proper consultation. Consultation is there not to put bureaucratic stones in the road, but to ensure that when reforms are brought in, there is if not complete consent, then an opportunity for everyone to express their view, and indeed occasionally enlighten the Government about the consequences of their reforms.

[Kevin Brennan]

I think the Government will learn that, once they have gone on a bit; indeed, they are currently learning it to their cost elsewhere, and may do so during the Bill's proceedings. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

9.30 am

Kevin Brennan: I beg to move amendment 220, in clause 54, page 44, line 29, at end insert—'(aa) the local authority, or'.

The amendment is intended to ensure a role for local democracy in the form of the local council—I am looking at our Liberal Democrat colleagues, who are sitting in their little huddle, to see if that wakes them up a bit. It is about whether local authorities should have a role in our education system in the future. The amendment would ensure that the relevant local authority is able to consult before the conversion of a school that is eligible for intervention—a failing school—into an academy.

As was previously argued under clause 43, the Bill will lead to more schools being eligible for intervention and therefore to more schools being converted to academies. The local authority is responsible under part 4 of the Education and Inspections Act 2006 for various intervention measures, so it should have a duty to consult. As the clause stands, a school's governing body must consult those that it thinks appropriate on the question of whether the school should convert into an academy. The amendment would also enable local authorities to consult those that it thinks are appropriate, and for the results to be considered in making the decision on whether the school should convert. It would open up the consultation to wider voices based on the local authority, which is the locally elected and democratically accountable body. I want to hear what the Minister's thoughts are on the amendment and on the role of local authorities.

Mr Graham Stuart (Beverley and Holderness) (Con): I want to raise the issue of selection in grammar schools that convert to academies. On 21 July 2010, the hon. Member for Altrincham and Sale West (Mr Brady) and the Minister debated the provisions of the then Academies Bill on the selection process of grammar schools choosing to become academies. I was pleased to note that, during that debate, the Minister made it clear that any grammar school that transferred to academy status would not be able to change its admissions policy under the terms of the funding agreement, without the support of a parental ballot. In some ways, it is an irony that parental ballots, which were so often seen as an enemy of grammar schools, turned out to be a protection. That goes to show how often provisions have unforeseen consequences and ones that were little envisaged by those who put them forward for legislation and raised them elsewhere.

Will the Minister please confirm that that is still the plan? Will he tell the Committee what steps have been taken to include protections in the funding agreements for new academies? Will he also provide any additional details on what protections will be put in place for grammar schools that become academies in future? If it is necessary and helpful, I will extend my remarks, but I think that the Minister is fully au fait with the issues, so I am happy to sit down and to hear from him.

Mr Gibb: Amendment 220, moved by the hon. Member for Cardiff West, seeks to add the local authority to the people who, under the clause, may consult on whether a maintained school that is eligible for intervention should be converted to academy status. We are all in agreement on the importance of requiring a school to consult before it converts. That consultation will usually be carried out by the governing body. Clause 54 addresses the need for an alternative option for a consultation where a school is eligible for intervention. In these underperforming schools, an academy solution may be proposed to turn the school's performance around and we would not want governing bodies to be able to frustrate such a school improvement proposal by failing or refusing to consult. Clause 54 addresses this issue by ensuring that a consultation is still carried out, but that it can be alternatively conducted by the person entering the academy arrangements for the Secretary of State; in other words, the proposed sponsor. It seems logical that this alternative consultation duty should fall to the proposed sponsor. The sponsor will be heavily involved in a school's potential future direction and it seems right that they should consult on the plans that they have proposed to turn a school around.

The amendment to include the local authority as an alternative body which can consult seems unnecessary. The conversion of a school to academy status provides schools with autonomy to raise standards and, in the case of underperforming schools, it is integral that a strong sponsor is put in place to ensure that these freedoms are used effectively to ensure improvement. Given the vital role that the sponsor will play in a sponsored academy, it seems right that the alternative consultation duty falls on the sponsor and not on the local authority, especially given that the consultation will be on a proposal to move the school from local authority control. As I have set out, it is important that we have an alternative to governing body consultation where a school is eligible for intervention so that the governing body cannot alone frustrate proposals to turn the school around. I am convinced, however, that the Secretary of State's proposed sponsor is the best person to carry out this alternative consultation.

I turn to the intervention of my hon. Friend the Member for Beverley and Holderness regarding the exchange that took place between me and my hon. Friend the Member for Altrincham and Sale West during the passage of the Academies Act about grammar schools and grammar school ballots. The funding agreements of wholly selective grammar schools that convert to academies contain provisions which reflect the parental ballot system which applies if a grammar school is within the maintained sector and that has now been put into model funding agreements. I hope that that will reassure my hon. Friend that the commitments given during the passage of the Academies Act have been fulfilled.

Mr Stuart: During that exchange the Minister said,

"we will include the provisions in the funding agreements of academies".

He has confirmed now that that has taken place. He went on to say:

"That will provide strong protection—as strong, in effect, as it would be if the measures were on the statute book.—[*Official Report*, 21 July 2010; Vol. 514, c. 462.]

Is that the case? What if another Government were to come to power that was less sympathetic on these issues? What would be the obstacles in the way of their changing the funding agreement and what real protections do we have compared to something put in a Bill such as the one we are debating here today?

Mr Gibb: Of course, a contractual agreement between the Secretary of State and an academy trust would be binding on future Governments. There is nothing to stop a future Government changing the model funding agreements and taking out such provisions. There would also be nothing to stop a future Government, particularly one peopled by Opposition Members, from abolishing selection altogether, but when a Labour Government was elected in 1997 that was a decision that they did not take. The 1998 Act prevented further extensions of selection, but it did not remove selection from the existing 164 grammar schools. That would be a political decision for a future Government and, of course, my hon. Friend is aware of the parliamentary convention that an existing Parliament cannot bind future Parliaments—they are sovereign to do what they wish, so long as they have the backing of the public to do it. There is a limit to what we can do to protect grammar schools from the vicissitudes of politics in generations to come, but I think that a binding contract between a Secretary of State and an academy trust is a very good protection.

The Chair: Order. The debate is ranging extremely widely now. Can we move on?

Mr Stuart: I am extremely grateful to the Minister for that response. It still seems to me that, judging by the record so far of the new leader of the Labour Party and their reversion to the left, the reality recognised by the incoming Labour Government in 1997 is unlikely to be repeated were a Labour Government to be elected in future. Therefore it seems to me that every possible barrier should be put in the way. Putting something on the statute book would at least provide a clearer hurdle than being able to change funding agreements As we know, Governments can apply pressure through funding agreements. Will the Minister consider whether clause 54 could provide protection in the statute book and on the face of the Bill?

The Chair: Order. Minister, we have ranged widely. Could you confine your response to the amendment we are debating?

Mr Gibb: Very well, Mr Walker. I believe that contractual arrangements are more difficult to change than legislation from a Government that has an overall majority. I have addressed all the comments raised by hon. Members and I hope, therefore, that the hon. Member for Cardiff West will withdraw his amendment.

Kevin Brennan: I am not entirely satisfied that the Minister understands why local authorities need to be involved with this. However, it is also subject to the next group of amendments, so with the permission of the Committee I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 221, in clause 54, page 44, line 36, at end insert

'including parents of registered pupils, registered pupils, school staff and the local authority.'

The Chair: With this it will be convenient to discuss amendment 226, in clause 57, page 46, line 41, at end insert

'but must include parents of registered pupils, registered pupils, staff of schools in the area of the proposed new educational institution and the local authority.'

Kevin Brennan: Amendment 221 concerns the issue of consultation. I will avoid repetition as much as possible, though it covers some of the ground we have already discussed.

The purpose of the amendment is to ensure that proper consultation takes place before a school governing body applies to become an academy. This clause should be improved, as a minimum, by requiring consultation with families, staff, pupils and the relevant local authority. The Minister admitted earlier that he would expect parents to be consulted before a school converted to an academy, although his conviction was not zealous enough for him to think that that should form part of the Bill.

Staff, pupils and the families of pupils have a manifest interest in the nature and future of their school. The local authority, which has important statutory responsibilities for the education of children in its area, and a much greater knowledge of local conditions than the Secretary of State, should also be consulted. It makes sense for it to be consulted before the Secretary of State makes his decision, rather than relying on the reports of civil servants. What further assurances can the Minister give the Committee about the nature of the consultation that will be required?

The Government's "Coalition Programme for Government" states:

"We will promote decentralisation and democratic engagement, and we will end the era of top-down government by giving new powers to local councils,"—

it is not happening here, I am afraid—

"communities, neighbourhoods and individuals."

Well, how about it? How about some power for councils, communities, neighbourhoods and individuals in this Bill, instead of powers being given only to the governing body and to head teachers? There is a broader interest in the future of a school in an area. Will the Minister respond to the amendment, perhaps by putting on the record that he will expect not only parents to be consulted, but also, for example, the democratically elected local council? There could also be consultation with school staff, rather than threatening letters to head teachers about discussing pay and conditions with staff. What does he have to say about that?

9.45 am

Mr Gibb: The amendments list specific categories of people who must be consulted, such as

"parents of registered pupils, registered pupils, school staff and the local authority"

of the school concerned in a conversion and "parents of registered pupils" and "staff of the school" within the relevant area of a new or expanded provision. We agree that it is important to consult such groups, but specifying

[Mr Gibb]

them in legislation would be only the start of putting in place a prescriptive list. It is hard to encompass all groups that might need to be consulted and, in the end, a prescriptive list might stifle a wider consultation that the governing body would otherwise have carried out.

Stella Creasy (Walthamstow) (Lab/Co-op) *rose—*

Mr Gibb: Before I give way to the hon. Lady, may I wish her a happy birthday? I hope for her sake that she is still in her 20s.

Stella Creasy: That is just one of the many things about which the Minister is wrong. I thank him for his birthday wishes, and I hope that the rule "If it is your birthday, your amendments get accepted" will hold true.

Why does the Minister believe that such groups should not have a right to representation? To make sure that they are involved is another way to ensure that they will always be consulted. The amendments would not preclude including a broader group of people, but we would ensure that such people had a right to representation in consultations.

Mr Gibb: I am putting forward the same argument. I am not saying that the consultation of people such as parents, pupils and staff is not important. In most cases, a consultation could not be deemed reasonable if it did not involve those who would be most affected by academy conversion. We are trying to resist having a prescriptive list because, inevitably, it would miss out some groups that, in certain circumstances, might be more important or as important as the groups that the hon. Lady wants listed under the Bill. That is why we will not accept the amendments and why we are resisting the concept of prescribing in detail who should be consulted. On that basis, I urge the hon. Member for Cardiff West to withdraw the amendment.

Kevin Brennan: Under our proposal, the list would be not prescriptive but inclusive. Such groups should definitely be consulted, but if it was appropriate to consult the unspecified groups to which the Minister referred, the amendments would not proscribe that. They would not prevent schools from consulting others. All we are saying is that we want to make things absolutely clear in the Bill—not with a nod and wink in Committee. We want everyone to understand that parents, students, staff and local democratically elected council members—they are all the people who anyone reading the coalition agreement would think should be consulted—will be consulted during a conversion.

The Government's position is curious because at times the Minister says that he does not want to prescribe things, yet I read in *The Daily Telegraph* today that pupils are being told to do up their top button and tie, so he can micro-manage by being as prescriptive as that. He should, however, encourage his Parliamentary Private Secretary to practice such behaviour sometimes, because he can often be seen, in his louche way, lounging around the precincts of the Palace of Westminster wearing no tie at all. I hope that the Minister will prescribe the appropriate dress.

There is an odd mixture under the Bill. It is pretty obvious to most people that we should consult parents, people working and studying in a school, and the people elected by the local community to represent them who have specific duties in respect of the school, but the Minister is not willing to prescribe such people under the Bill, although he will prescribe that school pupils should do up their top button and tie despite the fact that he finds it impossible to enforce such behaviour on his PPS. Our case has not been met by the Government, so I shall press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 21]

AYES

Brennan, Kevin	Hendrick, Mark
Creasy, Stella	Munn, Meg
Durkan, Mark	
Glass, Pat	Wright, Mr Iain

NOES

Boles, Nick	Hayes, Mr John
Duddridge, James	McPartland, Stephen
Fuller, Richard	Munt, Tessa
Gibb, Mr Nick	Rogerson, Dan
Gyimah, Mr Sam	Stuart, Mr Graham

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Kevin Brennan: I simply wish to put on record that the clause is yet another example of the Government trying to deny parents their rights when important decisions are taken about their children's education. If we tot them up at the end of our proceedings in Committee, we will find that the number of ways in which the Government are undermining parents' rights in the Bill will be quite significant.

Mr Gibb: Schools are always asked to provide evidence of the consultation that they carry out on their proposals to convert. If officials or Ministers have real concerns about such consultation, including if it is thought that a school unreasonably fails to consult directly affected groups such as staff or parents, they would have the opportunity to question that before an academy conversion was approved. Parents are key to the success of an academy after conversion because they are the people who will decide whether to send their children to the academy, so it is of course in the interests of an academy to consult prior to conversion.

As for the hon. Gentleman's other point, we are not prescribing in legislation that children should do up their top buttons. I have tried unsuccessfully to persuade my hon. Friend the Member for Grantham and Stamford to do up his top button, but I understand that the peer pressure on him is so great that he feels the need to conform to current trends.

Question put and agreed to.

Clause 54 accordingly ordered to stand part of the Bill.

Clause 55

ACADEMY CONVERSIONS: FEDERATED SCHOOLS

Kevin Brennan: I beg to move amendment 222, in clause 55, page 45, line 7, after 'regulations', insert
'but in any event is not less than half'.

The clause will allow schools that are part of a federation to become academies and for an academy order to be made even though a school remains part of the federation, and even though the whole federated governing body for the schools in the federation may be against that application. The amendment is designed to probe Ministers on the level of support required in a federation governing body before academy arrangements can be entered into. It would amend the clause so that no academy order should be made unless and until not less than half the governing body for the federated schools votes in favour of the proposal.

The White Paper said:

"we will…ensure that there is support for schools increasingly to collaborate through Academy chains and multi-school trusts and federations."

The clause as it stands could give rise to a situation in which the whole federated governing body for the schools in the federation was against the application by one of the schools in the federation, but the Secretary of State could grant an academy order. Does the Minister believe that that might harm the trust and co-operation among schools, which should be the basis of any federation? A school that is part of a federation may use the provisions in the School Governance (Federations) (England) Regulations 2007 to leave the federation and thereafter apply to become an academy, so why is it necessary for the Minister to do what he is putting in place in the Bill? I will be grateful if he will enlighten us on those points.

Mr Gibb: Clause 55 will amend the Academies Act 2010 to enable a federated school to convert to academy status without requiring the agreement of the whole federated governing body. The amendment would require that at least half a federated governing body decided to apply for an academy order on behalf of a single school within a federation that wanted to convert to academy status.

We have already had the opportunity in Committee to discuss the impressive record of the academies programme, which has proved to be a genuine revolution in raising standards in schools throughout the country. I am proud of this Government's work to extend the programme. As of 1 March, we have received 638 formal applications from schools wanting to convert, with more applications coming in every week. However, conversion to academy status is a significant step that should not be taken lightly. The hon. Member for Cardiff West is therefore rightly concerned that there should be proper consideration and that the decision-making process has appropriate rigour. We share that concern, which is why officials, Ministers and the Secretary of State will look particularly closely at the consultation that has taken place on such schools. However, we also wish to ensure that every eligible school has the opportunity to convert to become an academy.

At the moment, if one or more, but not all, of the schools in a federation wished to convert, a majority of all of the federation governors would need to agree to the conversion. In addition—and before the conversion—the school would need to go through a statutory process to leave the federation, and the local authority would have to set the school up with a new temporary governing body and new instruments of government. That process is unnecessarily bureaucratic, and it might result in schools that are willing and able to convert being unable to do so because of the contrary views of other schools in the federation. The changes in the Bill and subsequent regulations have the purpose of remedying that situation and to allow a group of governors representing a particular school to apply for academy status even if other schools do not wish to do so. We believe that school leaders recognise that federations work only with willing partners, and while we want to enable conversion of single federated schools through the clause, whatever the circumstances, we also believe that in many cases a majority of the full federation would be likely to support the conversion of a single school within it.

I circulated a policy statement last Wednesday setting out the detail of our proposals, but I will summarise them now. We propose to amend regulations so that the proportion of governors required to make a decision is proportionate to the number of schools in a federation. The group of governors would need to comprise at least three members, and it would also need to include at least half the governors who represent the school that wishes to leave the federation. By that we mean parent governors elected to represent the particular school, foundation governors appointed for that school, staff governors working at that school and the school's head teacher, when he is a governor. That means that for a federation of two schools, at least half the federated governing body would be required to approve the application to convert, while for a federation of three schools, at least a third would be required and so on. Prescribing a minimum without taking into account the number of schools in a federation does not seem appropriate, which is why the Government have proposed this proportionate approach. It would not be the first time that an exception to the usual majority decision-making approach has been made in legislation. The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 enable a decision to remove a school's foundation in certain specified circumstances to be made, in effect, by a minority of the governing body.

10 am

We want to help as many schools as possible to have access to the increased freedoms that come with academy status, but we also want it to be up to schools to decide for themselves. The provision supports the expansion of the academies programme by making the process for federated schools to convert to academy status easier so that more schools can benefit from academy freedoms.

I hope that I have answered the hon. Gentleman's points and that he will therefore feel able to withdraw the amendment.

Kevin Brennan: I thank the Minister for his reply and for his note on the issue to which he referred.

I have a feeling that there could be occasions when the provision as set out in the Minister's note and the Bill might be a source of ill-feeling locally if one school

[Kevin Brennan]

in a federation was considering converting to academy status. The amendment was probing, so I will not press it to a Division. The Minister rightly pointed out that our proposal would be a restrictive way of achieving its purpose.

I will think further on what the Minister has said and reflect on the note he provided to the Committee about the Government's intentions. My concern is the possibility that such a mechanism might trigger local ill-feeling and that a minority interest locally could act in a way that was not conducive to the interests of all children in an area. However, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 55 ordered to stand part of the Bill.

Clause 56

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES TO ACADEMIES

Kevin Brennan: I beg to move amendment 223, in clause 56, page 45, line 35, leave out 'including' and insert 'excluding'.

The amendment is probing, to find out more about what the Government mean y this clause. It provides for rights and liabilities in relation to staff transferring to an academy, including a free school, from the predecessor school.

The Government's intentions in this part of the Bill are not entirely clear. We recognise the importance of academy freedom, which the Labour Government introduced to raise standards in schools that needed to improve and as a targeted measure, if other things had failed to lift schools and enable children to reach their potential. It was a different and less diluted form of academy intervention than the Government are introducing across the board, but the purpose was to raise standards in schools that needed to improve. We support such flexibilities if required.

Teachers who transfer from predecessor schools replaced by an academy currently have their existing pay and condition entitlements protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Can the Minister confirm whether the Government's intention is for TUPE arrangements to remain in place for all new academies? Unison told us in evidence:

"There is much concern at the unknown implications of the change of property transfer schemes into transfer schemes that cover staff."

I would be grateful if the Minister could outline his intentions in the clause.

The NASUWT told us that

"the transfer of property, rights and liabilities to Academies divides the school from the community and potentially deprives the community of facilities and assets. It prevents the local authority from being able to plan strategically in the interests of all children and young people. This has far reaching implications for the public interest in that the Secretary of State can acquire land and assets for the purposes of an academy or free school or can equally choose to leave liabilities incurred by a converter school to be borne by the public purse and local tax payer".

That is a wider point, but in his remarks will the Minister refer in particular to the TUPE arrangements and to what happens to staff?

Mr Gibb: Section 8 of the Academies Act 2010 ensures that the process of converting a maintained school to an academy cannot be frustrated by delays or disagreements on the part of the local authority or a governing body on the transfer of their property rights and liabilities. Clause 56 makes a minor amendment to that section, clarifying that such rights and liabilities include those rights and liabilities relating to staff. The hon. Member for Cardiff West referred to the briefing from the NASUWT, which made that point. I understand that that union and others have voiced a desire for clarity, so that they might understand the intentions of the clause and whether it will impinge on the rights of school staff. The hon. Gentleman's amendment is helpful in enabling me to make it clear, publicly, that there will be no undermining of staff rights.

The hon. Gentleman asked in particular about TUPE. The clause does not change the legal position on rights of staff. The rights of staff, when transferring from the employment of a maintained school to an academy trust, are protected by TUPE regulations. That holds true whether or not a transfer scheme is put in place. A property transfer scheme may be necessary where the relevant bodies cannot reach agreement. The things that we expect to be transferred to the new academy trust may include classroom furniture, maintenance contracts and staff contracts. In making such a scheme, a Secretary of State would make a fair and reasonable assessment of the property rights and liabilities that should transfer to the academy trust and those that should remain with the local authority or governing body. That is the purpose of the clause and section 8 of the 2010 Act. I hope that I have been able to reassure the hon. Gentleman and members of the Committee on that point, particularly regarding TUPE rights. I hope that the hon. Gentleman will feel able to withdraw his amendment.

Kevin Brennan: I welcome what the Minister has said about TUPE, which, in a sense, just threw into further relief the bizarre comments of Lord Hill in his letter to head teachers on 15 December. I referred to it earlier. He said that any agreement by head teachers to respect pay and conditions of new staff in academies would be

"a significant factor in the assessment the Secretary of State will make before deciding whether or not to enter into a Funding Agreement for an Academy."

In other words, head teachers have to respect TUPE in relation to existing staff. If they want to employ new staff, however, and have an agreement to employ new staff on the same basis as existing staff—because they think that would be good for staff relations, in the interest of the school and an all-round positive thing for the school when it converts to an academy—and if they come to that agreement with their staff's representative associations, the Secretary of State would be minded to regard that as a negative factor in considering whether a school should apply for academy status. That sentence in Lord Hill's letter clashes in a discordant way with the Minister's point that TUPE, employment continuity and provision in law apply to staff who are transferring into a new academy. The amendment was probing. Having got that off my chest, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 56 ordered to stand part of the Bill.

Clause 57

ACADEMIES: NEW AND EXPANDED EDUCATIONAL INSTITUTIONS

Kevin Brennan: I beg to move amendment 224, in clause 57, page 46, line 10, at end insert—

'(1A) An "existing educational institution" must not be a "selective school" as defined in section 6(4) (definition of selective school).'.

The clause allows selective schools to become academies and to widen the age range of their intake. We want to understand whether the Minister is proposing that the state education system should be able significantly to extend selection to primary schools or, rather, to primary age pupils. If that is the case, it should not be entered into lightly and people will want to consider it much more fully.

The previous Secretary of State, my right hon. Friend the Member for Morley and Outwood (Ed Balls), raised that point as shadow Secretary of State during the passage of the Academies Bill. He described the potential ability of selective grammars to expand in that way as "a Tory Trojan horse" for the expansion of selection. I note that the Secretary of State has indicated that he favours the expansion of grammar schools—at least, that is how I interpret his remarks. An article in *The Daily Telegraph* last October stated that he had

"signalled to campaigners that existing grammars will be able to create more places but also, crucially, could be given permission to build new premises and start 'satellite' schools."

In his exuberance at meeting grammar school campaigners, the Secretary of State made some highly significant points.

Will the Minister tell the Committee whether that is in fact what the Government intend by introducing the clause? We tabled the amendment—to restrict the ability of selective schools to become academies and to widen their age range when they do so—to find out whether that is possible under the clause and what the Government's intentions are.

Dan Rogerson (North Cornwall) (LD): It is a pleasure to have you back in the Chair again on our final day in Committee, Mr Walker.

The hon. Member for Cardiff West has, as usual, moved his amendment in a cheerful and concise way. I always start off with a certain sympathy for some of the topics that he discusses, but by the end I have been persuaded not to follow his argument. I have to say that on this occasion it is absolutely right to have a discussion on the sensitivities around selection.

Although this may go slightly beyond the amendment, I hope that the Minister will reassure members of the coalition, who might certainly be less enthusiastic about any expansion of selection, that what is proposed is to ensure that all schools throughout the country have access to the same freedoms and that we will not see any change to admission procedures. That particularly applies in relation to the issue that we discussed earlier about the decision on whether selection is right for a local area and has the support of the local community. If a community has decided that that is not a pattern with which it is happy, schools from neighbouring areas might offer provision on a selective basis in that area. I hope that the Minister will be able to offer reassurance on those sorts of issues, either now or at a subsequent stage.

10.15 am

Mr Gibb: We believe that the intention behind the amendment is to prevent the expansion of an existing selective school by an extension to its age range. The actual effect of it would be to prevent the Secretary of State assessing the impact on other local educational institutions of any academy or free school proposals that envisage new provision within an existing selective school—for example, proposals for new all-age provision that incorporated an existing grammar school. I am sure we all agree that we do not want to restrict the circumstances in which an assessment must be made of the impact of new provision on other educational institutions.

That is what his amendment does in practice, but I shall reply to the points that the hon. Member for Cardiff West raised about what it was intended to do. I shall respond to his concerns and to those of my hon. Friend the Member for North Cornwall by explaining the circumstances in which it will be possible to expand existing selective provision.

Under current legislation, which was introduced by the previous Government, grammar schools can expand in a number of ways. They, and other maintained schools, are free to determine their published admission number annually or publish statutory proposals to expand the school, either by extending age range or by expanding the overall size of existing year groups. In relation to statutory proposals, the presumption for approval by local decision makers that applies to successful and popular schools does not apply, as the hon. Gentleman will remember, to grammar school enlargement proposals. That does not mean that such proposals would not be carefully considered or be successful.

The Government's general principle is that academies should not be prevented from taking any action that might be possible within the maintained sector, such as proposals to expand or increase their numbers—whether they are maintained comprehensives or maintained grammar schools. We believe that all good schools should be able to expand where there is demand. Nevertheless, as with the maintained sector, we do not believe that there should be new provision for selection by ability, and we do not intend to change that. All good and popular schools should be able to expand, but that does not extend to selective schools extending selection into the primary age range.

Kevin Brennan: That is the issue in question. I appreciate the Minister's point about the technical nature of the amendment, but I want to be clear about his last point. Is it the case that grammar schools cannot legally extend downwards to primary-age pupils, or is the Minister simply stating that he thinks they should not do so if they convert to academy status?

Mr Gibb: My understanding is that schools can expand down the age range, but the issue is selection, which they cannot introduce into primary education, even if the school becomes part of a larger school.

Kevin Brennan: As the Minister will appreciate, I am trying to be helpful to him in the spirit of understanding his need for inspiration to arrive. To be clear, I am certainly not against the concept of all-age schools, because there are some very good ones, including those that I visited as a Minister. However, the Labour party and I are against selection being extended down to primary age pupils. It would be helpful if he were able to say that he and the Government are against that and that such an extension will not be possible under any provisions in the Bill.

Mr Gibb: Yes, I am able to say that. It is certainly not our policy for selection to be introduced into primary education. The legal position is as I have explained. Our policy is not to allow grammar schools to expand down to the primary sector and they will not be legally permitted to be selective lower down the age range. I think that I have addressed all the issues that have been raised by the hon. Gentleman and by my hon. Friend the Member for North Cornwall. I hope, therefore, that the hon. Gentleman will feel able to withdraw the amendment.

Kevin Brennan: I am extremely sorry for the effect that my remarks have had on the hon. Member for North Cornwall. I sense, however, that his lack of agreement with me might come from another source. At the risk of sounding like the Minister for Further Education, Skills and Lifelong Learning, the hon. Member for South Holland and The Deepings, I quote Disraeli:

"A majority is always better than the best repartee."

I suggest that the source of the hon. Gentleman's convictions is not the weakness of my argument, but the strength of numbers on the Government side of the Committee. However, I am satisfied that the Minister has provided a clear assurance that it will not be legal for grammar schools to expand selection down the age range—I think that is what he said and he is nodding, although he is being tapped on the shoulder as I speak. He told the Committee that that is not Government policy, and went on to say that it would not be legal for grammar schools converting to academy status to expand selection to pupils of primary school age. On that basis, I am happy to withdraw the amendment, but perhaps the Minister wishes to intervene.

Mr Gibb: The legal position has not been changed by the Bill. It is not our policy for grammar schools to expand down the primary age range, and it would not be legally possible for them to select at an earlier age.

Kevin Brennan: I suspect the Minister has repeated something that is not true. My general ability to absorb feelings in a room suggests in my waters that what he said was not quite correct, and that the legal position might be different. It would be helpful for him to make the current legal position clear to the Committee once again. Secondly, will he make it clear that it is not the policy for grammar schools to expand selection down the age range, and that if such an application were to be made, it would not be approved?

Mr Gibb: I am happy to say that the legal position of selection down the age range is the same as under the previous Government. It would technically be possible, but it is not our policy to permit such a move. Therefore, I can give the hon. Gentleman the assurance he seeks about the approval of such an arrangement.

Kevin Brennan: I thank the Minister for the clear statement that the Government will not approve the extension of selection down the age range when grammar schools convert to academies, and on that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 225, in clause 57, page 46, line 15, at end insert—

'(2A) In considering the effect of a proposed new or an expanded educational institution on existing educational institutions in the area, the Secretary of State must consider the effect in the light of the future need for school places.'.

The amendment would ensure that any decision about a new or expanded educational institution is made with the full understanding of pupil place requirements in the area, and the infrastructure—public transport, for example—needed to service the new or expanded establishment. Will the Minister assure the Committee that any such decision will be made with full knowledge of local pupil place needs, and of the potential impact on existing establishments in terms of pupil numbers and, as a consequence, funding and future viability? What steps will be taken to ensure that decisions about new or expanded schools do not have a damaging impact on the ability of local authorities to strategically plan and manage pupil place needs? What considerations will be required in terms of transport and other infrastructure before any decision is made? How will local affected groups be consulted in relation to the measure? Will he assure the Committee that each decision will be made in the broader interests of the area and its pupils?

Mr Gibb: Clause 57 provides for the addition of new section 9 to the Academies Act 2010. That will ensure that before the Secretary of State enters into academy arrangements with a new educational institution or an educational institution that provides for a wider age range, he must take into account what the impact will be on maintained schools, academies, further education colleges and alternative provision institutions in the area. The amendment would prescribe that future demand for school places must be considered as part of that impact assessment.

I agree with the hon. Gentleman on the importance of the impact assessment taking account of the pressure on existing places and the demand for future places, and I assure the Committee that we would consider that as a matter of course. Assuring appropriate levels of demand for new places is a core part of the process when considering free school proposals. I do not wish, however, to prescribe in law the content of an impact assessment for a school. When we begin to make specific reference to individual considerations, questions are asked about why other considerations are not also specified, and whether those considerations are to be ignored. It is hard to encompass all characteristics that may need to be considered in specific local circumstances, and it is unnecessary to do so. Instead of taking that approach, we expect to take into account all the relevant factors, but they might differ between different proposals and in

different areas. On the question of transport, we would take into account any relevant considerations, and they could include transport when appropriate to the proposal involved.

I have addressed the hon. Gentleman's points, and I hope that he will withdraw his amendment.

Kevin Brennan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 57 ordered to stand part of the Bill.

Clause 58

STAFF AT ACADEMIES WITH RELIGIOUS CHARACTER

Question proposed, That the clause stand part of the Bill.

Kevin Brennan: This clause clarifies the position of reserved teachers who are employed to give religious education in line with the tenets of the religion or religious denomination of certain schools when they become an academy. The law on the employment of staff in independent schools with a religious character is amended to preserve the arrangement about reserved teachers as if the school had remained a voluntary controlled school.

The clause gives the Secretary of State the power to disapply the provision in respect of an academy that was once a voluntary controlled school if he has agreed changes to the governance of the academy that mean that a religious body gains majority control of the academy trust. In that case, all teachers can be appointed for their fitness to teach religious education in accordance with the tenets of the religion or religious denomination of the academy.

The Minister has supplied a note on that, for which I am grateful. Comments have also been made to the Committee, for example by the National Secular Society, which said:

"If a religious ethos can be achieved with a maximum one fifth of teaching staff in VC schools, our advice suggests that 100% of Reserved Teachers cannot be justified under the Directive as being necessary to achieve the ethos in VA schools or religiously designated academies."

I will be grateful if the Minister will put on record the need for the change in the law and explain briefly the points in his note.

Mr Gibb: I am happy to do that.

The clause amends part 5A of the School Standards and Framework Act 1998, which deals with the employment of teachers at independent schools that have a religious character. In the maintained sector, there is a clear distinction in staffing provisions between different categories of schools with a religious designation. Voluntary controlled and foundation schools with a religious character have a minority of church representatives at governor level, so they cannot have in excess of one fifth of staff as reserved teachers.

Reserved teachers are specifically appointed and selected on the basis of their ability to give religious education in accordance with the tenets of the religion or religious denomination of the school. In contrast, a voluntary aided school with a religious character may have a majority of church representatives at governor level and may apply faith criteria in the appointment of any teacher at the school. A central principle of the academies programme is that schools will convert as is. In particular, academy status should not be used as a back-door method to gain extra power or to extend a school's provision, nor indeed to reduce it. Clause 58 embodies that principle. Legislation covering all independent schools with a religious character, including academies, currently states that preference on the basis of religion may be applied to all staff. The clause ensures that in the case of converting voluntary controlled or foundation schools with a religious character, the limit of a fifth of reserved teachers will be retained in the converted academies, which simply provides parity with the position in the maintained sector.

10.30 am

As the hon. Member for Cardiff West will be aware from debates during the passage of Bill that became the Academies Act 2010, our preference is to regulate academies through their funding agreements, but it is necessary to legislate in this case because that ensures that new staff employed at, and people applying for posts at, these academies will have the same access to statutory protections, in particular to legal redress such as employment tribunals, as their peers in maintained schools.

As the hon. Gentleman is aware, we have received a number of representations from the National Secular Society raising concerns about the clause, and particularly about proposed new section 124AA(2) of the 1998 Act. I responded to Mr Porteous Wood personally to address his concerns and I hope that that letter and the policy statement, which have been circulated to the Committee, reassure the National Secular Society, the hon. Gentleman and other Committee members about the intentions behind that provision, which makes it possible for the Secretary of State to issue an order disapplying the clause for a specific academy.

In the maintained sector, it is possible for a school to move from a voluntary controlled foundation school with religious character that has minority faith representation to being a voluntary aided school with majority faith representation. With that change comes the ability to appoint 100% of teachers on the basis of religion, with protection for existing non-reserved teachers as set out in regulations. The change would be available only if a school had set out a proposal for its plans, if it had consulted and if it could demonstrate sufficient support for the change.

As our policy statement sets out, the Secretary of State would similarly issue an order disapplying proposed section 124AA of the 1998 Act only if an academy had consulted on, and attracted support for, a change from minority to majority faith representation on its governing body. Proposed new subsection (2) therefore simply ensures that there is a level playing field between the processes available in the maintained and academy sectors. It is important to re-emphasise that any order disapplying these requirements would contain provisions to protect the position of existing non-reserved teachers. On the basis of that assurance, I hope that the Committee will agree to clause 58.

Kevin Brennan: I thank the Minister for that helpful explanation. It shows that to achieve, to use his words, a "level playing field" between the maintained sector and

[Kevin Brennan]

academies, it is sometimes necessary to do something in legislation. It might have been sensible at this juncture—following the Academies Act 2010 and given that the Government are effectively seeking to make all schools academies in the longer term—to create that level playing field right across the piece in legislation, rather than having the situation that we are going to inherit now. According to the Minister, all new academies will have funding agreements to put in place the commitments he has set out to the Committee according to Government policy, but there will be a whole batch of existing academies with different funding agreements to which such provisions will not necessarily apply.

The Bill would have been an opportunity to tidy all that up and make sure that there genuinely was a level playing field across the piece for all schools, whether maintained or academies—and whether new academies or Labour's academies, if we like—for the powers that they have, as well as their responsibilities around staffing and employment law. Rather than putting in place the untidy mess with which we will be left as a result of these uneven provisions, we could have taken the opportunity to use the Bill to put everyone on the level playing field to which the Minister referred. However, I am grateful to him for his note and for his further explanation, so I will not divide the Committee on the clause.

Question put and agreed to.

Clause 58 accordingly ordered to stand part of the Bill.

Clause 59

ACADEMIES: LAND

Question proposed, That the clause stand part of the Bill.

Kevin Brennan: The clause consolidates and extends the law on land occupied by academies. Together with schedule 13, it gives the Secretary of State additional powers to transfer publicly funded land to academies. Will the Minister tell us the intentions behind extending the Secretary of State's powers in this respect? What evidence does he have to demonstrate that such powers are needed? What assessment has he made of their impact? Will he confirm to the Committee whether he intends that the powers will relate to the transfer of the publicly funded land of maintained schools to free schools?

Mr Stuart: Under the clause and schedule 13, school land and property that become vacant as a result of amalgamation, closure and other reorganisations of school facilities may be forfeited to the Secretary of State rather than remaining under the ownership of a local authority. I represent a largely rural constituency with a greater than average number of schools for its population, including a number of small Victorian primary schools, many of which have fewer than 60 pupils on roll. I am extremely concerned about the provision. Many local authorities rely heavily on the receipts from the disposal of surplus accommodation and land to fund capital improvements in their area.

Areas such as the East Riding of Yorkshire received no money—absolutely nothing—under the wasteful, bureaucratic and outrageously unfair Building Schools for the Future programme. East Riding, along with Cornwall, has the greatest backlog of maintenance and building need. The cost of addressing the deficits and inadequacies of school accommodation and facilities in the East Riding of Yorkshire has been conservatively estimated at £491 million. Between 2008-09 and 2010-11, the council had on average less than £21 million a year for capital expenditure on schools. The sum available for 2011-12 is £10 million. We therefore have £10 million available for capital this year, thanks to the financial wasteland left behind by the previous Administration, versus £491 million of requirements.

My concern arises because excellent local authorities such as East Riding have worked creatively and innovatively to use capital receipts and to help put nurseries and junior schools together to form primary schools. They basically found ways of using every possible receipt they could to deliver higher quality services. Despite their best efforts, however, they are still seriously behind. Wilberfoss primary school brought in £364,000 and Bridlington lower school brought in £2.4 million. In each case, those moneys were repurposed and reused to provide better and more appropriate facilities for local children.

At a time when local authority funding is under significant pressure, we should ensure that schools have the flexibility to use surplus assets to improve what, in many cases, is not an acceptable situation. Will the Minister assure us that such points have been considered and that they will be factored into the implementation policy?

Richard Fuller: It is a great pleasure to follow my hon. Friend the Chair of the Education Committee, who made some strong, general points. I have two precise questions about the transfer of land for the establishment of academies, which relate to local authorities and decision rights in federations of schools if one of those schools will have its land and buildings transferred to create an academy. In such circumstances, what are the necessary and sufficient conditions for that to take place? If a request to the Secretary of State is made solely by a local authority without the support of the federation, is that necessary and sufficient to enable a transfer of land and buildings to take place? Alternatively, are there circumstances in which the transfer may happen at the request of a federation without the support of the local authority? On my reading of the Bill, both those circumstances would be sufficient to enable the Secretary of State to facilitate a transfer of land and buildings, so I would appreciate it if the Minister would answer my questions, either in this debate or at some other time.

Stella Creasy: The Minister is well aware of my great concerns about the clause and what it might mean for a number of schools across the country. In particular, I am worried about what it might mean for schools that had been part of Building Schools for the Future. I have no desire to start a debate with the hon. Member for Beverley and Holderness about whether BSF was a good programme, but I think we can all acknowledge that there is a need for investment in the schools infrastructure in the UK, particularly in Wales, and that many schools have great capital needs.

One of the ways in which BSF was resolving those needs was by moving to new sites. I can think of several schools in my constituency—Willowfield school, the Holy Family school, William Morris school and Lammas school—which acquired land to redevelop and are in various stages of that process. In particular, Willowfield was cruelly stopped just as it was about to start the process of building on the new land. For many of us looking at the clause, that is where we have concerns.

I tabled some questions to the Government to try to understand their thinking on school closures and the disposal of surplus land. The hon. Member for Beverley and Holderness has set out how schools and local authorities have been using land and capital to try to invest in new school provision. The Minister, in response to my question about how much land the clause will apply to, said that the Government did not hold a record of that, and that decisions on school closures and the disposal of surplus land will normally be taken by local authorities. Those of us who are becoming increasingly aware of the kind of language used by the Minister will be supremely worried by the concept of "normally", which opens the door for many decisions that are not normal.

The clause creates some worrying principles. I hope that the Minister will address some of those concerns today, so that not just MPs, but local authorities, which are deeply concerned about the future of the school maintenance and building projects in England and Wales, will have some clarity, particularly on paragraph 1(2)(c) of schedule 13, which sets out the proviso that if the Secretary of State thinks that a piece of land is

"no longer about to be so used",

it may also be included. I also hope that the Minister will remember the evidence that we heard from Councillor Pugh during the evidence sessions, when we talked briefly about the clause and the concerns that local authorities have about it. He said:

"Clearly, where schools become academies, those school sites then transfer out of local authority control…there is a balance to be struck. If schools are going down that route and the local authority is comfortable…local authorities should be relaxed...There is a need to explore this particular area further, because if it does not tie in with an authority-wide approach to school sites…it could become disjointed."

He continued:

"There needs to be the opportunity for the local authority to have a discussion with Government about how that is best used, so that we are not losing sites that are of particular value for educational purposes, or not getting best value for money out of the future use of those sites and any capital receipts."—[*Official Report, Education Public Bill Committee,* 1 March 2011; c. 40, Q84-5.]

With that in mind, I have a number of questions for the Minister. First, what discussions has he had with local authorities about the clause? Secondly, will he confirm that the disposal of land and assets will remain the right of local authorities and schools, and that there will be no interference by the Secretary of State in those decisions? Thirdly, will the Minister explain how he expects the Secretary of State to divine when a piece of land is no longer about to be so used, as set out in schedule 13? Fourthly, who does the Minister imagine will benefit from such transfer powers, and will he say more about why he thinks those powers are needed? Fifthly, schedule 13 3(3) talks about

"incidental, consequential, supplemental and transition provision."

Can the Minister explain further what he means by that, because it is a wide rubric under which the Secretary of State can intervene in capital receipts and how land is used by local authorities?

10.45 am

Sixthly, what assessment has the Department made of the need for such land by schools to meet the existing needs of maintained schools? I am thinking particularly of the schools in my local authority area that were part of BSF, but which now have no clarity about whether they will have the land. They were also part of providing additional places. I am sure that the Minister is aware of the severe pressure on school places in the London area, and that many of the BSF projects in London were precisely about meeting that need and making sure that we could provide schooling for all our children. The idea that land may be taken from those projects for unspecified purposes is worrying for several schools.

Seventhly, in what circumstances does the hon. Gentleman envisage the Secretary of State not consenting to local authorities disposing of land? Turning that question the other way round, I notice on page 94, line 45 of the Bill that the Secretary of State also has the ability to prevent local authorities from doing exactly what the hon. Member for Beverley and Holderness has said that many do to manage the needs within their school provision. How does the Minister expect disagreement between local authorities and the Secretary of State on the disposal of land to be resolved, especially if the professionals in the school support such a disposal?

My eighth question is whether the Minister would rule out requiring local authorities that wish to dispose of land from making schools become academies as a way of reclaiming the assets that will be generated through the disposal of that land. Ninthly, what is the purpose behind the powers on page 95, line 25 of the Bill in respect of being able to reverse the purchase of land? Can he give some examples of where those powers could be enacted and say how such action could occur?

The Minister will be pleased to know that I am on my last question about the purpose of page 95, line 43 and the requirement for local authorities to help the Secretary of State with compulsory purchase applications. Will he clarify when those powers will be used? Given that local authorities have stretched budgets, who would underwrite the legal fees that such action could incur? I hope that he accepts, from the questions that I have outlined, our genuine worry about being able to meet the ongoing maintenance needs and the demand for school places, especially in London. I fear that the clause could make such problems worse, not better.

We can see a situation in which much needed land for maintained schools could be given to free schools for their renovations, and that could raise all sorts of questions about whether or not the provision is appropriate in meeting the need for school places. Furthermore, the threat that the Secretary of State might decide that land and building are surplus to schools could create huge problems for schools trying to manage their estates in the future, especially if we cannot understand how he will divine whether the land is no longer needed. Above all, the clause will make it hard for schools to plan for future provision. In communities such as mine where there are fluctuations in the number of pupils, the ability to plan for how land is used is something that is done well with the local authority.

I hope that the Minister will take the chance of our debate on the clause to allay the fears that I have set out and confirm the important role that local authorities have to play in managing school assets. How will such measures support the schools that were trying to meeting a need through BSF? I understand that we do not yet have the details of the capital investment in schools that the Government now recognise has to be made, but I hope that he can understand our worries that the funds that might be generated by the transfer of land could inadvertently be put towards purposes other than education and supporting existing schools and their needs for maintenance. I hope that he will respond to my wide-ranging questions. If he needs further clarification of my points of reference, I shall be more than happy to provide it.

Dan Rogerson: It is a great pleasure to follow the hon. Lady. I wish her a happy birthday. It is good to see that, on such an august occasion, she is taking her responsibilities to the House so seriously and scrutinising proposed legislation in such detail. I am sure that the Minister will feel ready for a specialist subject section of "Mastermind", and we will be looking to see whether he gets through it without too many passes.

The Chair of the Education Committee asked crucial questions, and he was kind enough to refer to the situation in Cornwall. It is certainly my experience that, in an area similar to his with many small, ageing, rural primary schools, there is pressure and demand for investment. For example, on Friday I visited St Tudy school and St Mabyn school now in a federation under their excellent head, Karen Holmes, at a local leisure complex at which they were displaying their work. They put up a fantastic exhibition for parents and the community, and it was great to see the two schools working effectively in a federation. St Tudy was to be in receipt of money for a rebuild scheme—not under the BSF but a different mechanism—but there were problems with planning. After explorations, the first site identified was judged far too costly to get to the required standard, so the school looked at another site and eventually got planning but, by that time, the clock had been ticking and, unfortunately, the money was lost. The school is therefore looking keenly for the Government's proposals for targeting capital spending at capacity in areas. The two villages have affordable housing being developed, hopefully expanding the number of younger families, which might give the opportunity to bid for some of the capital.

There is concern that capital that becomes available for improvements from sites surplus to requirement elsewhere should be focused on meeting identified need. The primary school in Camelford, another town in my constituency, has now moved to the site of the Sir James Smith secondary school—a school named after a Conservative MP, which I am sure the Minister is pleased to note. The original primary school site is now surplus to requirements, and there has been a lengthy process of discussion in the community and with the council about its future. It should secure a capital receipt for the local authority, so it will be able to meet the aspirations of the community in other regards, including the council's existing capital programme.

I am delighted that we are starting to make progress with a new medical centre for Camelford on the site, as well as securing some of the playing fields as open space. I am not sure how well the Minister knows the geography of north Cornwall, but Camelford is a rather hilly little town and there are not that many flat areas where people can engage in sporting activity, so the playing fields are crucial.

The community has therefore been involved with discussing all such issues. I have my frustrations with how long it has taken the Cornwall council property function to reach a conclusion in its negotiations with the primary care trust and so on, and to come forward with a plan for the site, but there has at least been a process with local involvement. Hopefully, the plan will secure the capital that the council needs to meet its commitments but will also secure a site meeting the needs of the local community.

I have some concerns about aspirations for free schools, for example, which might come to fruition in the near future but also might not, possibly causing other things to be delayed or to be influenced in unhelpful ways. So I share the concerns voiced by other Committee members about the provisions. I would hate to see too much power for the Secretary of State to step in and grab chunks of land which might well be used for other purposes in the community and which could provide capital resources to meet the already long list of priorities in local authority areas.

Mr Gibb: May I start by making an important point? The schedule does not extend the Secretary of State's powers. It mostly re-enacts existing provisions, except that ex-academy land is now included.

Finding suitable land is a key hurdle for free school proposals so we want to help overcome that. The schedule is quite long, as a consequence, because we also thought it preferable, in making the change to include ex-academy land, to replace the existing schedule 1 of the Academies Act 2010, rather than introduce a further layer of amendments. Some of the former provisions of schedule 35 of the School Standards and Framework Act 1998, which was added by the Education Act 2002, had already been carried forward into schedule 1, and the remaining provisions are now being carried forward into the schedule. We will therefore repeal schedule 35A as well.

In summary, the schedule re-enacts and amends the existing provisions in respect of school land, in order to give the Secretary of State additional powers to ensure that publicly funded land is available for free schools and to protect land at academies, including free schools, that has been provided or improved at public expense.

There is no doubt that the availability of land is the key impediment to new schools being set up by local groups. We are unapologetic about using powers to make land available for new schools to meet local needs, when that land is no longer needed by existing schools. The Bill contains no powers in respect of wholly private land or land that continues to be needed by schools, but when a governing body, a trust, or a local authority is of the view that publicly funded land can be disposed of, it is reasonable that one of the options considered is that the land be used for a new free school or an existing academy, as those are the institutions that will open up new opportunities for young people to be educated.

The Secretary of State already has powers in schedule 1 to the Academies Act 2010 to make a scheme to transfer local authority land to an academy. Those powers were

carried forward from schedule 35A to the Education Act 1996, into which they were inserted by schedule 7 to the Education Act 2002. Schedule 13 to the Bill puts a replacement schedule 1 into the 2010 Act. The Secretary of State also has the power to direct the transfer of publicly funded land at foundation and voluntary schools when the school closes, and the schedule extends that power to situations in which a school or a local authority thinks that publicly funded land is no longer needed for the purposes of a foundation or voluntary school. Before a school or a local authority can dispose of the land, it must obtain the consent of the Secretary of State, who may instead direct that the land should continue in educational use for a free school or an academy. In many cases, there might be no viable proposal for a free school in the area, but if such a direction were made the Secretary of State would pay appropriate compensation for any private interest in the land, just as he would if the transfer were directed on the closure of the school. The schedule also applies those protections to land at academies, so that an academy cannot dispose of publicly funded land without the consent of the Secretary of State, who again may direct the transfer of the land to another school—an academy or a maintained school.

On the specific issues raised by my hon. Friend the Member for Beverley and Holderness, the Education Committee Chairman, I can reassure him that the clause and the schedule relate to the retention of surplus land for educational purposes, and I hope he approves of that. The phrase "unspecified purposes" has been used in the debate, but the power, which already exists and is being extended slightly to ex-academy land, enables the Secretary of State to use the land only for educational purposes. The power will be used only when a school converts or if there is a suitable free school proposal in the area. All alternative proposals will be considered before a decision is made, and in many cases it is likely that the land will continue to be disposed of by local authorities for the purposes that my hon. Friend suggests, of spending capital on repairs and refurbishment.

Mr Stuart: On special schools, often, as in the East Riding of Yorkshire, provision is never quite where we want it or how we want it. Plans are made—which are challenging from a capital point of view—to establish new provision and to restructure existing provision, using capital receipts for that purpose. Could there be a conflict if some parents wanted the existing special school to stay where it was, maintaining what they had and found convenient, even if it was not convenient for most children in the area? It might then be impossible to restructure special school provision in that area.

Mr Gibb: I am not sure whether I totally understood my hon. Friend's point. If the school remains on the site, it will not be regarded as surplus land. If it continues to be used for a special school, the powers will not be invoked by the Secretary of State.

Mr Stuart: If it were proposed to close an existing special school and develop a new one somewhere else, it would be expected that some people would oppose the change even if, taken in the round, it would be better provision that was better suited to the needs of the area.

11 am

Mr Gibb: I will come back to my hon. Friend on that point. The basic principle is that where the land that is being proposed to be disposed of is regarded by the local authority as surplus to its requirements, albeit that the local authority is buying land elsewhere, the land that is being disposed of would be subject to these provisions. However, I just want to clarify my own thinking, to ensure that I am right about where it is being done as part of an overall proposal, of swapping one piece of land for another piece of land, and I will come back to him on that point.

I will address some of the other comments about how the Secretary of State will divine when land is no longer needed. We are not trying to take land away from schools. The powers have already existed for 10 years or more and they only apply where a school is about to close or where the land has been clearly identified as not being needed for the school. If a school and local authority do not accept that the land is surplus, these powers would not be applicable.

Stella Creasy: That is very helpful. Can the Minister clarify why paragraph 1(2)(c) of schedule 13 says:

"or the Secretary of State thinks it is about to be no longer so used"?

The Minister just said that if local authorities disagree that land is no longer in use they will have the right to veto any powers of the Secretary of State. Can he clarify why that line is in schedule 13 and what the intention behind it is, because it is quite hard to understand why the proviso exists—

"or the Secretary of State thinks it is about to be no longer so used"—

that will allow the Secretary of State to use these powers?

Mr Gibb: That provision simply replicates existing law; it does not change anything that has been in existence for the last x number of years, including the time that the hon. Lady's party was in power.

I want to come on to some of the other points raised by hon. Members. My hon. Friend the Member for Bedford asked what the necessary and sufficient grounds are for land to be transferred to a federated school that wishes to convert. The federated school would need to apply to the Secretary of State for an academy order and the local authority would then need to provide the school's land on a long lease, or the land could be transferred if the school was previously a community school. If the school was a foundation or voluntary school, appropriate arrangements would need to be made with the relevant landowner.

The hon. Member for Walthamstow asked a number of questions, many of which do not relate to the changes that we are making to the Bill. She is, in fact, questioning existing legislation rather than our amendments to the Bill. It would be better if I wrote to her to set out the answers to her questions where they do not relate to issues that are being changed by the Bill.

The hon. Lady also asked what discussions there had been with local authorities about the clause and its implications. The clause extends existing law and makes new provision only in relation to foundation and voluntary

[Mr Gibb]

schools. We have discussed the land provisions with representatives of local authorities as part of our regular discussions and we made that point very clear.

I want to clarify one thing that I said earlier. I said that these powers do not extend the Secretary of State's powers. What I meant to say is that they do not extend the Secretary of State's powers in relation to community school land. That is an important point to make. I think that I also referred to schedule 25, when I should have referred to schedule 35A. I just want to ensure that the record is absolutely correct.

I hope that I have addressed all the points that have been raised.

Stella Creasy: The Minister will not be surprised to know that I am very concerned that he does not know the answer to a number of my questions. The particular issue that really troubles many of us is whether he can rule out the notion that land can only be disposed of for the purposes of free schools or academies, so that where there might be a maintained school that would benefit from land, such as the school described by the hon. Member for Beverley and Holderness, such a scenario would not be acceptable any more under the Bill. Perhaps the Minister can do things the other way round—if he does not know what the provision is for, can he rule out what it is not for?

Mr Gibb: Again, the hon. Lady refers to previous legislation, which existed under the Labour Government. I know that she is new to the House, but her points relate to existing legislation. I have offered to write to her and I am happy to provide her with a full explanation of the legislation that was passed by the previous Government.

The essential issue is that such matters will be dealt with case by case. Broadly, the provisions enable the Secretary of State to prevent a sale of land for cash where there are alternative provisions—where that land could be used for educational purposes. The Government are maintaining and continuing that position with the consolidation of the provisions in new schedule 1 to the Academies Act 2010. We are extending the provisions, however, to include former academies' land.

To answer the question raised by my hon. Friend the Member for North Cornwall about whether land is being tied up unnecessarily, I should say that land will be transferred to a free school only when the school is ready to proceed. It will not be held by the Secretary of State to await a future free school in the area, so we will not be creating a supermarket land bank that we can tap into when someone wishes to expand a free school in a certain area.

I think that I have covered all the points made by hon. Members and I have corrected one or two points on the name of the schedule. I hope, therefore, that hon. Members will accept the clause.

Kevin Brennan: It has been an interesting debate. As is the convention, the Minister will copy to the Committee his letter to my hon. Friend the Member for Walthamstow, and we look forward to that. May I, too, take the opportunity to wish her a happy birthday? I caution the Minister against saying that she is new to the House. Ministers usually use that phrase when they are thinking, "I have absolutely no idea of the answer to the questions that she is asking, but perhaps if I patronise her a bit, I might get away with not answering them." That is not something that we should do to someone on their birthday. I am sure that he will be prompt in answering her letters. *[Interruption.]* It is not his birthday, so I can be rude to the Parliamentary Private Secretary—I would not be rude if it was. Perhaps he will reply to my hon. Friend today and include a birthday card with his letter.

We have had a wide-ranging debate. The Minister has made it clear that despite the incredibly long schedule that is attached to the clause, he is making a small change, which relates only to ex-academy land. In performing our textual exegesis of his letter to answer my hon. Friend's questions, we will check that that is so. I do not intend, however, to press the matter to a vote.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Schedule 13

ACADEMIES: LAND

Kevin Brennan: I beg to move amendment 227, in schedule 13, page 93, line 17, before 'school', insert 'maintained'.

The Chair: With this it will be convenient to discuss the following: 228, in schedule 13, page 94, line 43, before 'school', insert 'maintained'.

Amendment 229, in schedule 13, page 96, line 11, before 'school', insert 'maintained'.

Kevin Brennan: The amendment is intended to probe whether there is anything in the provision that might result in a land grab. For example, a local authority might acquire land from a former independent school that has ceased to operate within the past eight years. As part of its estate strategy, the authority might plan to use that land to provide homes at a local level.

In such circumstances, could the Secretary of State use the powers in the clause to claim the land for use as an academy, for example? What matters would be considered if the local authority had specifically acquired the land from an independent school as part of its strategy to provide necessary housing for people in the area? Would it be an extreme measure to take at the centre to prevent a local authority from pursuing its democratically accountable objectives, on which it might well have fought an election?

Mr Gibb: As I said, the Secretary of State has had the power since the Leaning and Skills Act 2000 to make a scheme to transfer local authority land to an academy if it has been used for a community school in the previous eight years, but is no longer so used, or is about to become so. Since then, there has been an increase in the different sorts of schools and therefore in the powers that need to be updated.

The Academies Act 2010 changed "community" school to "maintained" school to include, for example, foundation and trust schools. The purpose was to treat all publicly

funded land in a similar way, which is why the Bill makes a change yet again, and refers simply to "schools". That means that local authority land that has been used by an academy will be treated in the same way as land that has been used by maintained schools.

The effect of the amendments would be that land that had been returned to a local authority from an academy would be exempt from the Secretary of State's power in relation to land. He would be unable to make a scheme to transfer the land to an academy, and he would be unable to object to its disposal or appropriation for the authority's non-educational functions. It is reasonable that local authority land that has been used for a school, but is no longer being used for that purpose, should be available for a new free school if suitable proposals come forward. The option of its remaining in educational use should be fully considered before it is disposed of or otherwise appropriated by the local authority.

Kevin Brennan: I understand the Minister's point about the amendment, but if a local authority acquired a site that was not a former academy, but was perhaps a failed prep school in the private sector, and wanted to develop that land according to its election manifesto—for example, for housing—would it be caught by the changes? The purpose of the amendment is to probe him on that.

Mr Gibb: The answer, clearly, is no. That would be way outside the scope of the provisions, which relate to existing, publicly owned land being used for the purposes of a school.

In conclusion, it is reasonable that local authority land that has been used for a school, but is no longer being so used, should be available for a new free school if suitable proposals come forward.

Stella Creasy: Will the Minister say whether that proviso applies to land that has been purchased for a new school-building development that is not currently a school—a blank sheet of paper—and whether that land can be used only for free schools or academies, so that if schools in the maintained sector wanted to benefit from such redevelopment they would have to become academies? Will the Minister rule out that scenario of a forced prescription to become an academy to obtain a new school building?

Mr Gibb: If land is purchased for a specific purpose, it will not be covered by the provisions. That is clear.

On the basis of my explanation, I hope that the hon. Gentleman will withdraw his amendment.

Kevin Brennan: I take it, from what the Minister said, that he is confirming that if a local authority purchases a site that had previously been used by an independent school in the private sector, rather than by an independent school defined as an academy, the clause would not apply. There was some ambiguity, because he referred to land that had been previously used as a school. If it had been used as a private school, the interpretation could be the other way. From what he said, I am taking it that he is telling us emphatically that if a local authority purchased a former private school site, it would not be covered by the provision, and it could go ahead and use the site as it, as a democratically elected local body, wanted to, in the interests of the local community.

Mr Gibb: That would technically be covered, but policy would mean that we would not use it in those circumstances.

11.15 am

Kevin Brennan: That is a helpful clarification, as what the Minister said previously suggested that it might not be covered. He might add that issue to his letter in order to be absolutely clear about it, although I take the point that he has put it on the record that the Secretary of State would not seek to use the powers in the circumstances that I have outlined—where a former private school site was being purchased by the local authority to be developed for another purpose. I am grateful to him for putting that on the record. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 230, page 99, line 25 [Schedule 13], at end insert 'following independent arbitration.'.

As it stands, in the event of any dispute between the local authority and the Secretary of State over land, the Secretary of State will be the arbiter. I suspect that I know what the Minister will say in response to this point, but it is time to reflect whether in the circumstances, given the changes that the Government are making, it would be appropriate for somebody other than the Secretary of State—perhaps an independent body or person—to be the arbiter.

Mr Gibb: The land provisions are complicated. The final paragraphs of schedule 13, in particular, apply to some specific and unusual situations. The amendment, as drafted, would prevent the Secretary of State from making a direction before independent arbitration in only one rare situation, in which land is held on trust by both the governing body and other trustees.

The provision replicates existing provisions applying to school closure that were first enacted in this form by the previous Government in the School Standards and Framework Act 1998. Those provisions did not include a requirement for independent arbitration, nor did the more general provisions concerning the transfer of local authority land to academies that have existed in various forms since the Learning and Skills Act 2000.

Whether independent arbitration is needed before the Secretary of State determines the transfer of publicly funded land is an important principle. It is true that in some cases, when schools convert to academy status, it is necessary to do some work to determine ownership of the land. I appreciate the concerns and the intention to provide an additional mechanism for ensuring that decisions on land ownership are fair to all parties concerned, but we believe that it is unnecessary to add a requirement for independent arbitration before the Secretary of State can make a direction. In the vast majority of cases in which the governing body of a maintained school that wishes to convert to an academy holds land, it is clear to whom and under what conditions that land should transfer on conversion.

[Mr Gibb]

Where differences of opinion have occurred about the land of converted schools, they can usually be resolved locally, with the Department for Education facilitating any necessary discussions. The Secretary of State would need to act reasonably, or he would risk judicial review.

Stella Creasy: Or she.

Mr Gibb: Indeed. He or she would take into account all points made by interested parties and consider each case on its individual merits. However, the overriding objective is to make land available, where appropriate, to free schools and academies as swiftly and effectively as possible, to increase the choices available to parents and pupils. We do not consider that adding an additional layer of regulation and bureaucratic procedure would make the process more satisfactory to any party. I therefore urge the hon. Gentleman to withdraw the amendment.

Kevin Brennan: I sensed a sudden frisson of excitement in the Committee when the Minister began his remarks with the possibility of a concession crossing his lips, but he unfortunately returned to his usual riff about regulation and bureaucracy at the end, so that moment passed quickly. I hope he is right that the Secretary of State will act reasonably. I hope that the Secretary of State is listening, because if he does not act reasonably, he may well end up, yet again, being accused of an abuse of power in the courts. However, I do not intend to press my amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 231, page 103, line 36 [Schedule 13], after 'regulations', insert 'requiring an affirmative resolution of each House of Parliament'.

This is just a probing amendment to ascertain the Government's intentions, and I would be grateful for the Minister's remarks.

Mr Gibb: Amendment 231 would require that any regulations made in respect of administrative and practical arrangements, which were needed to give full effect to certain land provisions in schedule 13, were subject to affirmative resolutions. That is not merited in this case. The policies are laid out clearly in the Bill. The regulations will be practical and administrative only. On that basis, I hope that the hon. Gentleman will be reassured and that he can withdraw the amendment.

Kevin Brennan: I will withdraw the amendment, although we need to know the circumstances under which the Secretary of State will use the extended powers in this part of the Bill, and I hope that the Minister's letter will reveal that in detail. We look forward to having a much more detailed look at the regulations. If necessary, we can pray against them. However, it may well have been more appropriate to use an affirmative procedure, but I will not press the issue to a vote at this stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 13 agreed to.

Clause 60

ACADEMY ADMISSIONS ARRANGEMENTS: REFERENCES TO ADJUDICATOR

Kevin Brennan: I beg to move amendment 232, in clause 60, page 49, line 15, after 'Academy', insert—

(i) the admission authorities for all maintained schools in the relevant area;

(ii) the Academy Trusts for all Academies in the relevant area;

(iii) the governing bodies for all community and voluntary controlled schools in the relevant area (so far as not falling within paragraph (i) or (ii));

(iv) .'.

The amendment would ensure that local authorities, as the admission authorities for community and voluntary controlled schools, and the governing bodies of schools that are not admission authorities, can object to the school adjudicator regarding an academy's proposal to change its admission arrangements.

We have heard a lot in recent days about the need for the Minister's Parliamentary Private Secretary to do up his top button and wear his tie while on duty, but we have also heard a lot from the Government about the squeezed middle. Clearly, admission arrangements in the Bill will affect the squeezed middle quite a lot. The implications for parents of what the Bill does on admissions are quite significant.

Objections are limited to schools in the "relevant" area, which is roughly the area in which the parent would send his or her child to school. By virtue of new section 88H(6)(a)(i), maintained schools and local authorities have a right to object, because they are referred to in new section 88F(3). Parents' right to object to the adjudicator in respect of an academy are dealt with elsewhere, and a parent is not an appropriate person for these purposes. It is said that putting academies in the same framework as other schools on admissions is a good thing, although the objection rights of local authorities and schools are not guaranteed in primary legislation. Why is that not the case?

Which bodies will be prescribed in regulations under new section 88H? If local authorities are not allowed to object, there will be a loss of informed objectors. Elsewhere, the Government want to perform a leadership role for parents and pupils, particularly vulnerable children, so that schools are not tempted to change their admission arrangements to make it harder for such children to gain entry. What progress has been made on the draft code of practice? There was a further leak in *The Guardian* last Tuesday. Fran Abrams wrote:

"That code will be published in the next few days, and is understood to contain a reform of the measure controlling in-year admissions"—

we have obviously raised that issue—

"designed to hand back more say on the issue to schools. It will not prove universally popular".

When will the Committee see the draft? If that is after the Committee finishes, will the Minister urge his friends in the Government Whips Office to recall the Committee so that we can debate how that matter relates to the Bill?

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88 and Order of the House, 29 March).

Adjourned till this day at half-past One o'clock.