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Clauses 5 to 10 agreed to.
Schedule 2 agreed to.
Clause 11 agreed to.
Schedule 3 agreed to.
Clause 12 agreed to.

Adjourned till Thursday 3 February at half-past Nine o’clock.
Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

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not later than

Saturday 5 February 2011

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

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The Committee consisted of the following Members:

**Chairs: MR DAVID AMESS, † HUGH BAYLEY**

Alexander, Heidi *(Lewisham East)* (Lab)
† Barwell, Gavin *(Croydon Central)* (Con)
† Bruce, Fiona *(Congleton)* (Con)
† Cairns, Alun *(Vale of Glamorgan)* (Con)
† Clark, Greg *(Minister of State, Department for Communities and Local Government)*
† Dakin, Nic *(Scunthorpe)* (Lab)
† Elliott, Jack *(Birmingham, Erdington)* (Lab)
† Golightly, Julie *(Sunderland Central)* (Lab)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Howell, John *(Henley)* (Con)
† Keeley, Barbara *(Worsley and Eccles South)* (Lab)
† Lewis, Brandon *(Great Yarmouth)* (Con)
† McDonagh, Siobhain *(Mitcham and Morden)* (Lab)
† Mearns, Ian *(Gateshead)* (Lab)
Morris, James *(Halesowen and Rowley Regis)* (Con)
† Neill, Robert *(Parliamentary Under-Secretary of State for Communities and Local Government)*
† Ollerenshaw, Eric *(Lancaster and Fleetwood)* (Con)
† Raynsford, Mr Nick *(Greenwich and Woolwich)* (Lab)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Seabeck, Alison *(Plymouth, Moor View)* (Lab)
† Simpson, David *(Upper Bann)* (DUP)
† Smith, Henry *(Crawley)* (Con)
† Stewart, Iain *(Milton Keynes South)* (Con)
† Stunell, Andrew *(Parliamentary Under-Secretary of State for Communities and Local Government)*
† Ward, Mr David *(Bradford East)* (LD)
† Wiggin, Bill *(North Herefordshire)* (Con)

Sarah Davies, Committee Clerk

† attended the Committee
Orders made under subsection (1)—the barrier buster—are subject to the procedure set out in clause 6. In short, this is modelled on the procedure adopted for legislative reform orders under the 2006 Act. Orders made under subsection (2)—what I described as the simplifier—subject to negative procedure which is set in clause 201. Orders made under subsections (3) and (4), which impose restrictions or conditions, are subject to an affirmative procedure, which is also set out in clause 201. Subsections (3) and (4) provide the Secretary of State with powers first, to prevent local authorities from exercising the general power in certain circumstances and secondly, to set conditions around the use of the power. They provide a necessary safeguard, given the breadth of the new power, to ensure that risks to both local government finances and the Exchequer are managed.

The Government expect to use the power in these subsections very rarely. They might be used, for instance, to deal with risks that arise from authorities’ use of the new general power to engage in certain new financial transactions, perhaps of a sort that has not yet even been invented. That power is subject to an affirmative procedure, the same procedure that was applied to the similar power taken by the previous Administration to prevent the misuse of the well-being power. If the power is to be used effectively, it may need to be used rapidly and, therefore, such a procedure gives the right balance between ensuring proper scrutiny of attempts to curtail local authority powers on the one hand, and swiftness of action to protect communities on the other.

When I responded to my hon. Friend the Member for Bradford East this morning, I hope I illustrated why that was necessary, and how it might have effect. Subsections (5) and (6) enable the Secretary of State to exercise these powers in respect of all or any particular type of local authority.

Orders made under clause 5 are subject to the consultation requirements set out in subsection (7). I want to reassure the hon. Member for Worsley and Eccles South that, contrary to what she said, the Secretary of State, having consulted, cannot simply ignore the results. General public law principles have effect and the Secretary of State must have regard to the outcome of that consultation and must report to Parliament on it.

Question. That the clause stand part of the Bill.

The Committee divided: Ayes 14, Noes 7.

Division No. 3

AYES

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Question accordingly agreed to.

Clause 5 ordered to stand part of the Bill.
Clause 6

PROCEDURE FOR ORDERS UNDER SECTION 5

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

Barbara Keeley (Worsley and Eccles South) (Lab): I welcome you, Mr Bayley, to the Chair; it is a pleasure to serve under your chairmanship.

The Minister will understand that we think the powers in clause 5, on which we have just voted, are too sweeping, because we covered that at some length this morning. In terms of the procedure for the orders, will the Minister tell us more about the process of further consultation? There is concern about consultation—I still have great concerns. If there had been a belief on the part of the Government and ministerial team in consultation, there would have been rather more consultation on parts of this Bill. For instance, the whole section regarding community empowerment measures has had very little consultation or scrutiny. That makes it difficult for local authorities to plan. It also makes it difficult for voluntary and community organisations, because all those organisations are currently affected by the cuts imposed by the Government. Will future consultation on any changes affecting measures in the Bill be better than that we have seen in the run-up to the Bill?

Andrew Stunell: The correct answer to the question is, yes, we certainly intend the consultation to be appropriate and thorough, and to be taken seriously by the Secretary of State when he receives it, as he is duty bound to do.

Barbara Keeley: And we hope the process will be thorough.

Andrew Stunell: I will give way.

Barbara Keeley: But there is concern about consultation, which is at the heart of the Bill.

Andrew Stunell: I will come to that. We have heard from the Secretary of State for Communities and Local Government and the Communities and Local Government Committee that they do not intend to go back to these issues in further consultation. If the Government is not going to change its mind, is it going to legislate?

Barbara Keeley: Amendment 31 would require the Secretary of State to report to Parliament on how that provision impacts on the exercise of the power conferred by section 5A(1), and how he or she proposes to address this by presenting a Bill to Parliament to.

The Chair: With this it will be convenient to discuss the following: amendment 32, in clause 8, page 7, line 39, leave out ‘may by order’ and insert ‘must report to Parliament on how that provision impacts on the exercise of the power conferred by section 5A(1), and how the Secretary of State proposes to address this by presenting a Bill to Parliament to’.

The Chair: Clause 6 accordingly ordered to stand part of the Bill.

Clause 7 ordered to stand part of the Bill.

Clause 8

GENERAL POWERS OF CERTAIN FIRE AND RESCUE AUTHORITIES

Jack Dromey (Birmingham, Erdington) (Lab): I beg to move amendment 31, in clause 8, page 7, line 39, leave out ‘may by order’ and insert

‘must report to Parliament on how that provision impacts on the exercise of the power conferred by section 5A(1), and how the Secretary of State proposes to address this by presenting a Bill to Parliament to’.

The Chair: Clause 6 accordingly ordered to stand part of the Bill.

Jack Dromey: It is a pleasure to serve under your chairmanship, Mr Bayley.

In principle, we broadly welcome the Government’s proposals to provide fire and rescue authorities with the new powers contained in clause 8. The Bill does not provide those authorities with a general power of competence, but the powers are wide-ranging and will enable the fire authority to do anything connected with or incidental to its functions. The powers are, therefore, welcome.

We are, however, extremely concerned about and oppose the far-reaching powers provided to the Secretary of State. He seeks to give powers with one hand and take them away with the other. On the one hand, he allows himself the power to “by order amend, repeal, revoke or disapply any statutory provision” that he thinks “prevents or restricts relevant fire and rescue authorities” from exercising their new powers, thus giving himself powers that should face proper scrutiny in Parliament. On the other hand, he allows himself to “by order make provision preventing relevant fire and rescue authorities” from doing anything under the new power specified in the order. That effectively proscribes the fire and rescue authorities from carrying out anything that the Secretary of State deems inappropriate.

We are familiar with the epistles from Brentwood and Ongar, which are regularly issued to local government on everything from bin collection to parties on the occasion of the royal wedding. However, as has already been mentioned, the Bill contains 142 order-making powers for the Secretary of State, and that does not sit well with the rhetoric on localism. The Minister said this morning that the powers are “limitless”. In reality, however, they are limited by 142 powers. We are unable to scrutinise the regulation properly, because it has not yet been published, and we do not yet have the code that is being worked upon by the Select Committees on Communities and Local Government and on Political and Constitutional Reform, even though we were promised it this morning. This is a “now you see it, now you don’t” localism, and it would be closer to the truth to call the legislation the centralisation Bill from hereon in.

As we have already discussed in relation to local authorities, we believe that the extension of the Secretary of State’s powers is too broad. They could be used to repeal or revoke any number of statutory provisions with minimal parliamentary scrutiny. Such a provision is unnecessary and confers on the Secretary of State an extensive and unwarranted power. It is worrying that he should seek such broad powers, even in principle, given his rhetoric on localism.

I will cite two examples of that Churchillian rhetoric on localism. The first is from the Secretary of State himself:

“The Localism Bill is one of the most radical pieces of legislation to be debated in this chamber for decades… It represents everything this Government stands for and is the cornerstone for everything we want to do. It will revitalise local democracy and put power back where it belongs—in the hands of the people.”

For too long, Government has believed that Whitehall was the centre of the universe.”

Well, there will be 142 opportunities for it to remain the centre of the universe. He goes on to say:
[Jack Dromey]

“We genuinely believe in local democracy, in local communities, and in local solutions... By pushing power out, getting Government out of the way, letting people run their own affairs; we can build a stronger, fairer Britain.”

Yet he reserves for himself 142 powers to dictate the terms of that stronger, fairer Britain.

Brandon Lewis (Great Yarmouth) (Con): At the risk of repeating this morning’s debate, could the hon. Gentleman reflect on the fact that some of those powers, which he has referred to as being centralising, actually give the Secretary of State the power to do what local government wants and to help get things out of the way so that local government can do what it needs to do? That includes the fire service, which surely will not always want to wait for the time frame that the passage of a Bill through Parliament would take. This seems a good way of moving out power locally, and is quite the opposite of the argument that he is making.

Jack Dromey: There are two responses to that, both of which are based on trust. First, if we are legislating for a general power of competence, do we trust local government to exercise that properly? Secondly—the hon. Gentleman will forgive me for saying this—we do not trust the Secretary of State to exercise his powers properly. I will come to some examples of that later.

Brandon Lewis: Just as we discussed this morning, particularly on the first two amendments, these are powers that enable the Secretary of State to move things or waive things that local government has requested he moves. It is not the other way round; it is being driven from local government upwards. Again, it seems to be the opposite of what the hon. Gentleman is arguing.

Jack Dromey: In the event that there was a need, based on experience, to act, I am confident that, with co-operation between the parties, that could be done quickly and effectively through a Bill. Looking at past precedent, it could even be accommodated and accomplished within three days.

Returning to the Churchillian rhetoric, the Minister of State, Department for Communities and Local Government has said:

“We are using the powers of the Government and Parliament to give power away rather than to increase it for ourselves. That is the direction in which this Government will continue to go. We will give more and more power to the people.”

He goes on to say that

“there is something about the British people that means they do not like being told what to do”

I agree with that—

“they have a quality that makes them want to push back when people try to boss and bully them”.

I agree with that, too. But he then goes on to say that they—describing us—should not be concerned about the Secretary of State’s powers. The key power is the general power of competence.”—[Official Report, 17 January 2011, Vol. 521, c. 653-55.]

Would that the key power, the general power of competence, was what we are talking about, but the problem is that it is constrained by the ability of the Secretary of State to use 142 powers to undermine it.

Gavin Barwell (Croydon Central) (Con): Having sat through this morning’s proceedings and the start of this afternoon’s deliberations, I am confused about the approach that Labour Members are taking to this issue. The hon. Gentleman is talking about the number of order-making powers, and he is essentially saying that the Secretary of State is taking too much power. This morning the hon. Member for Worsley and Eccles South, who is sitting next to him, criticised those on the Government Front Bench for taking a laissez-faire approach—that is the phrase she used—because the Government were not planning to force local authorities to keep minimum standards of social care. Are they in favour of more central direction, or less?

Jack Dromey: We need to distinguish between two things. On the one hand, is it legitimate for Parliament to prescribe the minimum standards that should be provided, particularly to vulnerable groups, by local government? Yes, there is a powerful case for that. But, on the other hand, the Bill offers the illusion of localism while saying that the Government will retain 142 powers to constrain that localism if they see fit.

Brandon Lewis: I, again, want to clarify the use of those 142 powers—this came up in the evidence sessions, too. In many cases, those powers are to free up, not to restrain.

In the case we had this morning and two of the cases listed here, we can see that those powers are for the Secretary of State to use where local government requests it to free up statutory instruments, so that local government can move forward. That is quite the opposite from what he is arguing, which is why I am getting confused. The Opposition seem to be arguing against their own case.

Jack Dromey: Not for one moment; we have studied international experience with great interest. In this country, hon. Members will know that local authorities are creatures of statute, whereas in some of our continental counterpart countries, local authorities reside within a constitutional framework. I shall give some examples of how local authorities are free elsewhere, including in one common law jurisdiction.

In France, there is a three-tier system of government—regions, departments and communes, each with their own territorial competence. They are able to “settle any matter within its territorial jurisdiction provided it is not devolved by law upon another authority.”

In Sweden—again, I shall quote from a Government statement—councils shall conduct their own affairs.” That has been interpreted as a power of general competence and gives councils the ability to act in the best interests of their local residents. That is expressed as being “any matter” by way of public interest within their boundaries that can be provided on a not-for-profit basis. In Denmark, there is the general power of the kommuner to act in the interests of the community, provided that the action is not provided by another institution or arm of Government.
New Zealand, which has a common law tradition, adopted in 2003 a power of general competence and a formulation of the roles and responsibilities of local government. That involves, and I quote:

“a statement of the purpose of local government, being to enable local decision-making and promote well-being...a definition of role, being to give effect to these purposes and to perform the duties and exercise rights confirmed by legislation...a statement of status and powers confirming that...authorities have full capacity to carry on or undertake any activity or business, do any act or enter into any transaction, and to fulfill this capacity...full rights, powers and privileges.”

That is not what is being offered by this centralism Bill.

Henry Smith (Crawley) (Con): I have been fascinated to hear the tour around Europe and the Commonwealth with regard to how local government operates; I am just perplexed about why that research was not carried out during the last 13 years and why the Labour Government did not enact any such thing. The general power of competence does many of the things described in other countries and therefore represents a radical shift in power for the first time in many years.

Jack Dromey: It certainly represents a radical shift of power to the Secretary of State, with his 142 powers.

The Minister of State, Department for Communities and Local Government (Greg Clark): I say gently to the hon. Gentleman that if he wants to have a debate about whether the Secretary of State’s powers need to be put in a different context, it is worth separating out the powers that allow the Secretary of State to bust the barriers that get in the way of local authorities and fire and rescue authorities.

Surely the hon. Gentleman can have no objection to the simplification provision in the Bill. Why does he not concentrate more narrowly on the clauses to which he objects? We may then be able to make some progress on those points.

Barbara Keeley: On a point of order, Mr Bayley. We seem to have two Ministers speaking in this section. I did not think that that was allowed. Perhaps you could advise me.

The Chair: I do not see a problem with Committee members contributing. It was an intervention and Mr Dromey gave way, so I imagine he wanted to hear what was being said.

Jack Dromey: If the right hon. Member for Tunbridge Wells (Greg Clark) wishes to reconsider the sweeping scope of the powers that the Secretary of State has taken in the Bill and to come back to the Committee and the House to acknowledge that, in light of the force of the argument, it might be wise to circumscribe those powers greatly, we will be ready for that discussion.

Greg Clark: What I say to the hon. Gentleman is this. I made a commitment in the evidence session that we will consider reasonable cases. We all want to devolve powers. He persists in regarding as a Henry VIII power the provision to take out duplicate legislation, but we are not in the territory to do that. I say again gently to him that he may want to reflect overnight on whether he wants to narrow his points.

Barbara Keeley rose—

The Chair: Order. The hon. Lady must sit down for a minute. Under our rules, it is completely impossible to have a three-way debate. She is able to make a point of order, but she cannot reply to an intervention that has been made to another Member’s speech. She can, of course, speak later if she wants or even intervene on her colleague. Mr Dromey has the floor at the moment.

Barbara Keeley: Can my hon. Friend give way to me?

The Chair: Of course he can do that.

Barbara Keeley: The Minister said that we as a Committee can go through the powers one by one. The other point about the Henry VIII power is that it is the note from the Department of Communities and Local Government to the Regulatory Reform Committee that describes these powers as Henry VIII powers. That is where it comes from.

The Chair: Order. It would help the Committee if we had two-way debates. Although that comment was in the form of an intervention to Mr Dromey, it appeared to be addressed to the Minister. Perhaps it would make more sense for the hon. Lady to speak later during this debate. There is no difficulty with two Opposition Front-Bench spokesmen speaking in the same debate just as there is no difficulty with two Ministers doing so. Mr Dromey has the floor.

Jack Dromey: Thank you for your ruling, Mr Bayley. It will add to the wisdom of our deliberations.

Before I continue, let me say that the rather disparaging remark about European and common law comparisons is to be regretted. We learn valuable lessons from where a general power of competence has worked elsewhere in Europe and internationally.

The Parliamentary Under-Secretary of State for Communities and Local Government (Robert Neill): If the hon. Gentleman is looking for valuable lessons and comparisons, will he take on board the opinion of Mr Mike Bennett, the assistant director general of the Society of Local Authority Chief Executives, who said that “the wording of the general power of competence looks good in the Localism Bill”?

If it is satisfied, why is not the hon. Gentleman?

The Chair: Order. Perhaps I should remind those on the Back Benches that they are not excluded from this debate. Mr Dromey has the floor.

Jack Dromey: I shall make reference to the evidence of SOLACE later on. We are also concerned that in retaining the power to impose an order, the Secretary of
State may undermine the flexibility of fire and rescue authorities and their ability to provide the services that they believe are necessary.

That fear was expressed by Dr Keohane in relation to local authorities, but it is no less relevant to fire and rescue authorities. The amendments in these sections have been grouped, so I will take each one in turn to explain the purpose of each amendment.

Where it is deemed that a statutory provision prevents or restricts fire and rescue authorities from exercising their powers, or if it overlaps with those powers, amendments 31 and 32 will require the Secretary of State to report to Parliament on how the provision impacts on the exercise of the power conferred by proposed new section 5A of the Fire and Rescue Services Act 2004 in subsection (1) and on how the Secretary of State proposes to address that by presenting a Bill to Parliament.

Alun Cairns (Vale of Glamorgan) (Con): Does the hon. Gentleman not accept that even if a credible case can be made from today’s debate, amendment 32 really blows out all the credibility around those other amendments for which a credible case could be made—not that I accept that.

Clause 8, which amendment 32 seeks to amend, is extremely restricted as it is, and it relates to the overlap of power. It relates to making it easier for fire authorities, and other authorities, to prevent the risk of judicial review, delay and confusion. Does that not expose all the other amendments as purely spoiling motions?

4.30 pm

Jack Dromey: Not for one moment. We believe that localism should be localism, and that a general power of competence should be a general power of competence. We are not in favour of unreasonably constraining a power that all parties in the House have welcomed.

Stephen Gilbert (St Austell and Newquay) (LD): I am curious about what the hon. Gentleman has just said. If I am following the Opposition argument correctly, they want to retain powers to ensure national standards. Do you have any idea of how many powers you would retain? Would it be 142, 242 or 542?

The Chair: Order. I, as Chair, do not retain any powers at all.

Jack Dromey: The hon. Gentleman, like me, is new to this House. As I understand it, the purpose of the Committee stage is to scrutinise the Government’s Bill, not our Bill. We accept that circumstances might arise that require action in light of experience and the issue is about how we deal with that. Do we have an inadequate mechanism with potentially dangerous consequences and 142 powers retained, or do we have the full scrutiny of Parliament? We are in favour of the full scrutiny of Parliament.

Gavin Barwell: On the issue of constraining the general power of competence, what does the hon. Gentleman have to say in response to the point made by the Under-Secretary of State, the hon. Member for Hazel Grove (Andrew Stunell), in the previous debate? He said that the order-making powers taken by the Government are equivalent to those taken by the previous Government in relation to the general power of well-being.

Jack Dromey: There is common cause in favour of legislating for a general power of competence. We learn valuable lessons from history, including the necessity of getting the relationship between local and central Government right. We think that the Bill gets it wrong because it retains too much power for the Secretary of State and therefore frustrates the thrust for localism.

Several hon. Members rose—

Jack Dromey: I have been generous with my time, and I would like to continue. Where it is deemed that a statutory provision prevents or restricts fire and rescue authorities from exercising their powers, or that it overlaps with those powers, amendments 31 and 32 would require the Secretary of State to report to Parliament on the impact of the provision, so that appropriate action can be taken.

Crucially, that would apply a more reasonable and democratic level of rigour to the procedures, and more adequate safeguards against the unnecessary use of power. In the evidence sessions, Councillor Porter of the Local Government Association said that there are 142 places where the Secretary of State has taken reserved powers in the Bill. He added:

“If the most needed ones are retained, and the Secretary of State is asked to speak about them in the House…it would give the sector more confidence”—[Official Report, Localism Public Bill Committee, 25 January 2011; c. 25, Q36].

Those are his words.

We agree with Councillor Andy Porter. In a document entitled “Memorandum by the Department for Communities and Local Government”, produced for the Delegated Powers and Regulatory Reform Committee, the power in proposed new section 5C(i) to the Fire and Rescue Services Act 2004 is described as a “Henry VIII power.” That is appropriate for the Secretary of State.

We understand that in some circumstances, a relevant fire and rescue authority might find itself unexpectedly constrained by restrictive statutory provisions. However, a far more appropriate mechanism for dealing with such an eventuality would be proper consideration by Parliament.

There will be fewer examples of where that power may need to be exercised than in relation to the general power available under the Bill to local authorities. Nevertheless, we recognise that the powers should be as effective as possible. We believe strongly that fire and rescue authorities should be able to operate as freely as possible. We therefore support a mechanism that would allow parliamentary review of restrictive statutory provisions in Parliament through the passage of a Bill.

Amendments 33 and 34 remove the proscriptions applied to the powers that the Bill hands to fire and rescue authorities. We believe that such sweeping powers will undermine those authorities’ ability and confidence to use their powers. Andy Sawford of the Local Government Information Unit said that the limitations are not necessary.

The document issued by the Department for Communities and Local Government says that the powers that amendments 33 and 34 seek to remove are considered
“necessary in order to prevent fire and rescue authorities from pursuing activities which are within the ambit of their extended powers but are considered seriously undesirable”. Considered undesirable by whom? On what past experience of fire and rescue authorities is that based? Our experience has certainly been that they are admirable institutions and provide the country with a first-class service of which we can be proud.

Given the Secretary of State’s rhetoric about localism, would it not be preferable to allow fire and rescue authorities the discretion to determine what is seriously undesirable? Does the Secretary of State not trust them? Should such a situation arise, would it not be preferable for the Secretary of State to bring a Bill before Parliament to make the necessary amendments to this Bill?

The same document regarding the powers in the Bill admits that there is “no indication of how the powers might be exercised in terms of the activities which might be prohibited”.

Are Ministers therefore taking powers in accordance with the views of Donald Rumsfeld? He said that there are known unknowns and “unknown unknowns—the ones we don’t know we don’t know.”

We argue that as it is not indicated where such powers might be necessary, it would be better for them not to be conferred on the Secretary of State. Should known or unknown unknowns arise, the Minister can introduce a Bill to Parliament.

Greg Clark: The hon. Gentleman seems to think that a Bill is necessary to do any business in Parliament, despite the fact that statutory instruments can be debated by both Houses. Is it his view that statutory instruments should be abolished and everything should be done through a Bill? In what circumstances does he think that statutory instruments should be used?

Jack Dromey: Historically, statutory instruments have been the House’s stock in trade, but the fundamental point is this: either the Government believe in localism and in setting fire and rescue authorities free or they do not. Our view is that those authorities should be trusted to use the powers that will be available to them to provide a yet better service—I shall give an example in a moment—and to innovate. In the highly unlikely event—we cannot conceive of one—that any serious problem arises requiring the public interest to be defended, the Government could introduce a Bill in the House.

Greg Clark: This goes to the heart of the matter. I think that both sides are united in regarding it as essential to have parliamentary scrutiny of any provisions that might prove necessary, but I am still at a loss to understand why a Bill rather than a well-debated and scrutinised statutory instrument is necessary in all circumstances, given that the point will usually be quite narrow.

Jack Dromey: Because the Government have said, “As part of the big society, we believe in localism and we will legislate accordingly to set the people free”, and in this case it is to set fire and rescue authorities free. The only problem is that the Government then say, “We’re not sure. We want to retain controls and have 142 powers to exercise.”

Greg Clark: May I have one final try? I am clearly not expressing myself terribly well. As far as I can understand from these exchanges, there is a unity of view that sometimes in the future it may be necessary to introduce some changes to the powers under the power of general competence. The narrow issue to be debated is whether it is always and everywhere necessary for that to be debated through a Bill or whether there are circumstances in which it could be done through a statutory instrument, for which various levels of scrutiny are available. It is a reasonable question to ask. Since we agree that the measure will be needed in certain circumstances and that Parliament should debate it, why is the hon. Gentleman’s point that we can only, always and everywhere do so through a Bill?

Jack Dromey: There are two fundamental points. First, I repeat that we believe in trusting fire and rescue authorities. We are confident that they will exercise the powers admirably and well in the public interest. Secondly, in the history of debate in the House, there is a marked contrast between the scrutiny inherent in, on the one hand, a Bill brought before it and, on the other, the sometimes cursory consideration given to a statutory instrument. It is entirely legitimate for the Government to say that circumstances might arise in which they have to, with reluctance, constrain the power of general competence, but that they hope to avoid those circumstances. However, in the event that such circumstances arise, our strong view is that the appropriate way to deal with that is through a Bill, which we hope will be the exception rather than the rule.

There is another, perhaps more important, dimension to the argument on why fire and rescue authorities require the new powers and why they would benefit if the Committee supported the amendment. The powers are being rightly conferred on fire and rescue authorities to allow them to be as flexible and as innovative as possible in how they provide their services. It might have seemed inappropriate 20 years ago for fire and rescue authorities to have such powers, but the nature of their work, the service they provide and how they tackle fires has changed beyond all recognition.

The Fire and Rescue Services Act 2004 brought many positive changes to the fire service and strengthened the case for additional powers for fire and rescue authorities. The main purpose of the Act was to deliver a modernised fire and rescue service that responded to the needs of the 21st century. It repealed the Fire Services Act 1947 and brought a lot of the positive changes recommended by Sir George Bain in his report of December 2002. It also broadened the duties placed on the fire service to include rescue and tackling terrorist action, as well as its traditional role tackling fires.

In addition, the Act placed more emphasis on fire prevention. In particular, the new duties on all fire and rescue authorities to promote fire safety underpinned the necessary shift towards a more prevention-based approach, thereby saving lives and reducing the number of fires in the first place. It also replaced outdated legislation with a new statutory framework, which recognised fire and rescue services’ existing role in responding to a range of interests, such as road traffic accidents, alongside their traditional fire-fighting role.

It also created new duties to respond to other emergencies, such as serious flooding, and to plan for and respond to terrorist threats.
Those significant changes in 2004—the evidence is absolutely clear, and the Minister will be aware of it—contributed significantly to, for example, the 46% reduction in fire fatalities in England in the period April to September last year, compared with 10 years earlier. They were also significantly responsible for the 31% fall in fire alarms attended this year compared with 10 years earlier. It was as a result of those reforms and a gradual evolution in the nature of the services that the fire and rescue authorities provide that we arrived here today, where it is necessary to provide fire and rescue authorities with greater powers.

We know that as a result of the reforms that have already taken place, fire and rescue authorities engage extensively with communities up and down the country. If our amendments are accepted, the new powers will ensure that fire and rescue authorities will be able to provide the best service possible and be as innovative as possible.

Alun Cairns: I accept many of the points that the hon. Gentleman makes about innovation in the fire authorities and the difference that that has made, but why does he then propose the amendments, given that they would call for new Bills should the services need to react? In the relatively short time of today's debate, four of the amendments tabled by the Opposition have called for new Bills to come before Parliament. In view of the time that there is each year for new Bills to go through Parliament, what kind of situation does he foresee? Is it at all practical?

Jack Dromey: It is of the highest importance that we should be guided by the principal mechanism that, while acting in the public interest on the one hand, we should not, on the other hand, while welcoming localism, unnecessarily circumscribe it. I have already answered the hon. Gentleman's question in some detail. The essential difference between the Government's position and ours—I stress this again—is that we trust fire and rescue authorities to exercise their proposed powers in a way that will be strongly in the public interest.

Gavin Barwell: The hon. Gentleman can make that case in respect of one of the amendments that he has proposed to subsections (3) and (4), but not for the amendments to subsections (1) and (2). He keeps repeating the line that all 142 of the powers circumscribe localism. He might disagree with subsections (1) and (2) for the reasons that the right hon. Member for Greenwich and Woolwich set out earlier, but he cannot argue that they circumscribe localism. What they do is allow the Secretary of State quickly to push through measures that have been requested by local authorities or, in this case, fire and rescue authorities.

Jack Dromey: Where it is necessary, in the light of experience or the unexpected happening, to push changes through quickly, I am confident that there would be positive dialogue in this House about making the necessary changes. It comes down fundamentally to this choice: do we make the changes by way of a Bill before the House, or do we trust the Secretary of State to use his 142 Henry VIII powers? We prefer the former, not the latter.

Greg Clark: The hon. Member for Worsley and Eccles South referred to the suggested code of practice to govern the relationship between central and local government that was prepared by one of the professors who gave evidence to the Committee, and I have now had a chance to look at it. He makes provision for exactly the kind of powers that are in the Bill. He says that the powers given to local authorities may not be undermined or limited by another central authority except as provided for by statute. Since the Bill contains provisions to limit them by statutory instrument, it seems that the professor's evidence justifies our approach.

The Chair: Before Mr Dromey replies, I have to tell Members that the document by Professor Jones which was referred to earlier has now arrived. If any hon. Member wants it, it is available on the table in the middle of the Committee Room.

Jack Dromey: Thank you, Mr Bayley. You have made my point for me. I got used to speed-reading a long time ago, but if one had had the benefit of having the document before us this morning, they might have been able to respond intelligently to the point that the Minister just made. No doubt we can return to that. Thank you, Mr Bayley, for producing the document at last; we will give it careful scrutiny and it will no doubt be the subject of further debate in Committee.

The amended powers will give fire and rescue authorities the clarity they need to carry out their duties, particularly in relation to community fire safety programmes and home fire-risk assessments. That is an absolutely crucial area of their work. In some cases, fire and rescue authorities have not been clear that they have the power to carry out some of the functions they deem necessary, such as setting up a company to provide training and consultancy—including in partnership with the private sector—using their expertise that is not available elsewhere. They have also faced issues in determining how far they can go in relation to intervention in the home, for example, proactively replacing a chip pan with a more suitable appliance in the home of an elderly resident, or someone they know to be severely at risk, such as a drug addict.

Having spoken to representatives of the fire authorities, I know that they believe these powers—and they are welcome—will remove that uncertainty, enable authorities to provide their services in the most efficient way possible, and allow the space for them to innovate. That will be severely undermined, however, if these authorities are constantly worried that their powers might be undermined by a diktat issued by the Secretary of State, particularly when the current Secretary of State is so fond of sending out epistles on the one hand, and would no doubt be fond of using his 142 powers on the other.

Henry Smith: The hon. Gentleman's argument would have more credibility if it had not been for his party in Government, which sought to impose regional fire offices on the fire service across the country, costing £250 million.
Jack Dromey: I think we can be proud of the structure now obtaining for the fire and rescue authorities and how they operate. Our Government were instrumental in putting those arrangements in place.

My hon. Friend the Member for Worsley and Eccles South pointed out, in the earlier debate on the power of general competence in relation to local authorities, that a number of organisations have raised serious concerns about the 142 Henry VIII powers being taken to himself by the Secretary of State. Lest we forget, those concerns were expressed by a majority of the organisations that gave evidence on the local government issues before us. They included witnesses from the Local Government Association, the Local Government Information Unit, the Centre for Local Economic Strategies, the leader of Cheshire West and Chester council, the leader of Shropshire council, Professors Jones and Stewart, the New Local Government Network, the Society of Local Authority Chief Executives, Unison and London Councils. Ten different bodies of evidence, all clearly expressing their grave reservations, to a greater or lesser extent, about the power that the Secretary of State wishes to retain for himself.

We contend, therefore, that in order to ensure that fire and rescue authorities can use these powers in the best possible way and that the Secretary of State does not take unnecessary and unwarranted powers to himself, our amendments should be accepted. We hope that the Committee will take account of those concerns and support the amendments.

The Chair: Before I call the next speaker, I entirely understand why Mr Dromey was unable to comment on a paper that he had not had an opportunity to read. It may help the Committee, however, to hear that Professor Jones told the evidence session that he had submitted that paper to the Political and Constitutional Reform Committee, but it had in fact been lost somewhere between the London School of Economics and Westminster. It is not, therefore, the Government’s fault that it was produced late, and it is now with us. As I said earlier, hon. Members can consult it by taking a copy from the table.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): We are discussing the provisions in the Bill that amend the Fire and Rescue Services Act 2004, and I endorse the comments made by my hon. Friend the Member for Birmingham, Erdington about the important changes effected by that legislation. It would be odd if I did otherwise, as I was the Minister who both commissioned the Bain review and subsequently gave effect to its conclusions by taking the legislation through Parliament. It made some important changes and advances, and statistics on fire deaths and on the effectiveness of the fire and rescue services well and truly caught. They can do what they think is the best possible way and that the Secretary of State does not take unnecessary and unwarranted powers to himself.

We contend, therefore, that in order to ensure that fire and rescue authorities can use these powers in the best possible way and that the Secretary of State does not take unnecessary and unwarranted powers to himself, our amendments should be accepted. We hope that the Committee will take account of those concerns and support the amendments.

Let us look at the definitions of pre- and post-commencement limitations. A pre-commencement limitation is defined as “a prohibition, restriction or other limitation imposed by a statutory provision that—

(a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 8(1) of that Act”.

A post-commencement limitation is defined as “a prohibition, restriction or other limitation imposed by a statutory provision that—

(a) is contained in an Act passed after the end of the Session in which the Localism Act 2011 is passed, or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 8(1) of that Act”.

It seems that the Government have the fire and rescue services well and truly caught. They can do what they want, but they cannot do anything that is prohibited by a statute or statutory instrument that came into force before the Act comes into effect. The Secretary of State may by order make provision preventing relevant fire and rescue authorities from doing under section 5A(1) anything which is specified, or is of a description specified, in the order.

5 pm

There we have it. Yes, it sounds good, because it contains a devolutionary principle, but the limitations are incredibly tight. The Secretary of State has that power either to legislate or, by order, to limit the power of fire and rescue authorities.

Mr David Ward (Bradford East) (LD): I am confused, because the right hon. Gentleman rightly pointed out the limitations of pre and post-commencement. Does he seek to remove the power of the Secretary of State to remove those limitations?
Mr Raynsford: As the hon. Gentleman will recall from our debate this morning, I have always made the point that there are, inevitably, necessary limitations. I object, however, to the Government’s trying to pretend that this is an epoch-making, revolutionary, devolutionary Bill that totally changes the relationship between central and local government. In practice, as we dig down and investigate the detail—as the hon. Gentleman recognised in his contributions this morning—it becomes clear that it includes some draconian powers, which limit the devolution that is offered. My criticism of the Government is not that they seek to be devolutionary, but that they speak with forked tongue. They claim that the devolution is epoch-making when in fact it is limited, curtailed and circumscribed by draconian provisions. The Bill may be a useful, modest move in the right direction, but the attempt to present it as a fundamental, epoch-making, devolutionary measure is completely unrealistic and over the top.

Ministers are a bit desperate in trying to sell their case. We have heard the Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst, claiming that some official at SOLACE supported the Government’s proposed extensions of power to local government, specifically the general power of competence. I am surprised that the Minister said that because while I cannot remember which official at SOLACE he quoted, he and all members of the Committee will recall that we had evidence from SOLACE during the Committee’s first sitting on 25 January. I quote from Derek Myers, the chairman of SOLACE, who I assume is the highest authority. He said:

“Could I talk about the limitations on the power of general competence? We think this is too cautious as drafted.”—[Official Report, Localism Public Bill Committee, 25 January 2011; c. 38, Q55.]

That is what the chairman of SOLACE said, and if the Government are scrabbling around trying to find a more junior figure in the organisation to offer some comfort to their case that the Bill is devolutionary, they have a long way to go.

Robert Neill: The right hon. Gentleman has regaled us with his long and distinguished history as a local government Minister. If he sets such store by devolution to local government, why, during the three years that he was a Minister for local government, did he not introduce such a power?

Mr Raynsford: The hon. Gentleman’s memory may be short, although he was not in the House at the time. We introduced a whole series of measures. I have referred to the Local Government Act 2003—he might well wish to listen—which repealed the provisions of the Conservative Government that had required local authorities to seek consent from the Secretary of State for borrowing. The 2003 Act extended a power of borrowing to local authorities, and I have quoted that provision. It also got rid of the extremely offensive section 28, which most people in the gay and lesbian community regarded as deeply offensive. I am ashamed to say that the Conservative party opposed our repeal at the time. Although it has changed its mind now, and rightly so, at the time it was hostile to it. That devolutionary measure removed some pretty unpleasant and draconian provisions that the previous Conservative Government had passed. All that I am saying to him—in the nicest possible way, because he is a neighbour of mine in south-east London—is that if someone over-claims for their particular measures, the outcome is likely to disappoint them. In particular, there is likely to be a reaction from the supposed beneficiaries when they find that the promised liberation from government restriction is not as great as the prospectus had said it would be. The problem with the legislation is that the Government are overselling it and promising too much. In reality, it will come as a great disappointment to many people in local government, for the reasons that I have set out.

Robert Neill: It is a pleasure to see you in the Chair, Mr Bayley. This has been a lively, wide-ranging debate on what is, in fact, a narrow issue. Perhaps I will be forgiven if I do not go down all the interesting avenues that have been explored in the past few exchanges and instead concentrate on the essential issues of dispute between the Government and the Opposition, which are highlighted in the amendments.

I am grateful to the hon. Member for Birmingham, Erdington for setting out his support for the concept behind the clause. Although we will have a stand part debate in due course, it was sensible for him to do so because he referred to it in his analysis, and I agreed with what he said about the clause’s benefits. It is something that I advocated before I came to the House, when I was the leader of a fire authority, and I am glad that it has been welcomed across the piece in the fire community. To that extent, we are on common ground.

I join him in paying tribute to the work of fire and rescue authorities, and I have no doubt that they will exercise their powers sensibly, proportionately and constructively. However, for the reasons that were rehearsed in relation to other powers and local authorities, it is perfectly sensible that there should be fail-safe provisions and restrictions upon any body that is created by statute. The provisions give exactly the freedoms that fire authorities seek. They also remove what would otherwise have been an anomaly, because some fire authorities in the United Kingdom are part of a county council, and county council fire services would have had the benefit of the power of general competence as principal authorities in any event. Creating a general power for all fire authorities enables stand-alone fire authorities, or Metropolitan authorities—such as the one I once led in London, or the authority in the hon. Gentleman’s west midlands constituency—and what are generally referred to as combined fire authorities to have an equivalent power, which gives them the freedom to operate. That is within the context of there being single purpose authorities, rather than multi-purpose authorities, such as a county council.

Jack Dromey: The Minister has extensive experience in this House, and also outwith, in his former capacity of fire and rescue. Will he tell us in what circumstances the Government might choose to exercise the powers that they wish to retain?

Robert Neill: I will happily come to that, but I hope the hon. Gentleman understands that that point returns to the basic principle of what we have sought to do with the power of general competence. That power is being mirrored in relation to the particular purposes of fire
and rescue authorities. Generally, we are giving local authorities the same powers that an individual has for legal purposes, and those are subject to being capable of constraining a statute. That is the same position for fire and rescue authorities as it is for anything else. So, it is not necessary to think in the rather draconian terms that the hon. Gentleman does. It may well be that, at the end of the day, it is not necessary to use the powers, and I hope that that is the case. To say, however, that there should never be a fall-back position whereby the Secretary of State has a reserve power would contradict the stance that his party took in government, and that virtually every Act has taken in recent times. To my mind, that principle cannot be objectionable.

Jack Dromey: In the context of a Localism Bill, retaining that central power for the Secretary of State is draconian. I press the Minister again: under what circumstances might the Secretary of State have to exercise such powers?

Robert Neill: I will come back to the general principle of a Henry VIII clause, but the very important point that the hon. Gentleman neglects is that the bulk of these proposals are intended to free up local authorities and to give the Secretary of State the ability to remove restrictions on them. One might want to look at public safety issues where the order-making process might be appropriate, but it is not sensible to try to flag up those situations in advance. My point was fairly made in interventions from my hon. Friends for Croydon Central, for Great Yarmouth and for Vale of Glamorgan: the amendments seek to make it harder for the Secretary of State to free up fire authorities rather than easier.

Amendments 31 and 32 would mean that to remove a restriction on a fire authority, rather than using secondary legislation—it is worth remembering that it will be secondary legislation, subject to scrutiny—it would be necessary to bring a Bill before Parliament. We all know that that is a longer and more cumbersome process. I am surprised that those who say they support devolutionists argue that the measure should be fettered in that way. With all due respect to the hon. Member for Birmingham, Erdington and his colleagues, it is a little rich to criticise the Government for taking powers to remove restrictions on local authorities or, if necessary, to put a restriction on the exercise of a power by a local authority when they themselves, in the dying days of the last Parliament, took powers by statutory instrument, in the same situation as we have here, to abolish local authorities and create wholly new ones. The right hon. Member for Greenwich and Woolwich talked about forked tongues. That phrase does not sit easily with those who supported such proposals. What we are doing is entirely consistent with practice here.

The Bill provides for a rigorous process of scrutiny and consultation. That is set out in the clauses. There will have to be consultation and there will then have to be scrutiny based on the procedures for making legislative reform orders under the Legislative and Regulatory Reform Act 2006. That is set out in clause 8. The hon. Member for Birmingham, Erdington said that these are powers to the Secretary of State, but the Secretary of State is, of course, subject to the scrutiny of Parliament. That is the well-established procedure.

Mr Ward: There were some discussions this morning about the Secretary of State as opposed to a Secretary of State. I was also struck by the use of the phrase “If the Secretary of State thinks that a statutory provision”. Could there not be a more welcoming word than “thinks”? The Secretary of State might be approached by, receive representations from or be lobbied by a fire authority or a local authority and such a word could demonstrate a willingness to look at the barriers that are standing in the way of the general power of competence.

Robert Neill: That is an interesting point. I understand it because it is a point that I raised in opposition in relation to previous local government legislation. The advice that I got, which I am prepared to accept now, is that “thinks” is standard drafting in clauses of this kind. It mirrors the existing legislation and the circumstances that my hon. Friend postulates. Representations or consultations can be the device by which the Secretary of State thinks that such a step is necessary. The term of art has been used consistently by parliamentary draftsmen, so that is the thinking behind it. I am sure that my hon. Friend is right that the Secretary of State would often, in exercising these powers, be responding to representations from fire authorities, in relation to this clause, or from local authorities more generally. We are at one on how it is likely to work in practice.

5.15 pm
Amendment 32 deals with overlapping powers. Again, it seems ironic that the Opposition, who say that they wish to be localist, should say that those powers, which run the risk of judicial review—that is one of the fears that would exist—can only be resolved by primary legislation when, in fact, it is perfectly standard procedure to do that through secondary legislation, subject to the same constraints, consultation and scrutiny outlined in the clauses. I assure the hon. Member for Birmingham, Erdington that the purpose is to simplify. It will not impact upon the powers and, because there is consultation and scrutiny, I submit that it is entirely appropriate to leave those clauses as they stand.

On amendment 33, it is true that the clause as drafted has the ability to set certain restrictions and conditions, but that is not new or exceptional. Any Government would, inevitably, expect to have a fail-safe power to protect either ratepayers or the Exchequer, so it is neither new nor unique. In fact, similar conditions were set out in relation to the well-being power in the Local Government Act 2000, which the previous Administration introduced, and we have broadly built upon that framework. The powers are not intended to be used lightly, and there will be safeguards of consultation and scrutiny.

With respect, there has been a tendency during this Committee to suggest that the Government and the Secretary of State will use this as an intrusive power, but that is not the case. The use of the powers is entirely intended to be benign, and to characterise it otherwise is to have spent too much time, since we are discussing Henry VIII, thinking that the television series, “The Tudors”, genuinely reflects 16th-century history. It does not, and the suggestion that the Secretary of State seeks to use draconian powers to restrict fire authorities does not reflect the reality of the clause’s intention either.
Nic Dakin (Scunthorpe) (Lab): The hon. Member for Bradford East rightly focused on the word “thinks,” which is, of course, a neutral word. It could allow the powers to be taken and used in a non-benign as well as a benign way. That is part of the problem with the Bill as drafted and, whether that is the norm for draft legislation or not, it will remain a problem. I am pleased that the Minister acknowledged that that is a problem that he has himself identified in the past. We are all committed to localism and are driven by what local people want, so will he update us on what consultation has taken place with fire authorities and what they have said? Are they enthusiastic about the changes, or do they share the concerns of those who gave evidence to us?

Robert Neill: On the point about the word “thinks,” all I can tell the hon. Gentleman is that the order will be the result of the Secretary of State’s thinking and it will be subject to scrutiny. Therefore, the rationality of the appropriateness or otherwise of his thought is itself subject to both consultation and scrutiny, and that provides a safeguard.

The extension of a power of general competence has been welcomed by both the Local Government Association and the Chief Fire Officers Association. I am not aware of specific representations on the limitation issue in relation to the clauses under discussion, although I accept that the points made by some local government associations about limitations generally will, by implication, apply to them as well. I am not trying to avoid that, but neither do I think that they are justified if we consider the context in which the safeguards are being provided.

Amendment 34 would omit proposed new section 5D of the Fire and Rescue Services Act 2004. That is the exact provision, however, that sets out the scrutiny that will provide a safeguard. It also refers to the Legislative and Regulatory Reform Act 2006, and I would have thought that that was desirable. I therefore argue that the amendment will defeat the object of localism, rather than advance it. For those reasons, I hope that the hon. Member for Birmingham, Erdington will reflect on the debate and not press the amendment to a Division. If he seeks to do so, I must advise the Committee to vote against it.

Jack Dromey: I wish to make one point only. The hon. Gentleman has been uncharacteristically vague about the necessity for these powers. I asked twice for circumstances in which it might be necessary for them to be used. We will be pressing the amendment to a Division, but I ask that on Report he return to the House to spell out and justify why he believes—in light of the experience of fire and rescue authorities, which are admirable organisations—such powers are necessary.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 14.

Division No. 4]

AYES

Dakin, Nic
Dromey, Jack
Elliott, Julie
Keelley, Barbara
McDonagh, Siobhain

Mears, lan
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

NOES

Neill, Robert
Ollerenshaw, Eric
Smith, Henry
Stewart, lain
Stunell, Andrew
Ward, Mr David
Wiggin, Bill

Question accordingly negatived.

Question put forthwith (Standing Orders Nos. 68 and 89), That the clause stand part of the Bill.

The Committee divided: Ayes 14, Noes 9.

Division No. 5]

AYES

Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Lewis, Brandon

Neill, Robert
Ollerenshaw, Eric
Smith, Henry
Stewart, lain
Stunell, Andrew
Ward, Mr David
Wiggin, Bill

NOES

Dakin, Nic
Dromey, Jack
Elliott, Julie
Keelley, Barbara
McDonagh, Siobhain

Mears, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

Question agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

FIRE AND RESCUE AUTHORITIES: CHARGING

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

Mr Raynsford: I shall not detain the Committee for long, but I have a question on one of the provisions in section 18C, which this clause inserts into the Fire and Rescue Services Act 2004. Section 18C covers charges for malfunctioning alarms. It is well known that that is a serious problem for the fire and rescue service, and the principle is absolutely right. Subsection (5), however, states:

“The references in subsection (2) to “sea” are not restricted to the territorial sea of the United Kingdom.”

Is that simply a reference to the channel tunnel, because there are reciprocal fire arrangements between Britain and France for firefighting in the channel tunnel that may involve British firefighters operating outside the territorial sea of the United Kingdom? If it is not limited to that, could the Minister tell me where it is envisaged that fire and rescue authorities may be involved in responding to alarms outside the territorial sea of the United Kingdom?

Robert Neill: The right hon. Gentleman raises an interesting point, and I admire him for the detail of it.
The Chair: Order. Was Mr Dromey trying to catch my eye?

Jack Dromey indicated assent.

The Chair: It might make sense to call Mr Dromey first.

Jack Dromey: We broadly welcome this clause and its provisions concerning faults and calls from automatic fire systems, such as automatic fire alarms. We also welcome the provisions at sea, although my right hon. Friend is right about the importance of clarity on that. Could the Minister reassure us—that is the one reassurance that I ask for—that the proposed powers will not apply to domestic premises?

Robert Neill: I can assure the hon. Gentleman at once that we do not intend to do that. It is worth stating the general background, because I believe this is the end of this stand part debate. I will endeavour in the course of my remarks to address the pertinent question raised by the right hon. Member for Greenwich and Woolwich.

The clause redefines the process by which fire and rescue authorities charge for certain discretionary services. It is important that it is set out very clearly in the clause that that does not give the ability to charge for their core services of attending fires, saving lives, and giving emergency treatment. It does not cover road traffic accidents, at which the fire and rescue service are often the first in attendance, nor does it address pumping out floodwater as a result of, for example, the storms that we have seen. Those are outwith the provision and intended to be so.

The clause provides for a more efficient, swifter process, and it puts the power entirely in the hands of the fire and rescue authority and its community. At present, if fire and rescue authorities want to charge for one of those discretionary services, the Secretary of State has to carry out a full public consultation and, on the basis of that, must decide for what they may charge and who they may charge. He must then lay an order before Parliament. That is a lengthy process and, moreover, it has to be done on a national basis. At present, no local discretion is permitted and it is insufficiently flexible to respond to differing situations across the country.

We are simplifying the process by devolving to each FRA the power to determine, in consultation with its local community, what it should charge for. I think that is consistent with the thrust of the proposal, but, as I have said, there are certain core functions and national responsibilities that clearly would not be charged for: extinguishing fire; protecting life and property in the event of fire; providing emergency medical assistance; and protecting life from serious harm.

The right hon. Member for Greenwich and Woolwich rightly referred to the particular instance of false calls from faulty alarms in non-domestic premises. That is a significant burden for fire and rescue authorities. The latest statistics show that, in the three years leading up to 2009-10, 35% of all attendances by fire and rescue authorities were to false or faulty alarms, usually in unoccupied offices or warehouses. We should clearly have the power to recoup that cost from people who fail to maintain a piece of equipment, and that is the thinking behind the measure.

Ian Mearns (Gateshead) (Lab): A little thought: it might involve cross-border arrangements between the Republic of Ireland and Northern Ireland, for example. Also, if there was a large fire in France, a tender could be put out through the European procurement regulations for someone to come and put the fire out.

Robert Neill: Apparently it does not include Northern Ireland, but I understand the point. Sometimes, because firefighters are in the business of saving lives, they are likely to respond and do the decent thing, even if the law is unclear. No one would criticise them for that.

Mr Raynsford: I am still puzzled. If there was a fire at sea, I understand why the fire service would wish to respond, even if it were outside the United Kingdom’s territorial seas. However, I cannot envisage a circumstance in which the fire service would have a direct wire from an automated alarm from something outside our territorial seas. I can envisage that in the channel tunnel, but I cannot imagine any other circumstances where a malfunctioning automatic fire alarm would be wired in to a British fire authority. That is why I was puzzled by the reference. The Minister’s explanation, while plausible and interesting, is not wholly convincing when the clause deals with provisions for charges for malfunctioning alarm systems. I would be grateful if the Minister would give some thought—not now, as this is a complex matter—as to whether he envisages a situation where British fire authorities would be wired up to automated alarms that operate outside our territorial waters.

Robert Neill: I simply say that proposed new section 18C(2) applies to “a report of fire, or explosion, at sea or under the sea.”

That width is deliberate because although we have talked generally about false alarms as the most obvious issue, because of the responsibilities for rescue, there could be other circumstances.

Alison Seabeck (Plymouth, Moor View) (Lab): I have had an odd thought: could the measure potentially apply to oil rigs that could conceivably have alarms?

Robert Neill: It probably could. That is a helpful intervention and I will adopt it in the spirit in which it is meant. We are talking about fire and rescue, and I am grateful to the hon. Lady for fulfilling that function. I will get back to the right hon. Member for Greenwich and Woolwich, in writing if need be, with further clarification. I hope that the Committee will understand.
that the measure intends to provide flexibility in a life-saving service. It is not intended to create legal complications.

Mr Raynsford: I am most grateful to the Minister for his reply. Although I do not intend to detain the Committee, it does leave open a question as to how the fire and rescue authority would actually secure payment of the charge if the charge is to be made to an organisation based outside our territorial waters. I do not expect to pursue that issue further, but there might be difficulties in ensuring payment in those circumstances.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

The Chair: The question is that clause 10 stand part of the Bill.

Barbara Keeley: Shall I speak to amendment 35?

The Chair: We have not quite come to that. If nobody seeks to debate clause 10, I will put the question, which is that clause 10 stand part of the Bill.

Barbara Keeley: Clause 10 brings in schedule 2, and there are a whole bunch of amendments to schedule 2.

The Chair: We put the question on clause 10, and then have a separate consideration of schedule 2, under which we will take a series of groups of amendments. If we agree that clause 10 should stand part of the Bill, that does not preclude debate on schedule 2 or the listed amendments. Does that help the hon. Lady?

Barbara Keeley: But just seeking clarity, clause 10 does nothing but bring in schedule 2. Perhaps this is just my newness, but it would help if the matter were clarified. I am not sure whether others understand.

The Chair: For the benefit of the whole Committee, if we agree clause 10, it means that reference is made in the Bill to schedule 2, and we can therefore have a debate about it and of course consider all the amendments that Members have tabled. If the Committee is minded to allow clause 10 to stand part of the Bill, that does not in any way prejudice the debate on schedule 2.

Clause 10 ordered to stand part of the Bill.

Schedule 2

NEW ARRANGEMENTS WITH RESPECT TO GOVERNANCE OF ENGLISH LOCAL AUTHORITIES


The Chair: With this it will be convenient to discuss the following: amendment 36, in schedule 2, page 173, leave out lines 22 to 24.

Amendment 37, in schedule 2, page 173, leave out lines 27 to 29 and insert—

'(1) The Secretary of State must report to Parliament and present a Bill to make provision prescribing a new form of governance for any local authority which has made proposals for new arrangements under subsection (5).'

Amendment 38, in schedule 2, page 173, leave out lines 30 to 40.

Amendment 39, in schedule 2, page 173, leave out lines 41 to 44 and insert—

'(5) A local authority may propose to the Secretary of State that he or she makes provision through legislation for a new form of governance arrangements to apply to that authority if the authority thinks that the conditions in subsection (6) are met.'

Amendment 24, in schedule 2, page 215, leave out line 8.

Amendment 25, in schedule 2, page 215, leave out line 12.

Barbara Keeley: Amendment 35 to schedule 2 is on permitted forms of governance for local authorities. This group of amendments would make changes to another proposed power for the Secretary of State. Instead of the Secretary of State having the power to make a provision prescribing arrangements for local authority governance, the amendment proposes—in familiar phrasing—that the Secretary of State reports to Parliament on any proposals for new governance arrangements for local authorities and presents a Bill to Parliament to bring in any new arrangements.

The Bill is caught in the conflict between localism and the taking of centralised powers—a conflict that we keep coming back to. Earlier, I mentioned the important fact that 11 of our 14 witnesses who gave evidence about local government had issues with the powers that the Bill gives to the Secretary of State. The Opposition welcome the idea of innovation in governance arrangements, but Parliament has an important scrutiny role, in terms of prescribing arrangements for new forms of governance. It should not be for the Secretary of State alone to agree or deny those arrangements.

The Local Government and Public Involvement in Health Act 2007 introduced executive arrangements in place of the committee system for most local authorities, with two of the three executive leadership models involving directly elected mayors. Through that legislation, moving to a mayoral system could be achieved through petition, or through prior approval from local electors through a referendum. That is unlike the situation under the Bill, which seeks to impose mayors on 12 cities, and perhaps on many more later.

The 2007 Act reduced the leadership options for English councils to just two—directly elected mayor with cabinet, and indirectly elected leader with cabinet. It also meant that councils could adopt a mayoral system simply by resolution, without the need for a referendum. As we know, some councils have expressed the wish to return to the committee system of governance, and I understand that. I was a councillor in Trafford, and was a committee chair and a vice-chair when the leader-and-cabinet system was introduced. A number of my colleague councillors felt that their role had been taken away from them.

The Bill brings in the option of councils returning to the committee system that was in place before the Local Government Act 2000. We support that change, but we do not support an enduring power for the Secretary of
State to prescribe new governance arrangements without the scrutiny of Parliament. As I keep saying, the Bill has not had enough scrutiny and consultation, and that starts to show in places.

Clearly, there is a debate going on about what constitute effective forms of governance. Councils will be forced by the swinging cuts imposed on them to look at different ways of doing things. They may then make proposals to the Secretary of State for those different governance arrangements, if they believe that those arrangements would be an improvement. We have councils that want to outsource everything they do, and councils that want to run the charging model of easyJet and Ryanair. Potential airline passengers have choice: they can always fly with another airline or travel by another form of transport. However, residents of an area cannot choose another council without moving. It is therefore right that we have some balance when considering what could be important changes to forms of governance.

Labour Members believe that the right balance would be to have rigorous parliamentary scrutiny of any new governance arrangements proposed, rather than giving powers to approve governance arrangements to the Secretary of State. I want to avoid getting into the same debate time and again in Committee, but I have to say that Labour Members do not believe that statutory instruments constitute a rigorous form of parliamentary scrutiny. I served in the Whips Office for some time, and I know that a debate goes on when one tries to get Members to serve on SI Committees. The debate hinges on Members asking, “How long will I be there for? Is it only five or 10 minutes?” We should dispel here and now the notion that that constitutes rigorous scrutiny. I have known SI debates to last for half an hour or 40 minutes, but in such cases all the Members tend to sit there tutting.

As I said with regard to the Secretary of State’s powers over the general power of competence, it was made clear last week that many individuals and organisations are unhappy about the extent of the powers given to the Secretary of State in different parts of the Bill. One witness stated that the Secretary of State needs to prescribe less. The Minister of State, Department for Communities and Local Government, the right hon. Member for Tunbridge Wells—this will come to haunt him—said that we can go through these powers “one by one, and you have my word that I do not intend this to be centralising.”—[Official Report, Localism Public Bill Committee: 27 January 2011, c. 168, Q281.]

The power for the Secretary of State to prescribe new governance arrangements is centralising. He could prescribe new arrangements even where he has not had a proposal from a local authority. He could also refuse to accept a local authority’s proposals for new arrangements. Those matters ought to be dealt with through full scrutiny, not just through regulations.

I trust that the Minister will accept that the power contained in the Bill is centralising. It will not empower a local authority if the Secretary of State refuses a proposal just because it does not suit his views. It is not properly democratic or accountable to have major changes in governance for local authorities without full—fuller than a statutory instrument—parliamentary scrutiny. I hope that the Committee will support the amendments.

Andrew Stunell: I thank the hon. Lady for her welcome announcement that the Opposition are rethinking their views about the committee system in local government; that is a very welcome recantation—that is, perhaps, not too strong a word. The removal of the committee system under the Local Government Act 2000 was widely regarded by local government colleagues around the country as an act of vandalism. In every subsequent local government Act put in front of the House by Labour Members, there was a challenge on that point—on reinserting the provision. I am pleased that this time we have their consent.

5.45 pm

I want to give the broader context of schedule 2. It is lengthy, but about 98% of it consists simply of a reprint of part 1A of the Local Government Act 2000. That includes quite a number of the powers for the Secretary of State, which have just been reproduced lock, stock and barrel. I hope that Opposition Members will bear that in mind when they level their poisoned darts at us for including them in the Bill.

Barbara Keeley: The general view outside this place, and the view of the Opposition, is that there should have been a redrafting—that some of the powers and provisions are not in keeping with localism. That is the problem. It is not good enough just to reprint them from a Bill from 10 years ago, and say “That is why they are there.”

Andrew Stunell: That is an interesting point, coupling the twin arguments, “We were right in the first place” and “The Government have not reformed Labour’s proposals enough.” The hon. Lady is entitled to argue that she was right first time round. I am not sure which argument she is deploying on this occasion.

Gavin Barwell: Does my hon. Friend not think it remarkable, given what the hon. Member for Worsley and Eccles South has just said, that her amendments do not amend what she thinks are the defects in the previous legislation, but instead strike out a provision that allows the Secretary of State to give local authorities more freedom in their governance arrangements? How can anyone regard giving local authorities more options as more centrist? That completely passes me by.

Andrew Stunell: I entirely agree with my hon. Friend. I want to draw the Committee’s attention to the construction of the Bill. Earlier, I was reprimanded by the hon. Member for Worsley and Eccles South for quoting from it, but I will run the risk of a second reprimand by pointing out that what she is planning to do is delete the third of three options that appear in proposed new section 9B(1) of the reprinted 2000 Act. That, of course, is implemented via the final paragraph of 9B(4), which says:

“prescribed arrangements’ means such arrangements as may be prescribed in regulations made by the Secretary of State under section 9BA.”

I refer the hon. Lady to subsection (4) of section 9BA, which appears immediately underneath:
Andrew Stunell: I am more than ready to do that, but may I suggest that we wait until we reach a clause that has anything whatever to do with that?

The Chair: Yes, that would be wise.

Andrew Stunell: We are talking about governance arrangements, and the specific provision that the hon. Member for Scunthorpe was criticising, relating to the mayor, will not be dealt with through the procedure that we are considering at all. It is covered by specific clauses, and we will have the opportunity to scrutinise them later.

On the second broad issue—given that the amendments are completely misconceived, I could perhaps stop, but I will just go on—the hon. Member for Worsley and Eccles South claimed that statutory instruments were essentially a nullity as far as the House was concerned. Well, for 13 years, the Labour party put through an average of, I think, 3,000 statutory instruments a year. If we multiply 13 by 3,000, that is 39,000, or some other very large number of statutory instruments, and as she reported from the Government Whips Office, the question was whether they were going to take longer than five minutes. I do not know what scrutiny was like for Government Members under the previous Government, but I hope that the Opposition in this Parliament take the scrutiny of statutory instruments seriously, as the Opposition did in the previous Parliament, and I am sure that she will be a model of excellence on that in the coming five years.

On the value of statutory instruments, as compared with Acts of Parliament, as a way of holding Ministers to account, yes, it is a lesser procedure. It is a procedure where progress can be made much more rapidly. We need a flexible system that allows the Secretary of State to give local authorities more, not fewer, choices, and that allows him or her to do so expeditiously and without unreasonable delay. That is exactly what the text of schedule 2 does, and exactly what would be defeated were we foolish enough to support these amendments.

Barbara Keeley: Briefly, the Minister was trying to give us the idea that the Secretary of State would feel bound to move on the proposal that he got from Bradford, or any other local authority. As I read it, however, proposed new section 9B(1) says that the Secretary of State “may” do that. One can posit a case in which certain favoured authorities are allowed new arrangements, and certain other authorities are not. My concern is about “may”. My amendment says that if the Secretary of State has proposals, they “must report to Parliament”. That wording is stronger, so I will push the amendment to a Division.

Question put. That the amendment be made.

The Committee divided: Ayes 9, Noes 14.

Division No. 6]

AYES

Dakin, Nic
Dromey, Jack
Elliott, Julie
Keeley, Barbara
McDonagh, Siobhain

Mears, Ian
Raynsford, rh Mr Nick
Reynolds, Jonathan
Seabeck, Alison

NOES

Barwell, Gavin
Bruce, Fiona
Cairns, Alun
Clark, rh Greg
Gilbert, Stephen
Howell, John
Lewis, Brandon
Neill, Robert
Ollershaw, Eric
Smith, Henry
Stewart, Iain
Stunell, Andrew
Ward, Mr David
Wiggin, Bill

Question accordingly negatived.
Barbara Keeley: I beg to move amendment 40, in schedule 2, page 180, line 27, leave out from beginning to end of line 22 on page 191 and insert—

9F Overview and scrutiny: functions and definitions

(1) Governance arrangements of a local authority (whether under executive arrangements, the committee system or prescribed arrangements) must include the operation of an overview and scrutiny function (referred to in this Chapter as the scrutiny function) which must be operated by way of the appointment by the authority of one or more committees of the authority (referred to in this Chapter as overview and scrutiny committees).

(1A) The role and structure of the scrutiny function, and the overview and scrutiny committees, should be set out in the authority’s constitution.

(2) Executive arrangements by a local authority must ensure that its overview and scrutiny committee has power (or its overview and scrutiny committees, and any joint overview and scrutiny committees, have power between them)—

(a) to review or scrutinise decisions made, or other action taken, in connection with the delivery of public services in the local area by the authority or another designated person,

(b) to make reports and recommendations to bodies delivering public services in the locality on matters which affect the authority’s area or the inhabitants of that area,

(c) to review or scrutinise decisions made but not implemented by the authority (call-in).

(3) In this Chapter, “joint overview and scrutiny committee”, in relation to a local authority (“the authority concerned”), means—

(a) an overview and scrutiny committee of another local authority exercising relevant functions (within the meaning given by subsection (1)) of the authority concerned, or

(b) a joint overview and scrutiny committee of two or more authorities exercising such functions.

(4) The power of an overview and scrutiny committee under subsection (2)(c) to review or scrutinise a decision made but not implemented by the authority (call-in) includes power—

(a) to recommend that the decision be reconsidered by the person who made it, or

(b) to arrange for its function under subsection (2)(c), so far as it relates to the decision, to be exercised by the authority.

(5) For the purposes of this Chapter, a “designated person” is a person or organisation that commissions or provides services, goods or facilities to the public within their local authority area. This includes, but is not limited to—

(a) a relevant commissioner or provider of NHS services or social care services, subject to section 9FC,

(b) a responsible authority under the Crime and Disorder Act 1998,

(c) a water authority or waste water authority,

(d) an integrated transport authority under the Transport Act 2008; a company providing local bus services or a Train Operating Company under the Railways Act 1993,

(e) JobCentre Plus,

(f) a flood risk management authority or emergency planning authority,

(g) the Environment Agency,

(h) the Homes and Communities Agency,

(i) Highways Agency,

(j) a county council, in an area where the authority exercising its powers under this section is a shire district,

(k) a shire district, in an area where the authority exercising its powers under this section is a county council.

(6) In London, the relationship between London Boroughs and designated persons who are directly accountable to the London Assembly should be subject to the agreement of procedures between those organisations.

9FA Overview and scrutiny committees: supplementary provisions

'(1) An overview and scrutiny committee of a local authority:

(a) may appoint one or more sub-committees, and

(b) may arrange for the discharge of any of its functions by any such sub-committee.

(2) A sub-committee of an overview and scrutiny committee may not discharge any functions other than those conferred on it under subsection (1)(b).

(3) A reference in this Act to an “overview and scrutiny committee” will include reference to a sub-committee established under subsection (1) and to a joint committee established under section 9F(3).

(4) An overview and scrutiny committee of a local authority may not include any member of the authority’s executive (under executive arrangements), the chair of a decision-making service committee (under the committee system) or any equivalent decision-making person or persons under executive arrangements.

(5) An overview and scrutiny committee of a local authority may include persons who are not members of the authority (co-optees).

(6) Any person co-opted under subsection (5) will not be entitled to vote at any meeting of that committee, unless the Council’s constitution makes provision for such persons (either individually or as a class of person) to vote.

(7) Section 499 of the Education Act 1996 is repealed.

(8) An overview and scrutiny committee of a local authority is to be treated:

(a) as a committee or sub-committee of a principal council for the purposes of Part 5A of the Local Government Act 1972 (access to meetings and documents of certain authorities, committees and sub-committees), and

(b) as a body to which section 15 of the Local Government and Housing Act 1989 (duty to allocate seats to political groups) applies.

(9) Subsections (2) and (5) of section 102 of the Local Government Act 1972 apply to an overview and scrutiny committee of a local authority as they apply to a committee appointed under that section.

9FB Overview and scrutiny committees: powers

'(1) An overview and scrutiny committee of a local authority—

(a) may require members of the executive (under executive arrangements), the chair of a relevant committee (under the committee system), officers of the authority or designated persons, as defined by section 9F(5) to—

(i) attend before it to answer questions, subject to section 9FC and 9FD,

(ii) provide information to it that relates to the functions of the committee, subject to section 9FC and 9FE,

(iii) have regard to any reports or recommendations that the committee produces that relate to the functions of the committee, subject to section 9FC and 9FF,

(b) may require any other member of the authority to attend before it to answer questions relating to any function which is exercisable by the member by virtue of section 236 of the Local Government and Public Involvement in Health Act 2007.
(2) It is the duty of any member, officer or person mentioned in paragraph (a) or (b) of subsection (1) to comply with any requirement mentioned in that paragraph, subject to sections 9FF (2) and (3).

9FC Overview and scrutiny committees: powers in relation to substantial changes to local NHS services

'(1) Where an overview and scrutiny committee proposes to use its powers under section 9FB(1) in relation to a relevant NHS body or NHS provider—

(a) it should have regard to any joint arrangements put in place under subsections (2) and (3); and

(b) it should have regard to any formal consultation arrangements put in place under those subsections.

(2) When a relevant NHS body or NHS provider proposes a substantial change to the commissioning or provision of health services (referred to in this section as a “substantial change”) that will affect the authority’s or authorities’ area, the area’s inhabitants, it must consult the overview and scrutiny committee of that authority or authorities.

(3) Where a substantial change under subsection (2) affects more than one principal authority, or where it affects the services provided by a shire district in an area for which there is also a county council, the scrutiny functions of those authorities must either:

(a) establish a joint committee to consider the proposal, or

(b) put in place another joint working arrangement which allows all those authorities affected by the proposal to input into the response to the consultation.

(4) Where a committee or joint committee uses its powers under section 9FB(1) to scrutinise an NHS body or NHS provider, apart from subsections (1)(2) and (3) above, that organisation or person will be under the same obligation to attend meetings, provide information and respond to recommendations as any other designated person, subject to subsection (5).

(5) Where information or attendance at an overview and scrutiny committee is requested in connection to a substantial change, the relevant NHS body or NHS provider must satisfy that request in a manner that ensures that the overview and scrutiny committee has an opportunity to substantively contribute to the consultation.

(6) A relevant NHS body or NHS provider is required to provide a formal response to those it has consulted on a substantial change, including to any relevant overview and scrutiny committee. This response must set out—

(a) the action that the NHS body or NHS provider proposes to take with regard to the substantial change,

(b) the reasons for that decision,

(c) any other information which the NHS body or NHS provider feels is relevant, and

(d) any other information which the NHS body or NHS provider has agreed with any relevant overview and scrutiny committee shall be provided.

(7) If an overview and scrutiny committee or joint overview and scrutiny committee—

(a) is dissatisfied with the process of the consultation on the substantial change,

(b) is dissatisfied with the response provided by the NHS body or NHS provider to the consultation,

(c) is dissatisfied with the reasons given supporting that response, or

(d) is not satisfied that the substantial change is not in the interest of the inhabitants of the area,

it may—

(e) if it is not a joint committee, recommend that full Council refer the matter to the Secretary of State for Health for a direction, and

(f) if it is a joint committee, refer the matter to the Secretary of State for Health for a direction.

(8) For the purposes of this section—

(a) “relevant NHS body” means an NHS body other than a Special Health Authority which is prescribed for those purposes in relation to the authority; and

(b) “relevant NHS provider” means a body or person which provides services under the Health and Social Care Act 2011 in pursuance of arrangements made by the Board or a commissioning consortium and is prescribed, or is of a description prescribed, for those purposes in relation to the authority.

9FD Overview and scrutiny: duty to attend meetings

'(1) This section applies where an overview and scrutiny committee of a local authority proposes to use its powers under 9FB(1)(a)(i) to require a person to attend a committee meeting.

(2) When a request is sent to a designated person to attend a meeting of an overview and scrutiny committee, other than in accordance with section 9FC, that request must—

(a) give reasonable notice of the meeting, considering subject matter and urgency,

(b) make clear the purpose for which the designated person is being requested to attend, and

(c) be proportionate and reasonable.

unless the scrutiny function of the local authority and the relevant public body have agreed to waive or alter any of these requirements.

(3) Subsection (2) shall not apply where a request is sent to an officer or member of the council to provide information.

9FE Overview and scrutiny: duty to provide information

'(1) When a request is sent to a designated person to provide information to a scrutiny function, that request must—

(a) specify the format in which the information is to be provided,

(b) make clear the purpose for which the designated person is being requested to provide information, and

(c) be proportionate and reasonable,

(2) Subsections (1)(b) and (1)(c) will not apply where a request is sent to an officer or member of the council to provide information.

9FF Overview and scrutiny: reports and recommendations

'(1) An overview and scrutiny committee may publish reports and recommendations.

(2) Subject to subsection (3), the overview and scrutiny committee must by notice in writing require—

(a) the authority,

(b) the executive (under executive arrangements),

(c) a relevant committee of the council (under the committee system), or

(d) a designated person, to accept or reject the recommendation, and in doing so to—

(e) consider, and have regard to, the report or recommendations,

(f) respond to the overview and scrutiny committee within two months, advising what (if any) action that body or person proposed to take,

(g) provide reasons for the decision if the body or person proposes not to take any action, or

(h) publish the response.

(3) In this section, an “accepted recommendation” means a recommendation submitted to a person covered by subsections (2)(a), (b), (c) or (d), where the requirements of subsections (2)(e), (f), (g) or (h) have been satisfied.

(4) Subsection (2) will not apply where a recommendation is made which does not relate to—
(a) an issue for which the subject of that recommendation is responsible, and
(b) an issue which does not affect the inhabitants of the area.

(5) An overview and scrutiny committee may require updates to be provided on the implementation of an accepted recommendation.

(6) Where an overview and scrutiny committee proposes to exercise the powers in subsection (5), this requirement must—
(a) be set out at the time the recommendation is made under subsection (2),
(b) indicate after what period of time an update, or updates, will be required, and
(c) specify the format in which the update is to be provided.

9FG Statutory scrutiny officers

(1) A local authority must designate one of its officers to discharge the functions in subsection (2).

(2) Those functions are:
(a) to promote the role of overview and scrutiny within the locality,
(b) to provide support to the authority’s scrutiny functions, and
(c) to provide support and guidance to—
(i) members of the authority,
(ii) such persons who are not members of the authority but who sit on an overview and scrutiny committee or committees,
(iii) officers of the authority, and
(iv) other designated persons, in relation to the authority’s scrutiny function.

(3) An officer designated by a local authority under this section is to be known as the authority’s “statutory scrutiny officer”.

(4) The local authority must provide the scrutiny officer with such staff, accommodation and other resources as are, in the officer’s opinion, sufficient to allow the officer to discharge the functions in subsection (2).

(5) A local authority may not designate any of the following under this section:
(a) the head of the authority’s paid service designated under section 4 of the Local Government and Housing Act 1989,
(b) the authority’s monitoring officer designated under section 5 of that Act, or
(c) the authority’s chief finance officer, within the meaning of that section.

9FH Reference by a member of an authority to an overview and scrutiny committee (councillor call for action)

(1) A member of an authority may make a reference to an overview and scrutiny committee of the authority to refer to the committee any matter which is relevant to the functions of the committee.

(2) For the purposes of subsection (1), provision enables a person to refer a matter to a committee or sub-committee if it enables the person to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee.

(3) The scrutiny function must develop and have regard to procedures (“councillor call for action procedures”), which should be applied by the relevant scrutiny committee, and which ensure that such provision referred to in subsections (1) and (2) operate in an effective way. Such provisions should ensure that—
(a) reference to committee or sub-committee occurs where other avenues for resolution have been exhausted,
(b) the matter affects all or part of the electoral area for which the member is elected or any person who lives or works in that area,
(c) the matter relates to the authority or a designated person, and
(d) such a reference is not vexatious, persistent or discriminatory.

(4) In reaching its decision under subsection (3), the committee or sub-committee should also have regard to—
(a) any powers which the member may exercise in relation to the matter by virtue of section 236 of the Local Government and Public Involvement in Health Act 2007 (exercise of functions by local councillors in England),
(b) any representations made by the member as to why it would be appropriate for the committee or sub-committee to exercise any of its powers under section 9F(2) and 9FB in relation to the matter, and
(c) the powers under sections 9F and 9FB.

(5) Where the committee proposes to refer a matter for discussion under subsections (1) and (2) it may have recourse to its powers under sections 9F and 9FB.

9FI Publication of reports, recommendations and responses — confidential and exempt information

(1) Schedule 12A of the Local Government Act 1972 shall have effect with regard to overview and scrutiny committees.

(2) Where publication would involve making public any confidential or exempt information, a summary of the document or report shall be produced which omits the information.

(3) Where a witness at an overview and scrutiny committee is asked a question, the answer to which would require them to provide information which would, if published, be confidential or exempt, they will not be obliged to do so if the committee is meeting in public.

(4) In this section:
(a) “confidential information” has the meaning given by section 100A(3) of the Local Government Act 1972 (admission to meetings of principal councils),
(b) “exempt information” has the meaning given by—
(i) section 100I of that Act, or in relation to a report or recommendations of an overview and scrutiny committee,
(ii) a resolution of the overview and scrutiny committee under section 100A(4) of the Local Government Act 1972 which applies to the proceedings, or part of the proceedings, at any meeting of the overview and scrutiny committee at which the report is, or recommendations are, considered, and
(iii) section 246 of the National Health Service Act 2006.’.

The Chair: With this it will be convenient to discuss amendment 19, in schedule 2, page 204, line 17, leave out ‘may’ and insert ‘must’.

Barbara Keeley: Amendments 40 and 19 aim to strengthen the scrutiny function in local authorities. The Minister conveniently exhorted me to work hard on scrutiny over the next five years, so I hope that he, and the team at his side, will support the amendments. They show, like our amendment on Second Reading, that we believe that the scrutiny function is important and we want to help local authorities to move it along.

The Centre for Public Scrutiny sent Committee members a briefing on the need for the changes. It is a national charity that aims to promote transparent, inclusive and accountable planning and delivery of public services, and supports the individuals, organisations, and communities to hold decision makers to account. Holding decision makers to account has been today’s
theme, and we raised questions on that on Second Reading. The Centre for Public Scrutiny reminds us that the Bill consolidates a range of existing scrutiny legislation brought in by various Acts, but in many ways it does not go far enough.

It is timely to look at scrutiny now because the amendments offer the opportunity to clarify the inconsistencies in legislation, to take account of changes to policy and practice since it was passed, and make the law on scrutiny easier to understand for those who practise it and have a stake in good scrutiny. Amendment 40 brings in some provisions proposed in the Local Authorities (Overview and Scrutiny) Bill, which had cross-party support but failed to be enacted due to lack of parliamentary time.

Some people believe that scrutiny has failed to be effective and others have commented that they cannot find successful examples, but there are many, some of which I will quote later. Local government groups have called for the introduction of stronger scrutiny powers and for more resources to be available to the scrutiny committees or for the scrutiny function. The all-party group on local government published a report of its inquiry, “The Role of Councillors”, in June 2007. It argued that after the legislation was introduced in 2000, the Government concentrated on the executive decision-making function of councillors and said:

“Now there is a need for some rebalancing, as it is vital for the democratic representation of communities that there should be an effective role for all councillors. In developing the role of councillors who are not part of the executive, overview and scrutiny has had varying levels of success. The powers of scrutiny, and scrutiny support, should be strengthened to increase its effectiveness.”

The Centre for Public Scrutiny feels that, while scrutiny may not have had a high profile nationally, it has helped to secure, and is securing, significant improvements for local people in a number of different parts of the country. In fact, the centre gives good scrutiny awards every year, and it tells me that last year it received nearly 100 entrants, most of which were of an extremely high standard.

6 pm

Some may ask what the scrutiny functions are doing. The scrutiny work has resulted in significant cash savings for the authority or its partners, and in improvements in dialogue between the council and local residents. Some of the work has also led to measurable improvements in local services, including some high-quality work on value for money. Many scrutiny functions have therefore successfully tackled issues that can go beyond the council’s powers or that involve councils working with other authorities. What they do is very much in the spirit of this Bill because they enhance local partnership working and can look at local crime and disorder policy. They also help areas meet the challenge of finding financial savings and, most importantly—particularly as we will talk about community empowerment later—they can open up decision making on policy development to democratic accountability for the community. Those are the reasons why scrutiny is important.

Much of that work has been carried out in innovative ways, not just in formal committee meetings but through councillors going out, speaking to local people and gathering evidence. Members may have heard some of the examples of notable practice—one case is very much close to home. Wyre Forest district council reviewed renewable energy provision. South Derbyshire district council was engaged in a long-running review of slow broadband speeds in the district. That led to key successes, because BT announced that it would upgrade three exchanges that serve the district to superfast broadband. That is the sort of service improvement that can be brought about.

Tunbridge Wells borough council worked jointly with Maidstone borough council to review the local provision of mental health services. I am sure that the Minister knows of and supports that, but I understand that the review was very well received and that it resulted in the new mental health forum, which is chaired by the Minister of State, Department for Communities and Local Government, the right hon. Member for Tunbridge Wells.

The Centre for Public Scrutiny believes that that type of increased partnership working and local autonomy in relation to a wide range of public services means that, in future, it will become increasingly difficult to discern whether a service is delivered inside or outside a council, and that is why we have to look at the scrutiny powers. The centre feels that the current scrutiny powers and those in the Bill do not always help scrutiny functions to investigate the issues that directly affect local people if their influence is limited because a partner agency is involved. One of the key recommended changes is to equalise the powers that scrutiny has over the council and other partners, including health and crime and disorder partners. They currently have slightly different responsibilities under different legislation—for historical reasons, scrutiny powers have come together in different ways—and the change will help augment local democratic accountability.

The changes suggested by amendment 40 seek to achieve that and to clarify and simplify scrutiny legislation, which has become increasingly complex over the past 10 years. Current scrutiny legislation can impose unreasonable requirements on the scrutiny function, and resource issues are being discussed in relation to that. However, the current legislation still fails to give the clout that scrutiny across the board needs to give its work the profile it deserves. Proposed new section 9F in amendment 40 offers a complete rewrite of all the sections relating to scrutiny in part 1. The issue is also linked to the new health provisions: the Secretary of State for Health emphasised yesterday how important the scrutiny function would be in local councils once the changes in the Health and Social Care Bill are enacted.

The amendment would maintain the existing framework of scrutiny, allow practitioners more scope to innovate, and keep the broad powers similar to what they are now. It will make the business of scrutiny easier to track both for practitioners and for those they hold to account. The proposed changes bring together the existing, separate regimes for the scrutiny of health, crime and disorder and other local government matters.

Although the powers for a reference to the Secretary of State for Health in the case of any substantial variation in NHS services are kept separate, everything else has been merged together. I think that we all understand from the number of interventions on the
Prime Minister and the Secretary of State for Health that references to the latter tend to be on larger issues, such as the closure of hospitals. Scrutiny powers to challenge and hold partners to account are, in amendment 40, broadly similar to those that exist for the partner authorities, and there are safeguards that require scrutiny to be exercised in a proportionate manner. Those who are included in the new scrutiny powers that are suggested in the amendment might feel that that is too much for them, but there is a framework for those greater powers to engage with local service delivery issues without being limited and constrained by current anomalies.

Amendment 40 also expands the number of organisations with which scrutiny can engage. Instead of a list of organisations, the definition of such partners is given under designated persons, which is a class description, and it is the same as the definition that is about to be adopted in the proposed Local Government (Wales) Measure. In Wales, the Measure has gone through significant pre-legislative scrutiny, and that definition has not been found wanting.

The Bill has not had the benefit of pre-legislative scrutiny, although, as my right hon. Friend the Member for Greenwich and Woolwich said, if ever a measure cried out for pre-legislative scrutiny, this is it. We may benefit from the pre-legislative scrutiny that has been carried out in Wales, because we were denied that opportunity here.

Gavin Barwell: The combined effect of amendments 40 and 19 is to stipulate that authorities that choose to operate under the committee system must have a scrutiny and overview committee. Does the hon. Lady regard requiring an authority to do so as a localist measure? As a former councillor herself under the committee system, does she recognise that under that system all members of an authority are engaged in scrutiny work as a function of being on a committee, as opposed to an executive system where a split exists between executive and non-executive members?

Barbara Keeley: The briefing that we have received from the Centre for Public Scrutiny, which I recommend to the hon. Gentleman if he has not already read it, stated that scrutiny has moved on from the notion of committees. I gave examples—one of them was close to home for the Minister of State, Department for Communities and Local Government, the right hon. Member for Tunbridge Wells—whereby scrutiny reaches out beyond the committee sitting or the council into the community, which is what we want to see. I do not believe that it is in any way non-localist to state that those councils that return to the committee system must have a scrutiny function. Scrutiny is very important. In his opening remarks, the Secretary of State for Health referred to the importance that health scrutiny will assume in almost every area of the country.

Gavin Barwell: The hon. Lady has made the case with passion that she thinks that that is important. When he criticised the Government earlier, the hon. Member for Birmingham, Erdington said that the attitude was one of “We know best.” Does the fact that the hon. Lady thinks that scrutiny is important justify making all local authorities do what she would like them to do?

Barbara Keeley: I hate to think what sort of local authority would not want to have some form of scrutiny in this era of huge change, particularly in the NHS. I cannot see how that would work.

Alyn Cairns: Will the hon. Lady give way?

Barbara Keeley: No; I will try to make progress now. To summarise, amendment 40 would introduce more powerful scrutiny committees to follow up on their recommendations, which is important. It would remove anomalies such as councils co-opting statutory education co-opts, which they do not need to do. It will equalise roles and responsibilities across counties and districts in two-tier areas. That anomaly can no longer be justified. It will clarify the roles and responsibilities of joint committees, which are an increasingly popular way to transact scrutiny business in a proportionate manner.

Cross-authority working—about which Ministers from the Department for Communities and Local Government talk a great deal—is important, so cross-authority scrutiny will also become important. I have given the example of the joint scrutiny work on mental health services that was carried out by Tunbridge Wells and Maidstone borough councils. I feel sure that the Minister of State, Department for Communities and Local Government, the right hon. Member for Tunbridge Wells would appreciate measures that enable better joint work on scrutiny across authorities.

Greg Clark: I am grateful to the hon. Lady for referring to something that has worked successfully, and I have no doubt that both councils would want voluntarily to continue those arrangements. The hon. Member for Birmingham, Erdington said earlier that we should trust local government and fire and rescue authorities, and the hon. Member for Worsley and Eccles South herself said that she could not see an authority choosing not to have these arrangements. Why does she not want to trust local government in the way that her colleague does?

Barbara Keeley: Because we believe that scrutiny is important. Members should look at the briefing from the Centre for Public Scrutiny. Amendment 40 includes as part of its text that every local authority must have a scrutiny function—that is important. Members may not agree, but what about the citizens who live in an area where there is no scrutiny? Particularly now, when we have lost one tier and will be losing another tier in terms of primary care trusts so that things will all go straight to GPs. None of us really has an idea how all that will work. This is the time to strengthen scrutiny.

The difficulty for many scrutiny functions in a variety of councils is that they are restricted as to who they can call, and in their resources. They cannot move into areas such as health or crime and disorder, yet those are the very areas that local people expect councils to deal with. As a constituency MP, I have had incredible problems with utilities, areas that flood and so on—there are many things. Citizens and residents tend not to understand that councils do not have authority over those things.

We believe in the scrutiny function in this place. Select Committees have great powers to call witnesses and use resources in that way. It is not right in any way to deny it to local authorities.
[Barbara Keeley]

Amendment 40 would remove the power of the Secretary of State to issue regulations and guidance, so, to that extent, it is not centralising. Regulations and guidance are unnecessary and are not in the spirit of localism. I hope that the Committee will support the amendments, which would strengthen the important scrutiny function in local authorities.

Brandon Lewis: I will not keep the Committee long. I found the hon. Lady’s words surprising. We keep hearing that the Opposition are in favour of localism, but yet again we have an amendment that would tell local government how to do something. I fully support the Government’s position and oppose the amendment for a couple of reasons.

Barbara Keeley: It may help the Committee if I make it clear that these amendments were tabled at the request of the Centre for Public Scrutiny. They do not give the Opposition’s position, which is that we support scrutiny and want to extend it. Is the hon. Gentleman saying that the Government do not support scrutiny and do not support resourcing it and giving local authorities powers?

Brandon Lewis: The hon. Lady might like to clarify when she speaks later whether the Opposition actually support the amendments or whether a quango has told them what they must support in a Committee. I am not sure what she is arguing. The simple fact is that the Government’s position is to say to local authorities that they should scrutinise, but how they scrutinise is something that they can decide locally. It is true localism, not the top-down control that the Opposition argue for through the guidance of a quango paid for by the Government.

The hon. Lady says that she used to work with a fourth-option authority that had a committee system. I was on a committee system fourth-option authority in opposition and then as the leader of one for five years. It had an overview and scrutiny committee in the format laid out in the current legislation. The committee structure is a complete farce. I have not spoken to anyone in a fourth-option authority that still has committees who has not found the same thing: senior officers wasting their time and, therefore, taxpayers’ money trying to find something for the overview and scrutiny committee to do. That makes a farce of the law. They want to make it seem that something is happening when it is not. The reality is that in a committee system, the committee, which back-benchers sit on, take part in and are involved in, performs the scrutiny role itself and is self-perpetuating in that way.

Ian Mearns: I served in a local authority for 27 years and am aware of different ways of running the committee system in different places. In my local authority in Gateshead, we had an open committee system whereby there was no whip beforehand and committees could go on at length, rightly, to scrutinise properly the proposals put forward by officers and senior members. In other local authorities not too far away from where I was, the committees were pre-whipped and proposals went through on the nod. If that was to be the system adopted under the new proposals, it would seem only fair to allow a scrutiny system to be adopted, unless, of course, the local authority determined otherwise.

Brandon Lewis: I thank the hon. Gentleman for his intervention, but he fails to point out that, ultimately, on any council, there is always a council meeting where councillors—whether in opposition or not—can make comments and speak against an issue that they were not happy with when it was brought up earlier.

Barbara Keeley: If the hon. Gentleman thinks that the existing powers are fine, can he say how scrutiny—for example, in the case of the changes to the NHS—is going to happen? Is he clear about that?

Brandon Lewis: First, I would refer to good opposition. Secondly, I would refer to the Government’s position in schedule 2, which states: “Executive arrangements by a local authority must include provision for the appointment by the authority of one or more committees of the authority”.

It goes on to say that authorities must have scrutiny. What type of scrutiny that is and how it is structured is up to the local authority. The core difference is having the local decision made by a local authority that is answerable to the electors. If a local authority is acting in a way that the electors do not like, that puts the power back in the hands of the electors. That is what local elections are about. That is what democracy is about. As a democrat, that is what I support.

Alun Cairns: I could not support my hon. Friend more strongly. It is strange, however, that the hon. Member for Worsley and Eccles South made a comparison using the Welsh Assembly Government’s Local Government Measure, which is currently going through, because that is the most centralising piece of legislation that has been in front of the Assembly. It is so centralising that the Labour party in Westminster would find it extremely difficult to support, because it takes powers away from local authorities and into the centre.

Brandon Lewis: I am grateful for that intervention. I cannot support the amendment. From what the hon. Member for Worsley and Eccles South has said, it seems that it was created by a quango and the Opposition have not necessarily thought it through and do not necessarily even support it. The Government’s position in the Bill as it stands is perfectly legitimate: having local power making local decisions with local people being able to deal with that at elections if they want, rather than having some farcical situation that does not add up and is, yet again, top-down control from the Labour party.

Mr Ward: I find myself in a difficult position considering quite a prescriptive Bill and an even more prescriptive amendment, so I disagree with everybody so far. For consistency, I retain my fundamentalist position, which is that it should be for a local authority to decide how to carry out its own scrutiny. I see nothing wrong, whether it is centralism or not, in ensuring that there is a duty on the local authority to carry out an overview and scrutiny function and a duty to disclose what that is, so that the local electors know. As with the previous group of amendments, I believe that local electors have a right to be badly governed and badly scrutinised locally, but it should be for them to decide.
Returning to the previous string of amendments, I was won over by the argument for the prescribed arrangements, and I wonder why we cannot extend that to the overview and scrutiny function. If it does, I am sorry, but I have missed that. I was won over by the argument that the prescribed arrangements for governance allow the local authority to approach the Secretary of State and say, “We don’t like that, and we don’t like that. We think this is better for us.” Could that not be extended into a prescribed arrangement for overview and scrutiny, which local authorities could then ask the Secretary of State to think about with a view to a local choice?

On the choice between prescriptive and very prescriptive, there is a long list of named or prescribed bodies, which extends the scope of overview and scrutiny beyond the authority itself. Is that not already covered in the Bill where it is stated that the local authority can look at anything that concerns anybody within the area? A couple of broad clauses already cover that point.

**Mr Raynsford:** As I made clear at the start of our proceedings, I have an interest in this matter as I am chair of the Centre for Public Scrutiny. [Interjection.] I made that clear at the outset, and it is right for me to repeat it now. I must say to the hon. Gentleman who referred to it as a “quango”, that it is not a quango, it is a charity.

**Brandon Lewis** rose—

**Mr Raynsford:** I will give way to the hon. Gentleman in a moment, but I would like him to listen to my point. I thought that his party was keen to encourage the voluntary sector, charitable organisations and the big society, and that he would be slightly less churlish in his references to an organisation that works to support the public interest by promoting good-quality scrutiny and more efficient government.

**Brandon Lewis:** I am sorry if the right hon. Gentleman took my words in that way. I referred to the organisation as a quango on the basis of my understanding that its funding came from the Government through local government, that it was entirely funded that way and that it is effectively a Government body. I was amazed that the Opposition seemed to be tabling amendments that came from such a body, rather than from their own thought processes.

**Mr Raynsford:** I assure the hon. Gentleman that the CFPS is a charity that receives and seeks funding from a range of sources, including charitable donations and money earned from informative conferences and publications. I do not ask him to accept that point from me, but I ask him to look at the work done by the CFPS over the years, I hope he will accept that it is a worthwhile organisation.

Scrutiny has advanced significantly over the past 10 years, but the legislative framework has not kept pace. My hon. Friend the Member for Worsley and Eccles South highlighted that in her introductory remarks, and I want to highlight two areas where that point is very relevant. First, there is a growing focus on scrutiny by local authorities of organisations outside the local authority. We are particularly aware of the changes being introduced by the Secretary of State for Health, and there is a strong presumption of scrutiny of local health arrangements being carried out by local authorities. Secondly, there are a growing number of partnerships between local authorities and other partner bodies. A scrutiny function that embraces that situation can ensure that those partnerships genuinely work in the public interest.

In the previous Parliament, I had the fortune, or otherwise, to inherit a private Member’s Bill which fell at the election, as mentioned earlier. It was designed with all-party support to extend the principle of scrutiny to partnerships. But for the general election, it would probably have been enacted by now, but it fell because of lack of time. The principle of rationalising scrutiny functions to embrace partnerships and take on board the new functions of scrutiny beyond the local authority boundary is a reality. Although Conservative Members may want to have a pop at the Labour party about centralism, I ask them to think seriously about the benefits of having effective scrutiny in local government, particularly in those areas where local governments relate to outside organisations.

I understand that the Government may not accept the amendment—it is detailed and sophisticated and contains many provisions on which they may wish to spend more time. However, I urge Ministers to be serious about the issue, and recognise that it is important and that there is a need for clarification and for the law to be updated. If they allow a situation to develop where it is presumed that scrutiny will apply only in authorities with cabinet and executive responsibilities and structures, and not in local authorities with committee structures, a two-tier system will develop. The benefits of that wider scrutiny of partners and outside bodies will not occur in a local authority with a traditional committee structure because there is no obligation to have that scrutiny function. Quite serious problems will develop in the years ahead if the Government do not address this. I urge Ministers not to reject the provision in a partisan spirit, but to look at it as a genuine effort to extend good quality governance, not just in local government but more widely at a local level involving wider partners, and to see whether they can come forward in due course with alternative proposals of their own.

**Andrew Stunell:** We have had an interesting debate in which a number of good points have been made. I hope that this will be the last part of the struggle between localism and freedom on one side and command and control on the other. Labour Members want to introduce yet another control on local authorities and yet another prescription on what they shall and shall not do. On this occasion, they would retrofit a scrutiny function on those smaller authorities that have a committee system at the moment and impose it on any authority that chose to go down that route in future. However, there does not seem to be much sign that existing rules and regulations prevent local authorities from being innovative. The hon. Member for Worsley and Eccles South gave the Committee a number of examples of innovative, laudable and effective ways of carrying out the scrutiny function, for which I am grateful. Even if the existing rules and regulations are a bit rusty and creaky in places, they clearly do not inhibit such practice.
Let me deal with a couple of key points that have been made. The Bill, including the schedules to it, amounts to 406 pages, so it is understandable that Opposition Members have not directed their attention to page 236. Were they to do so, however, they would see that paragraph 87 of schedule 3 sets out a requirement for every local authority to have a health scrutiny committee. If there were such a loophole regarding health, the requirement in schedule 3 would block it. There is no requirement for a particular format, but the Bill includes a safeguard.

I can tell my hon. Friend the Member for Bradford East, who is a self-confessed fundamentalist on this, that the prescribed arrangements to which he referred are also capable of delivering on scrutiny. Bradford might want to propose an innovative way of approaching scrutiny and therefore want the flexibility to do that. It can use the route that we discussed under the previous clause to bring that to the attention of the Secretary of State so that it could become a prescribed system of governance for it and other local authorities. The amendment would impose additional and unnecessary duties on all local authorities, yet those who propose it freely admit that the scrutiny function already happens in all local authorities and that there is a lot of innovation and forward-thinking about how to do it.

Mr Raynsford: Will the Minister give way?

Andrew Stunell: I shall just develop my point for a moment.

While the Bill provides specifically for the health scrutiny function, I would also draw the Committee’s attention to the fact that the forthcoming health Bill also contains parallel requirements. There does not seem to be any need for the amendments in practice. They send exactly the wrong signal about what a localism Bill is about in theory, and I hope that that the Committee will reject them.

6.30 pm

Mr Raynsford: I will not get into a partisan dispute about imposition, but the hon. Gentleman’s argument that this is somehow prescriptive is unconvincing, given that the paragraph deep in the schedule to which he referred states that local authorities must establish health scrutiny committees. Frankly, that is an unconvincing argument against this attempt to create a coherent scrutiny function that covers not just health, but wider partnership arrangements with other organisations, which should reflect the development of good practice and scrutiny over the years. It is a progressive approach and not one to be rubbished, although that is, unfortunately, what the Minister has done.

Andrew Stunell: It is possible to be both progressive and centralist. I might acknowledge that this is progressive, and I hope that the right hon. Gentleman would acknowledge that it is centralist.

Barbara Keeley: I gave some examples of good scrutiny, but I do not want people to be misled into thinking that it is possible either under existing legislation or under the Bill to do everything that would be required for an effective scrutiny function, because it was made very clear to the Committee that that is not the case. It is important to address such things as the duty to attend meetings. In the House, our scrutiny function in Select Committees is enhanced by the power to require attendance. If that is missing, scrutiny is less effective.

My right hon. Friend the Member for Greenwich and Woolwich referred to the wider partnerships that will exist. I have given some examples of the substantial benefits of working with outside providers, such as BT’s work in mental health, but there are many areas in which scrutiny would not be effective, because the people called would not attend.

I would hope that Ministers would not use the disparaging language and tone of the hon. Member for Great Yarmouth. I deplore such a way of talking about a charity that is doing very effective work, and I hope that he will look at the briefing and think again. Dismissing everything as a quango is not an effective way of critiquing things.

Finally, I wish to address the distinction that the Minister keeps coming up with about what the Government think is localist. The Government apparently think that it is okay to impose mayors and to dictate that mayors become chief executives. If there is any imposition, the imposition is in this Bill, and we will come to that shortly. We think that this amendment is important, and we intend to return to the subject on Report, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Barbara Keeley: I beg to move amendment 2, in schedule 2, page 191, leave out lines 25 to 30 and insert—

‘(1) There is a presumption that meetings of a local authority executive, or a committee of such an executive, are to be open to the public.

(2) A local authority executive, or a committee of such an executive, may decide to hold a meeting in private if it thinks that in all the circumstances it would be inappropriate to hold that meeting in public.’.

The Chair: With this it will be convenient to discuss the following:

Amendment 3, in schedule 2, page 191, line 31, leave out ’prescribed’.

Amendment 4, in schedule 2, page 191, line 34, leave out ’prescribed’.

Amendment 5, in schedule 2, page 191, leave out lines 38 and 39.

Amendment 6, in schedule 2, page 192, leave out lines 23 to 28.

Barbara Keeley: We need touch on amendment 2 only briefly. It has been tabled in the spirit of the transparency and openness that already prevail in good local authorities. However, the group has also been tabled in the spirit of localism, because amendment 6 would remove the link to regulations in which the Secretary of State prescribes the circumstances in which meetings must be open to the public, or in which meetings or proceedings will be held in private. In the spirit of localism, such conditions cannot be prescribed by the Secretary of State. To avoid
undue secrecy, however, the presumption of holding executive meetings in public seems to provide the right balance. When I checked, I found that a great number of councils specify in their constitution that there is such a presumption, but I think it is right to include such a provision in the Bill while we are considering all things local government.

Amendments 3 to 6 would also remove the Secretary of State’s power to prescribe which written records are made of decisions made at meetings held in private or by individual members of a local authority executive. Matters such as what records are kept are better decided locally and defined in a local authority’s constitution. A number of local authorities already operate with such a presumption, and I have seen good examples from Durham and East Sussex. I trust that the Committee can support the amendments.

Andrew Stunell: As the hon. Lady says, many authorities have open executive meetings as a matter of course or policy. My own borough of Stockport is one, and I would commend that approach to local authorities. We need to be careful with what we are saying, however, to ensure that we do not produce perverse outcomes. Among the requirements proposed is that every decision should be recorded. That sounds a good idea, but let us be clear that existing regulations require executive decisions made in connection with the discharge of a particular executive function to be recorded. Even if such a meeting is held behind closed doors, the decision should be recorded. The proposal would—probably inadvertently—impose quite a burden through the recording of all sorts of decisions, and not just those that are related to the discharge of an executive function. It goes very much wider and deeper than is required from that point of view.

Barbara Keeley: I will say this for the first time, although I might do so again: the Minister has an army of civil servants and parliamentary draftsmen to draft things. If he is saying that he could accept the spirit of our proposal, we would be happy to allow our amendments to be altered so that any complexities or technicalities could be addressed. Perhaps he will tell us whether he is in favour of a presumption of openness and transparency under which executive committees should meet in public, unless they decide the circumstances are not suitable to allow that.

Andrew Stunell: I want to give the hon. Lady as much comfort as I can, but I remind her that the Bill, as far as practicable, avoids prescription for local authorities. I undertake to consider the point that she raised, if that would be helpful. I hope that she will take stock, however, because neither the Government nor the ministerial team are in any way inclined to add burdens to local authorities. I would be helpful. I hope that she will take stock, and I have seen good examples from Durham and East Sussex. I trust that the Committee can support the amendments.

Barbara Keeley: I beg to move amendment 7, in schedule 2, page 194, line 27, leave out ‘may’ and insert ‘must’.

Amendment, by leave, withdrawn.

Barbara Keeley: I beg to move amendment 7, in schedule 2, page 194, line 27, leave out from beginning to end of line 39 on page 196.

The Chair: With this it will be convenient to discuss the following:
Amendment 42, in schedule 2, page 195, line 22, leave out ‘may’ and insert ‘must’.
Amendment 43, in schedule 2, page 199, leave out lines 4 to 25.

Barbara Keeley: The amendments would remove the proposal to allow an elected mayor to be the chief executive of a local authority. Of all the powers in the Bill to direct the Government’s arrangements for local authorities from Whitehall, this is the strangest. We have been hearing about it from the Secretary of State for some months, but I am not convinced that there is any compelling reason why elected mayors should become the chief executives of their authorities. I agree with the evidence of our witnesses—doubtless that will cause amusement—because, from my experience, Professor Jones was right to say:

“There are two types of leadership that you need: political leadership looking out to the world of politics…and administrative leadership…It is very rare to find one person who can combine those two leadership roles. When you look at different systems around the world, you find that there is always a duality of leadership—one person who deals with the politics and one person who deals with the administration.”

Henry Smith: Will the hon. Lady give way?

Barbara Keeley: I will make a bit more progress, if I may. Professor Jones continued:

“Whether a local authority or a central Government is a success or not depends on the interaction and the partnership between the political leader and the administrative leader.”—[Official Report, Localism Public Bill Committee, 25 January 2011; c. 42-43, Q68.] The proposals in the Bill mean that the council leaders of our 12 largest cities could find themselves becoming shadow mayors, whether they or local people want that or not. The next pressure would then be for the mayor to become the chief executive.

Henry Smith: There are indeed examples from around the world of political and administrative roles being combined at the top. I know that we are talking about a localism Bill, but perhaps the most famous example is the President of the United States.

Barbara Keeley: I did comparative US and UK politics for my degree, but I do not think that the Committee has time to get into that tonight.

Under the Bill, the leaders of our 12 largest cities could find themselves becoming shadow mayors, and then there will be pressure on them to become the chief executive. In an article about how the Bill will affect Leeds, the Yorkshire Evening Post said:

“A Department of Communities and Local Government spokesman said: ‘Mayors will move to the mayoral management model and ensure that their mayor is the chief executive officer.’” There does not seem to be a lot of localism in the thrust behind the provision.

Professor Jones said in evidence to us that the Bill would produce

“Whitehall dominance: the same old ministerial games still being played; Ministers intervening; and civil servants devising their schemes and drawing up papers very similar to the Bill before the Committee.”—[Official Report, Localism Public Bill Committee, 25 January 2011; c. 42, Q65.]
Here we have an example of that. Even before Parliament has debated the Bill, which is in itself centralising and imposes governance arrangements on our 12 largest cities, we have DCLG officials turning what might have been an option into something that will have to be ensured. It is very telling that such conversations are happening. Ministers have already been picking fights with local authorities that have a mayor if they are appointing chief executives.

I have been an assistant engineering manager in the IT industry and I was also a councillor in Trafford. I started as vice-chair of social services and later became cabinet member for all children's services. We sometimes had to deal with tricky and complex issues—particularly around children—and I valued the advice that I received from senior officers. That is the real difference. In addition to administrative leadership, professional advice is needed from people with a depth of experience. Even though I have a managerial background, I would not have felt ready to take on the chief executive role or assumed that I had the knowledge to co-ordinate all the county’s functions, including staffing.

Let me give a brief example of the difference between the co-ordination role of professional officers and the role of elected leaders. On 2 November, we had a terrible gas explosion in Inalam in which a number of people were injured, one very seriously. Three houses collapsed, with people trapped inside, and 200 families had to be evacuated. It was clearly a major incident. Barbara Spicer, the chief executive of Salford city council, took over and co-ordinated the work at the explosion site with the police and emergency services. She and her team did a brilliant job on that day and in the following weeks getting emergency aid, and supporting and helping all the families affected. This is, I think, the first opportunity that I have had to mention that incident in Parliament and to say how grateful I am, as the local MP, for the work that she did. I know that some very difficult decisions had to be made, because there was an ongoing police inquiry. Our chief executive was able to undertake the role because she had done detailed work on contingency planning with police and other agencies, and that stemmed from her long experience in senior roles in different authorities.

If Salford had had an elected mayor, under the preferred model being put forward by DCLG and the Secretary of State, that mayor would have directed those operations without the skills and the professional competence required—depending on the individual. Is it now being suggested that there is no need for professional competence for the running and co-ordinating of our local authorities, because I find that terribly worrying?

When the Secretary of State has talked about local authority chief executives and the role of elected leaders, he has said:

“A lot of chief executives are very nice people whom one can take home to meet one’s mum. But they haven’t got a job anymore. All of the position could be subsumed into the leader’s role.”

Alison Seabeck: My hon. Friend makes a good point. She may well remember that a football mascot got elected as mayor in Hartlepool. To be fair to the gentleman concerned, he has been doing a very good job—

[Interruption.] No, to be fair, he has committed himself fully, but he could not have done that job, as he would be the first to admit, without having had the full-back of good officers and a good chief executive to guide him through those early years.

6.45 pm

Barbara Keeley: I thank my hon. Friend for that example. This is a massive miscalculation. It is a mistake to muddle political leaders and professionally skilled chief executives, or professional senior officers of any discipline. We can draw a parallel with the Health and Social Care Bill, which was debated in the Chamber yesterday. That Bill will force professionals into roles that they do not want, that they are not trained for, and that they do not want to do. It forces commissioning and other managerial functions on to GPs who only want to get on with their medical role.

The Localism Bill will muddle up political and professional roles in local authorities, and it is a recipe for confusion. All that will happen is that somebody will be chief executive, even though they will not be given that title, because local authorities will still need a person to perform that role. It is wrong to make the assumption that muddling those roles will work, so I urge the Committee to support the amendment.

Mr Bayley, may I seek your advice? Will amendment 42 be debated separately, or should I speak to it now?

The Chair: If you have things to say about amendment 42, now is the time.

Barbara Keeley: Before anyone tries to pull me up on it, amendment 42 is an alternative to amendment 7. Although amendment 7 would remove the mayoral management model altogether, which would be our preference, amendment 42 would provide that when a mayoral management model comes into force at the mayor’s request, the mayor “must” set out their plans for the new combined role, rather than “may” set them out.

The Bill provides that the mayor may issue reports on plans covering such things as the co-ordination of the local authority’s functions, the number and grades of staff in the local authority, the organisation of staff, and the appointment and management of staff. Those are significant policy areas, and any new executive mayor would have broad powers to reorganise and restructure a local authority—that might be something that the Government want. With the removal of the separate and professional role of chief executive, however, there is a serious risk that such areas could be mismanaged. We know of examples of the executive mayor model getting into difficulties. A mayor in such a position could politicise the appointment of staff, which might lead to serious mismanagement of the local authority, meaning that it could not carry out its functions or keep within a legal budget. There are examples of that happening, so it is important that we have as much democratic accountability and scrutiny as possible.

Gavin Barwell: The hon. Lady may be aware that the Greater London authority is considering abolishing the position of chief executive while keeping a head of paid service. That would be done under legislation passed by
the previous Government. If the Labour party has the concerns that she is setting out, why did it allow that situation to arise for London?

Barbara Keeley: It is not a question of allowing it; it is a question of forcing it. In the quote I read earlier, the DCLG spokespeson said that there would be a requirement, which is our concern. In fact, the Secretary of State has said that a mayor “will” become the chief executive.

The key point for amendment 42 is that any mayor’s plans must be published in full to enable full scrutiny and discussion, and any new mayor should not have the option of avoiding that.

Mr Ward: I have struggled with the prospect of elected mayors anyway, which does not help my consideration of amendment 7, but if they are in place, I have no real objection to the elected mayor proposing anything that they want to the authority—within reason, of course. What concerns me is proposed new section 9HB of the Local Government Act 2000, which is covered by amendment 42. Am I reading the provision right? Does it say that the proposition made to the authority has to be agreed by only 34% of its members? Surely that is a drafting error. We should be talking about figures of two thirds, 50% and so on. I query that such a huge difference in power could take place on the basis of a very small minority of the elected members of an authority.

Stephen Gilbert: When we get to the relevant provision, I am sure that we will properly explore that matter. However, as I understand the Bill, 12 major cities will be subject to a referendum on whether they want an elected mayor. I do not think that giving somebody a choice is quite the same thing as compelling them to do it. The hon. Gentleman makes the point that we would still need a head of paid service, but of course we would not—the Bill makes that clear. The Bill will enable some local authorities—Torbay or perhaps the Greater London authority—to make arrangements that will empower one individual to set clear directions for the authority. Such directions are sometimes vague at present, and they are not transparent or clear.

Andrew Stunell: If I may, I shall deal with a couple of the practical, factual points that have emerged in the debate. I direct hon. Members’ attention to proposed new section 9HO of the 2000 Act, which is on page 202 of the Bill. That provision makes it clear that the mayor cannot simultaneously hold one of the posts listed in the proposed new section. As the hon. Member for Worsley and Eccles South will see, the position of the authority’s director of children’s services, as appointed under the Children Act 2004, is included on the list. The mayor cannot double up on that, so there will be, to address the example she gave, a chief officer with that function and responsibility. Proposed new section 9HO(2)(a) makes it clear that the authority will continue to have a head of paid service and chief executive officer, although not a chief executive. Other provisions make it clear that that person will have responsibility for staffing, appointments and so on.

Ian Mearns: I am interested in the relationship. If the mayor becomes the chief executive officer and there is a separate head of paid service—I accept that there is that distinction—would it mean that in the new relationship under which the mayor is the chief executive officer, the head of paid service would be impelled to follow instruction from the mayor?

Andrew Stunell: As I think we all understand, a local authority is not a regiment of soldiers. An obligation to follow a command does not have the same force as it would in a military situation. The position will be exactly the same as if the deputy chief executive received an instruction from the chief executive, because if it were lawful and sensible, it would be followed. I do not think that the Nuremburg defence would get the head of paid service very far, if he said that he was just instructed to do something. I am not sure how I can answer that question in a meaningful way, except to say that there would be a power relationship between the
mayor and the head of paid service, with the head of paid service carrying out the instructions that he or she received from the mayor.

**Ian Mearns:** I accept that distinction, but there would be a different nuance from if, under the current arrangements, the deputy chief executive of the council was given an instruction from the leader of the council. The deputy chief executive would have to take advice from his chief executive and other legal officers about following a particular set of instructions.

**Andrew Stunell:** As the hon. Gentleman said earlier, local authorities have different cultures. I could point him to some local authorities in which what the leader says is the word of God to everybody else, but I could also point him to others in which the word of the chief executive is more towards that position. A wide range of things is happening in local authorities at the moment, and our proposal is within that wide range.

I will pick up two other points that were made. I was asked whether there are any examples of a move from dual leadership to single leadership. The example that I have in front of me is that of the elected mayors of North Rhine-Westphalia in Germany. The dual leadership model has ended there and the exact system that we propose has been introduced.

My hon. Friend the Member for Bradford East asked whether the Bill contained a misprint, but we have used the exact same legislative provision for when elected mayors propose a budget—the wording reflects existing legislation. A practical example is that a two-thirds majority of the Greater London assembly is required to overturn a decision to upgrade the mayor that is in place seeking a mandate and, in this case, someone between someone who has been elected and is already in place seeking a mandate and, in this case, someone seeking a mandate from a minority.

**Mr Ward:** That is slightly different, because that is about overturning a decision of a mayor who is in place. This is about a decision to upgrade the mayor that is taken by a tiny minority. Surely there is a difference between someone who has been elected and is already in place seeking a mandate and, in this case, someone seeking a mandate from a minority.

7 pm

**Andrew Stunell:** I will have to take further advice and return to that point later in the debate, if I may. I do not want to mislead the Committee with an off-the-cuff reply.

**Barbara Keeley:** It would be helpful if the Minister came back to the Committee on this one, because my note says that that is the case—if the elected mayor proposed to his or her local authority that they should switch to the mayoral management model, the local authority would need to pass a resolution by two thirds the other way to refuse it. The switch would pass on a third, therefore.

The Minister says that that brings forward a proposal relating to other mayors and budgets, but that is a very different thing. As I said earlier, the mayoral model mayor can take on all those extra functions—on staffing, on organisation and on which staff are appointed—but he does not even have to issue reports. Amendment 42 was intended to make him issue a report, so that there would be some scrutiny. I hope that he will come back to us on that.
scrutiny of what he was doing. He could politicise everything he did in managing staff and there would be no way of anyone knowing what he was doing.

Andrew Stunell: I believe that the existing scrutiny functions, which we decided not to amend, will safeguard the hon. Lady’s concern and the councils concerned from such a risk. Of course, it is quite appropriate that they should be so safeguarded. There will still be a role for the head of the paid service. It will not be the same as that of a chief executive, but more like that of a chief operating officer. Under those arrangements, the head of the paid service will still be responsible for appointing, dismissing and disciplining all but the most senior members of staff. Personnel issues in relation to senior staff will continue to be the responsibility of the full council and therefore not the mayor alone. As for the other responsibilities of the head of the paid service, that will be a matter for each authority to decide.

The Bill puts in place a number of safeguards. There will still be a chief finance officer to ensure financial propriety, and a monitoring officer. I have already mentioned, for instance, the requirement for a children’s services officer.

Mr Raynsford: The Minister has mentioned the chief finance and monitoring officers. Will they report to the chief operating officer or to the mayor?

Andrew Stunell: On their pay and rations, and organisation and so on, they will be reporting to the head of the paid service. He will be responsible and they will be part of that paid service. Clearly, the political direction and the direction of policy will be in the hands of the mayor. That is the intention of having an executive mayor in that position.

Mr Raynsford: The Minister will be well aware of the sensitivity of the issue. There may be a question of financial concern, which might lead the chief finance officer to wish to make a report, or one involving the chief monitoring officer, who may be concerned about probity. If either of those officers is ultimately directed by the mayor, that might make it virtually impossible for them to act in the way Parliament has rightly given them powers to act—to maintain the integrity and probity of the local authority.

Andrew Stunell: The first thing I would say—I think the right hon. Gentleman knows this—is that each officer named in the schedule is a statutory appointee with statutory duties and a statutory duty to blow the whistle, if I may put it that way. That statutory duty is not taken away by the legislation or by the introduction of the mayor. Of course, there will still be members of the council. There will still be a full council with a proper set of processes and checks and balances in place. There is provision in the legislation to ensure that all members of the council, including the elected mayor, continue to receive impartial, professional and robust advice from council officers.

I said to my hon. Friend the Member for Bradford East that I would come back to the Committee on the 34% issue, and I will write to the Committee setting out the position as soon as possible. I urge the Committee to reject the amendment.

Barbara Keeley: I will not press the amendment to a vote because we consider the matter so important that we want to come back to it on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Barbara Keeley: I beg to move amendment 8, in schedule 2, page 196, line 43, leave out ‘or requiring’.

The Chair: With this it will be convenient to discuss the following: amendment 9, in schedule 2, page 196, line 43, leave out ‘or requiring’.

Amendment 10, in schedule 2, page 196, line 45, at end insert ‘or elected leader’.

Amendment 11, in schedule 2, page 197, line 1, leave out ‘operating a mayor and cabinet executive’.

Amendment 12, in schedule 2, page 197, line 4, at end insert ‘or elected leader’.

Amendment 13, in schedule 2, page 197, line 6, after ‘mayors’, insert ‘or elected leaders’.

Amendment 14, in schedule 2, page 197, line 17, after ‘mayor’, insert ‘or elected leader’.

Amendment 15, in schedule 2, page 198, line 37, after ‘mayor’, insert ‘or elected leader’.

Amendment 16, in schedule 2, page 198, line 39, after ‘mayor’, insert ‘or elected leader’.

Amendment 17, in schedule 2, page 198, line 45, after ‘mayor’, insert ‘or elected leader’.

Amendment 18, in schedule 2, page 198, line 48, after ‘mayor’, insert ‘or elected leader’.

Barbara Keeley: Although it sounds as if it would mean a lot of change, amendment 8 would just remove the power for the Secretary of State to require a specified local authority to confer a local public service function on its elected mayor. Labour Members believe that that power is another centralising measure. I remind the Committee that the Minister of State offered to go through the powers one by one to check whether they are centralising.

For the Secretary of State to require a local authority to confer a local public service function on its elected mayor is centralising—how can it be anything else? If the mayor or elected leader does not want that function, it should not be imposed on them, and I do not know why the right hon. Gentleman wants to draw up orders requiring that provision. It is not in line with localism.

Part 7 deals with the transfer of additional powers to the Mayor of London, and there has been a great deal of consultation and involvement with the Mayor and the GLA about that. Why is the transfer of powers being dealt with in one way for London and differently for other cities? There was no question of requiring power to be conferred on the London Mayor. It was done through substantial consultation and agreement.

Amendments 9 to 14, 65, 15 to 17, 64 and 18 would allow the transfer of functions to elected leaders as well as to elected mayors. Ministers have said that they believe in localism and that the Government should not prescribe governance arrangements, but then this Bill
prescribes and it directs, particularly in respect of governance arrangements for local authorities, and schedule 2 is another example. It confers a local public service function only on elected mayors, not on elected leaders. I am not sure which Minister will reply, but I ask why the Government are taking such an approach.

For those local authorities and their local residents that do not choose to have an elected mayor, why should an effective leader with a different model of governance not take on extra powers? We could deduce that, by offering the carrot of extra powers only to elected mayors, Ministers are trying to bring yet another pressure to bear on local authorities to do what they want. The Government also want to take the powers to impose mayors on any local authority, so perhaps it is only a short-term carrot, because the big stick will be imposing mayors on local authorities in the long term. I urge members of the Committee to resist this further attempt at centralisation, give equality to local authorities and support the amendment. I hope that they can do so.

Julie Elliott (Sunderland Central) (Lab): I want to speak about the unfairness of the powers as I see the position, coming from Sunderland, which is the largest city in north-east England. It is not in the list of 12, although our smaller neighbouring city of Newcastle is. The proposals, if they are not amended, mean that an elector voting in Sunderland will be voting for people with less power for that larger population than electors voting 12 or 13 miles away in Newcastle. To me, that is an unfair anomaly.

The impact assessment published by the DCLG stated that, 10 years ago, the people of Sunderland voted against having a mayor. That is correct, but that was for a mayor under a completely different system with completely different powers. If there are such unequal powers, how can we possibly say that the Bill is fair and is putting a mayor under a completely different system with completely against having a mayor. That is correct, but that was for 10 years ago, the people of Sunderland voted not to have a mayor, which is why it is not on the list. I will make two other points. If the people of Sunderland wish, under existing provisions, to meet the threshold for a referendum through a petition for a mayor, there is nothing to prevent them doing so. Leicester, which is also a city that we originally considered, has decided to have a mayoral referendum under existing legislation. If the hon. Lady believes that Sunderland wishes to be included on the list and tables an amendment on the subject, the Government will consider it sympathetically.

Julie Elliott: That completely misses the point. My point is about the unequal nature of the powers prescribed by the Secretary of State, whichever form of government an area has. When people vote in elections for a tier of government, the powers that they vote to elected politicians for them to perform their functions with should be equal. It is not about whether areas have a mayor, a leader-and-cabinet system or a committee system; it is about the equality of powers that politicians have.

Robert Neill: With respect, the hon. Lady is wrong, because a directly elected mayor has the specific legitimacy of their personal and direct electoral mandate. It is perfectly proper to give extended powers to someone who has been directly voted for by the people of their city, as opposed to someone who has effectively been elected by the members of the majority group on the council—in practical reality, that is the leader. I have every respect for leaders of councils, but there is a difference between a directly elected mayor and an elected leader, even under the strong leader model, which is why it is perfectly legitimate to give mayors additional powers.

I should not have said that Leicester will have a referendum; it has decided to have a mayor. I think that that is because Leicester city council is controlled by the hon. Lady’s party, which has decided to move to the mayoral model without even having a referendum, so the hon. Lady’s argument is not consistent.

Ian Mearns: Another anomaly in the north-east region is that since the unification of both Durham and Northumberland counties into unitary authorities, Durham is now the biggest geographical and population area of the single-tier authorities in that region. It has a population of almost 500,000 and, although it is a geographical county, it is a unitary authority. It should not therefore be discriminated against in relation to Newcastle or anywhere else.

Robert Neill: The same proposition applies if the hon. Gentleman wants to table an amendment on Durham. It is a bit rich to talk about Durham as an example, because it was his Government who imposed a unitary authority on the people of Durham, without giving them any referendum—and they did so by secondary legislation.

I have set out my stall on that issue, and I will return to the gist of the amendment. The Government have made it clear—it is part of the coalition agreement—that we believe in encouraging directly elected mayors in the major provincial cities of England. Those cities are the obvious places for directly elected mayors because, as the hon. Member for Sunderland Central and others
have indicated, they have a real sense of identity and place, and people and businesses identify with them. They are therefore the most appropriate places to start having the directly elected mayor model. That would exactly replicate what we see in the great provincial cities of Europe and north America. We take the view that those mayors, having the legitimacy of being directly elected, can be given additional powers.

The amendments would undermine that proposition, which is why I ask hon. Members to reject them. Proposed new section 9HF enables the transfer of functions to public services. We are enabling the transfer of the discharge of local public service functions; interestingly, as I understand it, that is exactly the approach adopted by the Labour-led Welsh Assembly Government in the Principality, so there are precedents there. The Opposition are not on the strongest ground on a number of fronts with these amendments.

Proposed new section 9HF, which the schedule will incorporate into the 2000 Act, provides a mechanism enabling the Secretary of State to transfer such functions by order. Of course, Parliament will scrutinise and debate that order, but if Parliament has willed that the mayor should have such powers by order, and it has therefore been properly scrutinised in this place, it is not necessary or appropriate to require further approval and scrutiny at the local level, which is what amendment 8 would require. It would create duplication that would undermine the authority of the House.

Initially, we envisage using the order-making power to confer local public service functions on mayors in the specified larger cities. I await with interest an amendment adding Sunderland or wherever to the list. However, we do not want to prevent mayors in other areas from having the power to exercise such functions as appropriate, so proposed new section 9HG puts in place a mechanism that would allow any existing or future mayors to apply to the Secretary of State for a transfer of those local public service functions, or an order conferring those functions on them.

Importantly, the new section ensures that a mayor has a democratic mandate to discharge any additional functions conferred by the Secretary of State. It does so by providing that a mayor can apply for additional functions in the first year of his or her term of office only. The application must include such information and evidence as shall be specified by regulations. A new application must include such information and evidence as shall be specified by regulations. A new application must include such information and evidence as shall be specified by regulations.

Amendments 64 and 75 would remove those provisions, which are important democratic safeguards; I am sorry to see the Opposition seek to remove them. For those reasons, I hope that the hon. Member for Worsley and Eccles South and her hon. Friends will reflect, and that she will withdraw amendment 8. If she does not, I ask the Committee to reject it.

**Barbara Keeley:** I am not convinced on the point about the legitimacy of direct elections, because we will move on shortly to the issue of imposing shadow mayors, and I cannot see what legitimacy there is in direct elections when the Government will force a city to have a shadow mayor whether it wants one or not.

I think the Minister has missed the point. The point of the amendment, and the point so well made by my hon. Friend the Member for Sunderland Central, is that there should be equality of treatment. The Government are taking a very poor approach in the Bill by not treating major population centres, such as Durham and Sunderland, equally, in terms of powers. The city of Manchester is a small slither in the middle of Greater Manchester, and yet it qualifies for a shadow mayor.

There is some strange thinking in the Bill. We do not go along with the imposition of shadow mayors, and there is strange thinking behind the places that were selected. Manchester is not one of our largest cities, but it is part of the very large conurbation that is Greater Manchester. If anything is problematic, it is picking out places and saying, “That one will have a shadow mayor.” I will withdraw the amendment. I do not intend to move amendment 44, because there is a set of amendments on governance arrangements, and we intend to come back to them on Report.

**Amendment, by leave, withdrawn.**

**Barbara Keeley:** I beg to move amendment 20, in schedule 2, page 206, leave out lines 29 to 31.

**The Chair:** With this it will be convenient to discuss the following: amendment 21, in schedule 2, page 210, leave out lines 3 to 25.

Amendment 22, in schedule 2, page 210, leave out lines 26 to 47.

Amendment 23, in schedule 2, page 212, line 18, leave out from beginning to end of line 31 on page 214.

**Barbara Keeley:** The amendments would remove the Secretary of State’s power to direct or order the imposition of shadow mayors. For me, and for other Labour Members, this is one of the most controversial aspects of the Bill, and the one that most contradicts the Government’s claim to be localist. The Secretary of State wants the power to order a local authority to cease its existing form of governance or executive and to start operating a mayor-and-cabinet executive.

That approach is the opposite of what some of the Ministers here advocated when they were in opposition. The Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst, said in the Local Government and Public Involvement in Health Bill Committee in 2007:

“I want to make the pure gospel point that governance should be entirely a matter for local councils.”—[Official Report, Local Government and Public Involvement in Health Public Bill Committee, 25 February 2007; c. 251.]

How does he square that with imposing shadow mayors, and with forcing a council to cease the arrangements that it prefers and to adopt a mayor-and-cabinet executive model?

The Under-Secretary of State for Communities and Local Government, the hon. Member for Hazel Grove, also used to favour a localist, rather than centralist, approach. He told the same Committee:

“I want to make the pure gospel point that governance should be entirely a matter for local councils.”—[Official Report, Local Government and Public Involvement in Health Public Bill Committee, 20 February 2007; c. 269.]
If he could make that in favour of localism point so fervently in a debate on the return to the committee system, why do he and his fellow Ministers feel that it is in any way right to impose shadow mayors on 12 of our cities? During the same Committee sitting, the Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst, acknowledged that the mayoral model did not suit every local authority:

“I see the logic of the strong mayor model. It is not always appropriate but one sees the logic of adopting the American pattern of one directly elected figurehead”—[Official Report, Local Government and Public Involvement in Health Public Bill Committee, 20 February 2007; c. 251.]

Since the idea first emerged, we have asked Ministers and the Secretary of State to clarify their intentions, and they have caused a great deal of confusion by giving different answers. On 21 October the Secretary of State gave the following answer to my hon. Friend the Member for Kingston upon Hull North (Diana Johnson):

“She seems to be suggesting that we would somehow impose mayors on those 12 cities, but of course we will not—that is completely out of the question. The proposals will be subject to referendums. Once we know the views of the people in those 12 cities, we will move on to the election of a mayor if people vote for that.”—[Official Report, 21 October 2010; Vol. 516, c. 1111.]

In the same question session the Secretary of State was asked by my hon. Friend. Friend the Member for North Tyneside (Mrs Glindon) whether he intended to turn council leaders into mayors before holding a referendum. The Secretary of State admonished her, saying:

“Perhaps the hon. Lady should have paid a little more attention to the earlier question, when I ruled out the possibility that we would be imposing mayors. This will be subject to a referendum.”—[Official Report, 21 October 2010; Vol. 516, c. 1125.]

Perhaps the Secretary of State should apologise to her at the next opportunity for saying one thing and doing another.

We had further confirmation a week later of the Government’s stated intention not to impose mayors, but to hold referendums. The Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst, said:

“However, the decision of whether to have a mayor must ultimately rest with local people…The timing of the referendums is important, as my right hon. Friend the Secretary of State recognised when he said in the House last week, in response to a suggestion that we would impose mayors, ‘of course we will not—that is completely out of the question. The proposals will be subject to referendums.’

I can do no more than refer hon. Members who have asked about the timing to what my right hon. Friend said last week. He put it very simply:

‘Once we know the views of the people in those 12 cities, we will move on to the election of a mayor if people vote for that.’

I should have thought that that was pretty crystal clear.”—[Official Report, 27 October 2010; Vol. 517, c. 120WH.]

It might have seemed crystal clear, but between 27 October and 13 December, when the Bill was introduced, the Government did a U-turn, and we are now looking at proposals to turn elected council leaders into shadow mayors, whether they or local people want that.
On the gender point, which did not sound very democratic, if the leader of Bristol council does become the mayor, there will indeed be three female mayors, and I hope that there will be more in due course. As it happens, all three will be members of political parties that support the coalition, so we need not take any lectures from Opposition Members.

Alison Seabeck: What legal recourse will the Government have if the leader and deputy leader say they do not want to take on the responsibility? The schedule does not go further down the pecking order than deputy leader, if a taker for the job cannot be found.

Robert Neill: I think that that is a pretty hypothetical case, but, as we can see, subsections (2)(b), (3) and (4) make provision for those matters. I do not think that we will end up in that situation. If someone really does not want the job, he or she can stand down as leader and another person can be appointed in their place. If there is no leader of the council at the point that that is done, the deputy leader will become the shadow mayor. If there is no leader or deputy leader at the time the order is made, the fall-back position is that the Secretary of State has the power to designate a member of the authority as the shadow mayor. It is as simple as that, so that has dealt with that.

Barbara Keeley: I have read that the leader of Leeds city council says he will not become shadow mayor. The Minister says he is not aware of any cases—that is a case. With reference to the question from my hon. Friend the Member for Plymouth, Moor View about what happens in the case of a council that does not want this, it is a localism measure to depose a council leader because he or she does not want to go along with such an imposition?

Robert Neill: Nobody is deposing any council leader, nor do we know whether the current council leaders will be the leaders when the measure comes into force. I think it presumptuous to say that that will remain the situation. With respect, the hon. Lady raises a false argument. There is a mechanism. Why do we say that there should be a shadow mayor? Because we believe that, with the new system, it is good to have a short period in which people can see an elected mayor in practice and get a sense of what is on offer. It is interesting to note, for example, that a considerable number of research and opinion polls suggest that directly elected mayors have much higher name recognition than the equivalent council leaders, so there is an argument for raising that profile.

All that will be subject to the will of the voters of the city in the referendum. It is worth remembering that the shadow mayors will be shadows rather than full mayors, so that the full mayoral model is not imposed—the shadow mayor will not have the power to take on the mayoral management schemes, taking over the role of the chief executive. Nor will shadow mayors be able to propose those changes to the council until after the referendum has taken place and they have—or have not—been confirmed in office. That is important: people will have chosen to go down the directly elected route, and then full elections for the mayor will follow.

This is a transitional arrangement, which we think is sensible. It is a new endeavour. I am sorry that the hon. Member for Worsley and Eccles South denigrates the situation of the city of Manchester. I do not belittle Manchester; it is a key economic driver in this country. She seemed to be hinting that the boundaries were too small. If she wants to take that to the logical conclusion, is she going to propose that Manchester expand? Is she going to say that to her friends who control the councils around there?

Perhaps the hon. Lady should recognise that New York, Paris and all the major French cities have not felt the need to change their boundaries. The five boroughs of New York operate within the existing city boundaries, going back pretty much to the beginning of the last century. The boundaries of Paris have not been changed since the creation of the périphérique. That is true of Bordeaux, Lyons, Toulouse—all the other major cities. The mayors of those cities work in collaboration with the surrounding municipalities and mayors, and, as hon. Members will know, in French, the communautés urbaines. That is exactly what can happen with joint working between local authorities here; it is no argument against having a directly elected mayor. In effect, this is an attempt to wreck this part of the Bill and I hope that hon. Members reject the amendments.

Barbara Keeley: We end the debate with the Minister misrepresenting me. There is an important thing to say about his comments on what I said about Manchester. This schedule and all the measures that we have discussed today are confusion and muddle. They involve imposition and are centralising; they do not involve localism in any way, shape or form.

I was a councillor in Trafford and I represent a constituency in Salford, which is a city next to Manchester. It behoves a DCLG Minister who is trying to impose shadow mayoralty on part of the 10 local authority areas in Greater Manchester to understand the politics. There is not a councillor in Trafford or Salford who would ever suggest that Manchester should expand its boundaries. We jealously guard our own positions. Salford is a city, and with two cities next to each other like that, we would never want that to happen.

The Government are creating a difficult situation for Greater Manchester. Given the geography and the fact that Manchester is just a sliver at the centre of Greater Manchester, it would be difficult indeed to try to direct or to give extra powers to what is only one tenth of the area—an important central part of that area, but only one tenth of it. I cannot tell the Minister how many times we have had discussions about mayors but always rejected the idea. We would keep on doing so.

The Committee will probably be glad to hear that I intend to withdraw the amendment, only because this is all such a mess. I very much want to return to the matter on Report. I beg to ask leave to withdraw the amendment. 

Amendment, by leave, withdrawn.

Schedule 2 agreed to.

Clause 11 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 12 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.

—(Bill Wiggin.)

7.42 pm

Adjourned till Thursday 3 February at half-past Nine o’clock.