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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Seventeenth Sitting

Tuesday 23 April 2013

(Morning)

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Saturday 27 April 2013

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

The Committee consisted of the following Members:

Chairs: Mr Christopher Chope, † Mr Dai Havard

† Barwell, Gavin *(Croydon Central)* (Con)
† Brooke, Annette *(Mid Dorset and North Poole)* (LD)
† Buckland, Mr Robert *(South Swindon)* (Con)
† Elphicke, Charlie *(Dover)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
Glass, Pat *(North West Durham)* (Lab)
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
† Jones, Graham *(Hyndburn)* (Lab)
† Leadsom, Andrea *(South Northamptonshire)* (Con)
† Lee, Jessica *(Erewash)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Nandy, Lisa *(Wigan)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Powell, Lucy *(Manchester Central)* (Lab/Co-op)
† Reed, Mr Steve *(Croydon North)* (Lab)
† Sawford, Andy *(Corby)* (Lab/Co-op)
† Simpson, David *(Upper Bann)* (DUP)
† Skidmore, Chris *(Kingswood)* (Con)
† Swinson, Jo *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Timpson, Mr Edward *(Parliamentary Under-Secretary of State for Education)*
† Whittaker, Craig *(Calder Valley)* (Con)

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 April 2013

(Morning)

[Mr Dai Havard *in the Chair*]

Children and Families Bill

Written evidence to be reported to the House

CF 90 Abigail Pollard
CF 91 CHILDREN 1st
CF 92 Charity Commission for England and Wales
CF 93 The Board of Deputies of British Jews
CF 94 Anna Tylor and Dr Mark Owen
CF 95 British Psychological Society
CF 96 UK ADHD Partnership
CF 97 Dr Rona Tutt OBE
CF 98 Nicola Herron
CF 99 Thea Cable
CF 100 Men's Aid
CF 101 Ali Redford Stickland
CF 102 Ibrahim Maynard
CF 103 The Richmond Parent Carers Action Group (RPCAG)
CF 104 Clair Puschnik
CF 105 London Borough of Richmond upon Thames

Clause 75

Repeal of local authority's duty to assess sufficiency of childcare provision

9.25 am

Question (18 April) again proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jo Swinson): It is lovely to have you back in the Chair, Mr Havard, on such a sunny day.

When we adjourned last Thursday, we were debating clause 75, which repeals section 11 of the Childcare Act 2006. The Government are determined to make sure that parents can access affordable, high quality child care, that they are given greater choice in where they can access that child care and we are committed to reducing burdens on local authorities. The section 11 duty on local authorities means that the assessment is bureaucratic and costly to prepare, as the regulations require them to include data on the supply of and demand for child care places to an incredibly fine level of detail. For example, data are required on: the number of places needed and those available for children aged between three and four, five and seven, eight and 10, and 11 and 14; the number of places provided for which the child care element of working tax credit is payable; the costs of child care and parents' ability to pay for it; and the requirement for specialist care for children with special needs or disabilities and the number of places provided for children with special needs.

In preparing the information, local authorities are required to consult with children, parents, providers, employers, maintained schools and further education colleges. The resulting documents are long and often inaccessible to parents. By way of example, I have here a document from a large county authority, Wiltshire, which runs to 156 pages, with page after page of tables and graphs. I would argue that that is not the most helpful kind of document to parents looking for straightforward and concise information.

It is important to remember that the change is only about the bureaucratic process; local authorities will retain the duties in sections 6 and 7 of the 2006 Act to secure sufficient child care for working parents and funded early education places. Statutory guidance published in September 2012 makes it clear that to fulfil those duties, local authorities need to collect and publish information annually on the availability of and demand for child care in their area; they must not depart from that statutory guidance without good reason.

Statutory guidance provides local authorities with clear steers for the minimum that should be included in the annual report, such as information on the affordability, accessibility and quality of provision for disabled children and school-age children, as well as those taking up funded early education, and how gaps in funding might be addressed; but repealing section 11 will give local authorities flexibility to determine the style, content and level of detail of their annual report, in contrast with the highly detailed, prescriptive legal duty that currently applies. That should prove to be a more effective way of collecting the right data and presenting local child care information in a way that elected Members and parents can understand and use to hold local authorities to account for ensuring that there is high-quality, affordable child care in their area.

In "More great childcare", which was published in January, the Government announced further steps to focus the local authority role on supporting parents, particularly the most disadvantaged. As the hon. Member for Washington and Sunderland West mentioned last week, the Government recently launched a consultation to seek views on the details of those proposals, which include reducing duplication between the roles of Ofsted and local authorities in the early years sphere. We want to allow local authorities to focus their energy and resource on ensuring that all children in their area, regardless of family background, are able to experience high-quality early education. At a time when resources are under pressure, it does not make sense for local authorities to conduct their own quality assessments of providers; that is clearly Ofsted's job.

Hon. Members may have seen that the chief inspector launched a consultation last Friday on proposals for Ofsted to have a stronger focus on identifying underperformance in the early years, ensuring that weaker providers are inspected more frequently. Once Ofsted identifies how providers can improve, they should have the freedom to seek support from wherever they find most helpful. Where the arrangements are working well, providers can continue to take up the support they need, including training and advice, from their local

authority, but where providers have their own effective quality systems in place, it makes no sense to require them also to receive support from their local authority. That may be nursery providers operating in chains, or, in future, childminders registered with childminder agencies.

The hon. Lady also spoke about funding, and there is no denying that finances are tight in local government. That is why it is critical to ensure that resources are directed to the most important areas, while avoiding bureaucratic and expensive processes such as the highly detailed and prescriptive sufficiency assessment. Even in these difficult times, the Government are increasing overall funding for early intervention from £2.2 billion in 2011-12 to £2.5 billion in 2014-15. That includes substantial new investment—£760 million in 2014-15—in early learning for two-year-olds from low-income households.

In this difficult economic climate, it is particularly important that we make the best use of the available funding—that we maximise the funding that reaches providers on the front line, and do not lose it to meeting centrally imposed bureaucratic requirements such as those imposed by section 11. The decision to repeal section 11 was taken following a public consultation. As I am sure members of the Committee know, responses were received from childminders, parents and providers from the independent and maintained schools sector, as well as from local authorities and national organisations. The majority of respondents supported the measure, which is intended to send a clear signal to local authorities not to take their eye off the ball, as the hon. Lady suggested. They must be constantly vigilant and alert to the availability of early education and child care provision locally, and not simply look in depth at the issue every three years. I hope I have reassured the hon. Lady and that she, too, will support the measure.

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): Welcome back to the Chair, Mr Havard, for the last week of our Committee.

I listened carefully to what the Minister had to say, and in the last sitting I set out the case for why the Opposition oppose the clause. Her team have had a long time to craft her response and address my concerns, which she attempted to do, but, unfortunately, she has not reassured me at all. If anything, I am even more concerned about the role of the local authority in child care, of which the clause is symbolic. In part, that is because interventions from the Minister for child care, the hon. Member for South West Norfolk (Elizabeth Truss), either side of the weekend beggared belief; but more jarring were the comments of Her Majesty's chief inspector of schools on Friday, who proposed changing the classification of "satisfactory" for child care centres to "requires improvement". Of course we want all settings to improve, but it remains to be seen whether changing the name of inspection classifications is a better driver of change than the targeted investment in quality improvement that the Government have so judiciously cut back. The chief inspector's remarks would be fine, were it not for the Department's plan to allow those very settings to deliver the free entitlement for disadvantaged two-year-olds. I have said before—we are in total agreement in this House—that those children should be given the highest quality early learning experience. The local authority would have no say in the matter, even if it was concerned that the child care setting had not made the improvements that Ofsted required.

As I said, if the clause replaced the section 11 duty with a slimmed down, less bureaucratic version that could be published more often, we would have accepted it happily, but it does not do that. In terms of a direct replacement, we have a requirement in statutory guidance, and we do not know how that will look in the reports that the councils will put out. That requirement can ultimately still be changed at the whim of the Secretary of State.

More than that, we have what appears to be the first act in dismantling the Childcare Act 2006 and with it the role of local authorities in their local child care markets. We are starting with sufficiency reports, and soon it will be quality improvement and supporting providers. Then it will most likely be total disconnection, leaving the availability, affordability and quality of child care to market forces, which gave working parents such a raw deal prior to the positive reforms that we on this side made. We do not support that vision or the clause.

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

The Committee divided: Ayes 11, Noes 8.

Division No. 7]

AYES

Barwell, Gavin	Milton, Anne
Brooke, Annette	Nokes, Caroline
Buckland, Mr Robert	Skidmore, Chris
Elphicke, Charlie	Swinson, Jo
Leadsom, Andrea	Timpson, Mr Edward
Lee, Jessica	

NOES

Esterson, Bill	Powell, Lucy
Hodgson, Mrs Sharon	Reed, Mr Steve
Jones, Graham	Sawford, Andy
Nandy, Lisa	Simpson, David

Question accordingly agreed to.

Clause 75 ordered to stand part of the Bill.

Clause 76

GOVERNING BODIES: PROVISION OF COMMUNITY FACILITIES

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

Jo Swinson: The clause is straightforward and helpful. The purpose is to remove unnecessary and bureaucratic duties from the governing bodies of maintained schools in England.

Governing bodies of maintained schools in England and Wales may offer facilities or services including, for example, after-school care, under a power granted under section 27 of the Education Act 2002. Section 28 of the same Act requires the governing bodies to consult parents, staff, local authorities and anyone else they feel appropriate before they make such an offer. It also requires the governing bodies, when making such an offer, to have regard to advice or guidance issued on the subject by their local authority and the Secretary of State.

[Jo Swinson]

We believe that those requirements represent an unnecessary burden on the governing bodies of schools in England. The consultation set out in section 28 may not be proportionate to the changes that a school wants to make, and so delay or deter schools from providing services to their communities. The clause therefore removes the duties set out in section 28(4) and (5) of the 2002 Act as far as they relate to the governing bodies of schools in England. The duties will remain intact for the governing bodies of schools in Wales. Governing bodies will retain the powers granted them by section 27.

We hope that schools will use the freedom provided by the removal of the duties under section 28 to increase their offers of facilities and services, including wraparound care, and to be more responsive to the needs of their communities.

Question put and agreed to.

Clause 76 accordingly ordered to stand part of the Bill.

Clause 77

PRIMARY FUNCTION OF THE CHILDREN'S COMMISSIONER

Lucy Powell (Manchester Central) (Lab/Co-op): I beg to move amendment 265, in clause 77, page 50, line 15, at end insert—

'(ga) investigate the effectiveness of the safety and protection of children living at any specific premises which the Children's Commissioner is empowered to enter under section 2E.'.

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

Amendment 269, in clause 77, page 50, line 15, at end insert—

'(ga) investigate reported instances of the trafficking of children, with particular regard to migrant children;

(gb) investigate matters relating to children in custody.'.

Amendment 266, in clause 77, page 51, line 3, at end insert—

'(c) consult, so far as possible, all children living at any premises that the Commissioner is investigating under section 2(3)(ga).'.

Amendment 267, in clause 77, page 51, line 20, at end add—

'(4) For investigations under section 2(3)(ga), where a report contains recommendations, the Commissioner must require that the person towards whom those recommendations are directed implement them, or otherwise to state in writing why they are unable to do so.'.

Amendment 268, in clause 79, page 51, line 40, after 'child', insert 'or children'.

Lucy Powell: As ever, it is a pleasure to serve under your chairmanship, Mr Havard.

I tabled the amendments to ensure early action to reach a better understanding of the experience of abuse of children living away from home. The proposals are preventive. As we know, more than 60% of children taken into public care are already victims of abuse and neglect. Further abuse must be prevented. The abuse of children when living with their families is at the heart of our child protection system, but the amendments focus on children who are not living in the family home. The abuse of babies, toddlers and children under nine forms the majority of the work of our child protection specialists, but children living away from home are typically aged over 11. There is a pattern of institutions failing to own up to problems, to listen to children and to act rapidly and effectively, whether it is a Church, a public broadcaster, or an education or care establishment. If we do not give explicit attention to the experiences of the residential community of children, we will continue to place children at risk of decades of abuse.

There is a growing number of claims by child victims who found their voice as adults and are now telling their childhood horror stories. The National Association of People Abused in Childhood received 9,000 calls after the Savile scandal broke. My hon. Friend the Member for West Bromwich East (Mr Watson) has a list of residential establishments with cultures of abuse which is now in double figures and includes existing establishments. We have to act now to ensure that in future the voices of these children are heard before the abuse takes place. The amendments are consistent with the Children's Commissioner's response to the consultation regarding the powers of her office, and in line with comments made by the outgoing children's rights director, Dr Roger Morgan, when I questioned him during our evidence sessions.

Work carried out has uncovered that institutionally based abusers can: make each child believe they are the only one; appoint others in their own image; act as child protection officers or child experts, and therefore as a plausible bridge between the child and the child protection system; and carry on unchallenged for years. The child may react, at best, by running away, but often they keep the secret until they are adults to cast a mist over their own actions.

The evidence states that effective child protection must place children at the centre. Children want to be active participants in decisions to keep them safe, and not listening to children can seriously compromise their safety. The child protection system protects the vast majority of children who reach its attention, but it is not sufficiently sensitive to children living away from home; instead, it is built around an assumption that abuse occurs in families, and that all professionals will protect children, not abuse them. That is laudable, but our experience in the last year shows this to be a rather naive and certainly insufficient position.

Parents obviously have a key part to play in educating their children in what to look out for and how to challenge predatory adult behaviours, but children in care lack the reliable support of a loving home with consistent parents. The Government are attempting to improve that situation. As the Under-Secretary of State for Education, the hon. Member for Crewe and Nantwich, said in a recent speech, sexual predators exploit weaknesses in the residential care system. Good children's homes provide young people with the intensive caring professional help and stability they need, but some children's homes are poor and may be in areas

"where there are disproportionately large numbers of sex offenders often synonymous with organised criminal activity."

He wants changes that ensure

"rigorous independent scrutiny of the quality of care in each home."

That is what I would like, too. I agree with him that

"there is a clear imperative, moral and hard-headed, for changing the game when it comes to the support we give them."

A game changer would be to strengthen the focus of the new Children's Commissioner on child safety and protection. We need to do more to prevent residential environments being used as centres of sexual abuse and exploitation. The Munro review suggested that we must give children themselves a voice. Progress on that is being made for those who have been identified as having been abused; we now need to do more for those who are experiencing the early stages of being seduced into abuse by sophisticated paedophiles as well as peer abusers. That extends beyond the current model of safeguarding children, and with reduced funding to local authorities the threshold for action will be rising, so prevention will become even more important.

I regard our amendment as a preventive power that complements the formal child protection system by enabling the commissioner to be explicitly associated with reaching into residential establishments at the first indications of grooming or concern among children. It is not intended that the new commissioner's office should systematically visit all residential establishments or take on an abuse investigation function—that is already set out in law as the role of local authorities and the National Society for the Prevention of Cruelty to Children. Our intention is to shine a spotlight on communities of children where early concern has been raised about their experience of safety and protection, whether this initially comes from other family members, peers, staff or the children themselves. If there are only the formal child abuse investigation services to turn to, early concerns will be, and indeed have been, missed. We cannot allow that to continue. We trust that the Minister will support the proposals and accept the amendments.

9.45 am

In short, the amendments would place a specific function of safety and protection on the office of the new commissioner and ensure that children—not just a child—are spoken to. They would finally press home the fact that those responsible for action following the entry of the commissioner have to act or explain why they did not do so. The measures would add to those already in place.

The Bill strengthens the role of the Children's Commissioner by merging their functions with those of the children's rights director, who is currently the lead person on children living away from home. It confirms that the new commissioner will be able to enter premises where there are children living away from home or receiving social care with the purpose of interviewing the child, observing care and interviewing staff as appropriate. The current commissioner has applied that scope to good effect in custodial and mental health settings. The Bill confirms that the commissioner, in discharging their primary function, take reasonable steps to involve children, consult them and have regard to their rights. However, without the amendments, the safety and protection of children will be treated as any other matter, and that is not sufficient.

Lisa Nandy (Wigan) (Lab): I wish to speak to amendment 269, and want to start by saying that Opposition Members very much welcome the thrust of the reforms under part 5 of the Bill to strengthen the Office of the Children's Commissioner. My proposal, the amendment tabled by my hon. Friend the Member for Manchester Central, and the amendment tabled by my hon. Friend the Member for Croydon North would all further strengthen the OCC, in line with the direction of travel set out by the Minister.

Amendment 269 would extend the remit of the Children's Commissioner specifically to give special consideration to trafficked and migrant children, and those in custody. I understand the Minister's position, and his desire for the Children's Commissioner to retain the flexibility to decide where her efforts best lie, and in principle I do not disagree. However, I also agree with the Alliance for Reform of the Children's Commissioner—its members include UNICEF, Save the Children, Action for Children and the National Society for the Prevention of Cruelty to Children—that such children are particularly vulnerable, often have their rights infringed and are treated appallingly, sometimes not because the state has not intervened, but because it has. This follows the special recognition given to such children by the UN convention on the rights of the child in light of their past and current experiences.

I want to draw attention to the real concerns for the welfare of trafficked and unaccompanied migrant children and those in custody, and the need for a much better safety net for them. There are serious worries about the treatment of migrant children, who are often viewed as migrants first, not children first, and who are treated in line with their immigration status, not their vulnerability as children. The coalition Government recognised that when they made ending the horrific practice of detaining children part of the coalition agreement. I pay tribute to the right hon. Member for Ashford (Damian Green) for his role in that.

The poor treatment of those children did not end with that decision. Last week, the charity, Bail for Immigration Detainees, launched a report on children who are separated from their parents by the practice of immigration detention. One of the children referred to in that report, who was taken into foster care when her mother was detained, spoke harrowingly about what that had meant for her. The ongoing trauma for those children is absolutely apparent from the details in that report.

The former Children's Minister, the hon. Member for Brent Central (Sarah Teather), drew attention to the plight of children who are destitute as a result of the Home Office's decision to deny their parents the right to work and an adequate level of subsistence, despite the fact that many of them cannot be returned to their country of origin. She has made that one of the central planks of her work since leaving the Government. That is important, because the treatment of migrant children in general makes it almost impossible to identify trafficked children. It is largely because they are treated not as children first and foremost, but according to their immigration status, that we often miss the signs of vulnerability that would tell us early on that they had been trafficked.

Trafficked children are extraordinarily vulnerable. Every year, hundreds go missing from care. It is still of concern to me that, six or seven years after I first came across such cases, many of them who are found are treated as criminals, not victims. Six or seven years ago, I came across the first instance that I personally dealt with. When I was at the Children's Society, a young man was found in a raid on a cannabis farm, which is a residential house that has been converted into a place to grow

[Lisa Nandy]

cannabis plants. He had been living in that situation for several months and had serious mental health problems as a consequence. Despite being identified as a child when he was found, he was treated as a perpetrator, not a victim. He was prosecuted for circumventing electricity, of all things, despite protests from the Children's Society, the Refugee Council and the local authority. From speaking to charities working in this field, I gather that that still happens.

In 2012, the Secretary of State for Justice acknowledged that

> "It is unequivocally accepted...that children in custody are amongst some of the most vulnerable and socially disadvantaged and that they have specific needs which may not be common to the wider population of young people."

As the Minister will know, many children in custody have experienced neglect or abuse and come from deprived and disadvantaged backgrounds. Some of them come from the care system. I am sure he will agree that we have a unique responsibility for those children and young people. As a result of their backgrounds, they often have poorer outcomes than their peers and higher rates of mental health problems: 20% of young people in custody have tried to harm themselves, compared with 7% of the general population, and around a tenth have tried to commit suicide at some point in their lives.

As my hon. Friend the Member for Washington and Sunderland West will know, such children are also more likely to have special educational needs: 18% of sentenced young people in custody have a statement of special educational needs, compared with 3% in the general population. Once in custody, they face policies and practices that infringe or have the potential to infringe their rights. As the Alliance for Reform of the Children's Commissioner points out, the most obvious example of that is restraint techniques, which have received a great deal of media coverage, in light of the harm to those children.

As with children who are detained in immigration detention centres, especially "age disputed" young people, children in custody continue to experience poor-quality education. The role of the Children's Commissioner is absolutely vital for those children, to give them a voice, particularly because, for a long time, the children that I am talking about were not even considered to be the responsibility of the Secretary of State for Education or the Minister with responsibility for children. They came largely under the Home Office, and then under the Ministry of Justice, in the case of children in custody, when that Department was created.

When the Department for Children, Schools and Families was created, the situation changed, especially for children in custody, and a joint protocol was drawn up between the Ministry of Justice and the Home Office. Increasingly, the Secretary of State for Children, Schools and Families took a personal interest in migrant children, resulting in huge benefits to those children, including through the extension of the Children Act 1989 and the removal of the reservation on the United Nations convention on the rights of the child. However, I am concerned that the situation has reverted back.

The Minister's predecessor, the hon. Member for East Worthing and Shoreham (Tim Loughton), who was then responsible for safeguarding, appeared before the Select Committee on Education a couple of years ago. I was a member, and I asked him why children were still being detained, compromising their safety, despite the fact that seven months earlier the coalition had pledged to end the detention of children. His response was to argue that that simply was not a matter for him, but a matter for the Home Office. That concerns me deeply, because there is a culture in the UK Border Agency and in the Home Office that is not about proactively safeguarding children. That was one of the reasons why we persuaded Ministers that they ought to extend the Children Act to that group of children and young people. It is why section 55 of the UK Borders Act 2007 was particularly important to them. Still, almost weekly, charities raise serious concerns with me about the treatment of children in that Department, and the fact that children are still invisible. The Bail for Immigration Detainees report highlights that compellingly.

If the Minister is not minded to accept the amendment and ensure that the Children's Commissioner pays heed to such groups of children, I would like to hear how he intends to ensure that they are borne in mind when decisions are taken by Government—not necessarily by his Department—that will have profoundly negative consequences for their welfare.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): It is good to see you back in the Chair, Mr Havard, as we go into the home straight with the Bill, we hope. I am grateful to the hon. Members for Manchester Central, and for Wigan, for raising important issues, and for the way they have done so.

In particular, I thank the hon. Member for Manchester Central for her strong and thoughtful contribution on how to tackle some of the problems we know still exist in the residential care system. She will know, if she was at Education questions yesterday, when I answered a question from the hon. Member for Stockport (Ann Coffey), who has done sterling work in championing the cause of children in residential care, that we have a programme of work under way and will shortly announce changes to the regulatory framework, so that the culture of "out of sight, out of mind", which has been too prevalent in the children's care home system, will belong to the past, not the present. That will involve not just regulatory change, but the cultural change that the hon. Member for Manchester Central spoke of, so I am grateful for her support, and look forward to working with her, the hon. Member for Stockport and the hon. Member for Wigan to ensure that the changes we bring in have the impact we want.

This part of the Bill relates to the Office of the Children's Commissioner and gives effect to the recommendations in John Dunford's report, following his independent review. He concluded that there were strong arguments for retaining the role of the Children's Commissioner, but said that the existing legislative framework had limited the commissioner's impact. He recommended that the commissioner have a statutory rights-based remit, and that measures be introduced to: make the commissioner more independent of Government; increase their accountability to Parliament; clarify their remit; and combine the work of the OCC and the children's rights director within a single organisation.

In developing the legislation, we have sought to avoid placing too many specific requirements on the commissioner, allowing him or her the maximum flexibility

in deciding the OCC's priorities and key activities—a point that the hon. Member for Manchester Central acknowledged. The legislation is, therefore, generally permissive, and that was welcomed by the Joint Committee on Human Rights as part of its pre-legislative scrutiny. The Bill gives the commissioner powers to undertake certain activities, but does not require him or her to do so, ensuring that activity within the remit remains as unfettered as possible, thus helping to enhance independence.

The only exception to that general rule relates to children who are covered by the remit of the children's rights director. There is a strong case for making specific reference to those children defined in proposed new section 8A of the Children Act 2004, in order to respond to John Dunford's report, where he recognised the need to ensure as far as possible that the services currently provided to them do not become diluted under the new arrangements.

The overall approach is pertinent to this group of amendments, which seek to add provisions to new section 2(3) inserted by clause 77, which supplies a non-exhaustive list of activities that the commissioner may undertake in the exercise of his or her primary function. The purpose is to provide clarity on the broad scope of the commissioner's remit, rather than to set out every activity that the commissioner is expected to undertake.

In considering what should be included in new section 2(3), we have applied two key principles. First, the list should not constrain the commissioner's ability either to determine his or her own priorities or to focus the OCC's resources on the policy issues or groups of children that the commissioner believes most require attention. Secondly, the list should not include activities that are already implicit in the commissioner's primary function of promoting and protecting children's rights.

The Committee will note that the list in new section 2(3) refers only to types of activities, not to activities in relation to specific matters of policy or individual groups of children. I believe that is the right approach, providing clarity on the scope of the commissioner's role but, importantly, not restricting the ability of the commissioner to decide which issues to prioritise. It would be surprising in the extreme if children who were seeking asylum, were in custody or had been subject to trafficking were not, for all the reasons that the hon. Member for Wigan gave, regularly included in the commissioner's priorities. It is right that the commissioner should be able to determine that. It is not for Parliament to try to second-guess which groups of children might need to be a priority in the future. In any case, the commissioner's view will be informed by consultation on the OCC's business plan, and there will be an opportunity for Parliament to make its views known through that process.

10 am

The argument for her amendments made by the hon. Member for Manchester Central assumes a slightly different role for the commissioner from the one in the Bill, in that it implies that the commissioner should have an inspection role in relation to certain institutions, such as children's homes, young offenders institutions and asylum and detention centres, and that he or she would routinely visit them, although the hon. Lady's intention is not that there be a trawl around every single children's home, which would be within the OCC's capability but clearly outside its current remit. We recognise the importance of ensuring that children living in settings covered by the powers of new section 2E are properly safeguarded and protected, but the inspection role should be for other bodies, such as Ofsted and Her Majesty's inspectorate of prisons.

The OCC is a strategic body, which is able to use its unique powers to investigate specific concerns and make recommendations for change going beyond the individual institutions that it has visited during an investigation. If a child brings a case to the commissioner and the commissioner believes that a public policy issue that will affect other children is involved, it is open to him or her to investigate more closely. One such area might well be children's homes, and whether to conduct an investigation would be at the discretion of the commissioner. The Deputy Children's Commissioner's accelerated report on children who go missing from care, huge numbers of whom are from a residential care setting, was provided to the Department for Education and distributed more widely last summer. We see from that report that the issue is very much in the mind of the Children's Commissioner and the work her office is undertaking, and I expect that to continue.

Regarding amendment 266, it might be helpful to explain that the purpose of the commissioner's powers of entry are to enable the commissioner to access children who are accommodated or cared for in premises covered by new section 2E, to ascertain their views and hear about their experiences, normally as part of an investigation into a specific matter. I therefore do not think it necessary to put an additional requirement on the commissioner to consult those groups of children, because the reason for having the powers of entry is primarily to enable consultation with children and there are, in any event, other provisions in the legislation to involve children in the discharge of the commissioner's primary function.

On amendment 267, proposed new section 2C(3) already provides that when the commissioner produces a report containing recommendations, he or she can require the appropriate person to state in writing, and within a period determined by the commissioner, what action they have taken or intend to take. I have reservations about introducing a similar but differently worded provision in respect of just one aspect of the commissioner's role. I also have concerns about applying the wording in the amendment to the overarching provision that requires relevant persons to respond to the recommendations of the commissioner. John Dunford was right to say that persons to whom recommendations are made should not be able simply to ignore them, but he did not think that the commissioner should be able to require his or her recommendations to be implemented. In my view, new section 2C(3) provides the appropriate balance.

In response to amendment 268, I will say that under clause 79 it is open to the Children's Commissioner to interview an individual child, or a group of children individually or collectively, in support of the primary function, so the hon. Lady should have no concerns about the commissioner's powers in that regard.

The hon. Member for Wigan expressed concern about a culture in the Home Office of not being proactive in promoting the rights of vulnerable children. I do not know what conversations she has had directly with the Department that lead to her raising that issue. I would

be worried if she has evidence for that strong view, but I would be delighted to receive from her anything that backs up her claim. In my regular dealings with the Home Office at ministerial level and otherwise, I have seen close synergy between the Departments working on trafficking, asylum-seeking children and children in custody. Those issues cut across the Government. A strong response is needed from the Home Office in particular on the issues that the hon. Lady raised, but I would be concerned if the situation she described is the reality. I do not share her experience, but if she can provide me with evidence, I will be happy to receive it.

Lisa Nandy: One of my key concerns is that despite the fact that the office of the children's champion was set up in the Home Office some time ago to drive forward the welfare of children in the UK Border Agency and the Home Office, it seems from the report by Bail for Immigration Detainees that the office has become a mechanism for sanctioning the poor treatment of children. I would be grateful if the Minister looked at that report, which was published a week or two ago, and agreed to meet Bail for Immigration Detainees to discuss its concerns.

Mr Timpson: I am happy to look at the report and consider its findings and recommendations. I emphasise to the hon. Lady that I take these matters seriously, and from my work with the Home Office and other Departments, I am confident that other Ministers do as well. I know from the evidence that the Home Office, in conjunction with other Departments, gave to the Joint Committee on Human Rights that these issues are at the forefront of much of their work. I am happy to look at the situation to ensure that we are fulfilling what we set out to achieve.

The point was not raised with me directly, but there is concern about the OCC's powers and its impact on parental rights. It is worth putting on the record that the Children's Commissioner must have regard for the United Nations convention on the rights of the child in exercising his or her primary function. The UNCRC promotes good relations between parents and children and the right of children to express their faith. The OCC has no enforcement powers, as we know from the draft clauses. The Children's Commissioner will be appointed through a public appointments process, and candidate's views and experience will be vetted as a consequence of that process. I hope that is helpful to any hon. Members who are concerned about what impact the OCC will have on faith groups and other organisations.

We do not intend to create difficulties; we simply want to ensure that children's voices are heard. We want to strengthen children's voices in policy and in what we do about safeguarding, protection and welfare. I hope that helps the Committee, and I ask the hon. Lady to withdraw the amendment.

Lucy Powell: I echo the comments of other hon. Members, and add my voice to theirs. I know the Minister takes these issues extremely seriously. He carries out his responsibilities with diligence and a great deal of force, and I thank him for that.

I have been reassured by some of the Minister's comments; in particular, I welcome the forthcoming changes to the regulatory framework, which I hope will bring about the culture change we need. I hope that culture change will embrace the spirit of my proposals and provide a voice to the children who historically have not had a voice, who have often been regarded as unreliable witnesses and have not been believed. I look forward to working with the Minister and others to ensure that the desperately needed culture change comes about, so that we can draw a line under the systematic child abuse that has taken place in some institutions in this country.

As the Minister rightly says, my intention is not that the OCC should have powers of inspection, but that the onus is on it to listen to wider voices—not just the abused, but those surrounding the abused. I have been reassured by what the Minister said today, and on that basis I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lisa Nandy: I beg to move amendment 293, in clause 77, page 50, line 27, leave out from 'may' to end of line 28 and insert

'only conduct an investigation of the case of an individual child where he considers it will enable him to discharge the primary function more effectively.'.

The amendment would give the Children's Commissioner for England an explicit power to investigate individual cases that raise questions of wider significance for children. I do not believe that the Children's Commissioner is or should become an ombudsman; I share John Dunford's belief that it is important that she retains her focus on issues of strategic importance. As the commissioner recently pointed out to me, there are 12 million children in England, and at just 18p per child, resources do not permit the commissioner to fill that role, even if it were desirable.

It is vital that the Children's Commissioner for England is not obstructed in seeking to investigate cases that may have wider significance for children generally. The Children Act 2004 sets out the circumstances in which the Children's Commissioner can carry out investigations into individual cases: they are permitted only when the Children's Commissioner is using powers of inquiry, and only if the case raises issues of public policy relevance to other children. The Act explicitly prohibits investigations into individual cases as part of the commissioner's functions.

Five years ago, 14-year-old Meltem Avcil, who was detained in Yarl's Wood immigration removal centre, slit her wrists after learning that her bail application had been turned down. The then Children's Commissioner, Al Aynsley-Green, visited that brave young woman in Bedford hospital and, with her permission, used her case to illustrate the brutality and inhumanity of a system that routinely incarcerated children without time limit and in which a young girl who had self-harmed was handcuffed to a hospital bed and surrounded by armed guards while she recovered. The subsequent coverage of the case, sparked by the Children's Commissioner's decision to visit her in hospital, played no small part in the campaign to end the immigration detention of children, and the Minister for Policing and Criminal Justice is to be congratulated on having done that. During that period, however, UK Border Agency officials

strongly questioned whether the Children's Commissioner should be involved in the consideration of individual cases such as Meltem's.

At that time, I was on the Children's Commissioner's advisory board in relation to his work on asylum seeking. It is fair to say that UK Border Agency officials were consistently unhelpful and at times obstructive to his attempts to enter Yarl's Wood and other premises, such as children's homes, to talk to individual asylum-seeking children, whether they were with their families or were unaccompanied minors. I do not say that as a criticism of all UK Border Agency staff, because we found that people on the front line were often very concerned about the treatment of the children with whom they came into contact. However, because of messages coming from the middle and top of that organisation, they were very unsure about whether they could do more to safeguard those children.

It is vital that the Children's Commissioner can talk to individual children and investigate their cases when he or she thinks that there may be an issue of wider significance for children, even if that turns out not to be the case. In Meltem's case, it was incredibly important that the commissioner could determine whether it was of wider relevance to other children. It is not always clear from the outset whether a case is of wider relevance.

Other UK Children's Commissioners have proven effective for children in similar circumstances. The Children's Commissioner for Wales, who has the power to investigate individual cases in certain circumstances, tells me that his role is greatly informed by the individual cases that come to his attention, which he uses to determine his priorities. One well known example was the investigation into school exclusions, of which several cases had come to his attention. He found that children were routinely informally excluded from school for prolonged periods against their interests.

In his report, John Dunford stated:

"The Commissioner should have discretion to investigate a small number of individual cases that have wider significance, reflecting its strategic priorities and having regard to the effective use of resources."

To place it beyond any doubt, I seek an assurance from the Minister that the Children's Commissioner can investigate individual cases as she sees fit, without any interference from any Department. If he could provide me with some reassurance on this, I will happily withdraw the amendment.

10.15 am

Mr Timpson: The amendment would amend the provision that prohibits the Children's Commissioner from investigating the case of an individual child under the commissioner's primary function. Although it may appear a little odd to prohibit the commissioner from investigating individual cases, there are good reasons for the inclusion of new section 2(5), which is carried forward from the Children Act 2004.

The provision was introduced to avoid the commissioner inadvertently becoming bogged down in individual casework at the expense of the OCC's strategic role. As the hon. Lady mentioned, John Dunford made clear in his report his view that

"a full ombudsman role is not appropriate. Commissioners that have tried to undertake a substantial casework function have confirmed that it has swamped their other more strategic work and reduced their impact."

The aim is also to avoid the commissioner getting involved in supporting individuals in raising concerns that could be dealt with through existing complaint systems. If a child raises a concern with the commissioner that is relevant only to their individual circumstances, the commissioner's role should be to signpost the child to an existing complaints mechanism and to help the child to access advocacy services where that is appropriate.

The hon. Lady spoke about how the Children's Commissioner for Wales had been greatly informed by involvement in individual cases. From the contact that I have had with the Children's Commissioner for England and with the Deputy Children's Commissioner, I know that they also are well informed by individual cases, so even before we start strengthening and clarifying their role through this legislation, it is clear that, through the auspices of their office, there is already the capability for the Children's Commissioner to become well versed in specific cases, which provide them with a backdrop for deciding what the reaction should be through public policy where other children find themselves in similar circumstances. It is, however, simply not possible for the commissioner to carry out a full investigation into the facts of individual cases that are brought to his or her attention without the commissioner's strategic role being compromised. That view was supported by the Joint Committee on Human Rights in its pre-legislative scrutiny report.

I realise that creating the scope for the Children's Commissioner to undertake an individual casework function in circumstances where he or she deems it appropriate does not automatically mean that the commissioner would be obliged to respond to each and every case that is raised with them. The commissioner would therefore have some control over how much resource went into this aspect of his or her work. Nevertheless, it would create a presumption that this is a part of the commissioner's role, and would in turn probably lead to an expectation among children that their case would be taken forward, leading to disappointment if it was not. In addition, the commissioner would face difficult decisions about which cases to support, and might have to spend significant time and effort justifying why he or she had taken up a particular case and not another.

I understand the good intentions behind the amendment, but we have to be pragmatic. There are nearly 12 million children in England and the Children's Commissioner does not have the capacity to offer a casework function, especially where there are existing complaints mechanisms in place—for example, through the health service ombudsman—that can be used to address many of the situations in which children do not think that their rights have been upheld or taken into account.

I remind hon. Members that other provisions in the Bill allow the commissioner to provide advice and assistance to those children who currently fall within the CRD's remit, in order to continue a service to which those children currently have access. The commissioner many also initiate a formal inquiry into the case of an individual child where he or she considers that it raises issues of public policy that are relevant to the other children under the separate inquiry function.

Lisa Nandy: I want to press the Minister on interference by Government Departments. Can he assure us that he does not believe that it would be appropriate for a

[Lisa Nandy]

Government Department to determine what the Children's Commissioner can or cannot do in relation to an individual child, such as in the case of Meltem Avcil?

Mr Timpson: The remit of the Children's Commissioner is set out very clearly in the legislation. The purpose of doing so is to improve the independence of the Children's Commissioner and make the commissioner more accountable to Parliament. The remit we have set out attempts to strike a balance whereby there is not a complete disconnect between what the Government are doing and what the Office of the Children's Commissioner is looking to do within the powers that are at its disposal. Clearly it is a matter for the OCC, within the wide discretion we are giving it in the Bill, to decide where it wants to channel its energies and where, as at present, it wants to press the Government on policy, albeit it does not have a power to direct the Government. That might be about children's homes, as we have discussed. That will remain the case and will be strengthened by the Bill. If the hon. Lady has concerns as the office develops its enhanced role, there will be accountability to Parliament. I hope that reassures her and that she will withdraw her amendment.

Lisa Nandy: There is not much distance between us on this. I agree that the Children's Commissioner needs to focus on issues of strategic importance to children. As I understand from both the former and the current Children's Commissioner, obstruction by Government Departments is thankfully rare, but it is likely to occur in areas where children are already facing the greatest discrimination and disadvantage. That is what I sought to press the Minister on, so I was little disappointed by his response. It would be wrong of a Government department to try to stop the Children's Commissioner from talking to individual children in the course of their daily work if they consider that that might raise issues of strategic importance. I hope that we can return to this as the debate continues. I am grateful to the Minister but I am not completely reassured by what he said. We will seek to return to this. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Steve Reed (Croydon North) (Lab): I beg to move amendment 270, in clause 77, page 50, line 43, at end insert

'and have due regard to their views.'.

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

Amendment 271, in clause 77, page 51, line 8, at end insert

'and have due regard to their views.'.

Amendment 272, in clause 82, page 53, line 5, at end insert

'and have due regard to their views.'.

Amendment 273, in clause 83, page 53, line 32, at end insert

'and the extent to which the Commissioner has had due regard to their views.'.

Mr Reed: These are small but significant amendments which are designed to strengthen the voice of the child, which the Government also seek to do. The provisions requiring the Children's Commissioner to involve children in his or her work are welcome, but that will be more meaningful if alongside the duty to consult children there is a corresponding duty to have regard to their views and to report on how that is being achieved. It is important that the voice of the child is heard and vital that children's views are taken into account in all aspects of the OCC's work. The amendments create a mechanism for that to happen in line with the requirements of the United Nations convention on the rights of the child. I hope that the Minister is minded to support them.

Mr Timpson: The amendments address the important issue of children's views and the extent to which they should be taken into account by the Children's Commissioner. I thank the hon. Gentleman for raising these matters. I agree that children's views and interests should underpin all the commissioner's work. That is why, as well as amending the commissioner's primary function to one of promoting and protecting children's rights, we have made clear in new section 2(2) that the primary function continues to include the existing function of

"promoting awareness of the views and interests of children",

as it remains important that any recommendations that the commissioner makes are informed by children's views.

As the hon. Gentleman's amendments illustrate, there are several places in the legislation where we have placed a requirement on the commissioner to involve or consult children. Members may be aware that the OCC has a standing group of children, known as Amplify, which it consults regularly on a range of issues. It is also normal practice for the OCC to interview children as part of any investigation that it is undertaking. In my view, there is inherent responsibility in any consultation to have regard to the views expressed by the people who are being consulted.

I should also point out that new section 2A states:

"The Children's Commissioner must have regard to the United Nations Convention on the Rights of the Child in considering for the purposes"

of the child

"what constitutes the rights and interests of children".

Article 12 of the convention states that children have "the right to express" their

"views freely in all matters affecting"

them, and to expect their views to be "given due weight" in accordance with their "age and maturity".

I hope that the hon. Gentleman is reassured that the safeguards that he seeks to introduce are already embedded in the clause. I urge him to withdraw his amendment.

Mr Reed: I thank the Minister for his comments. In light of the explanation he gave on consultation and the fact that it includes, in his view, having due regard for the views of children, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

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

New clause 37—*Constraints on Children's Commissioner*—

'In Schedule 1 to the Children Act 2004, in paragraph 1 (status) after sub-paragraph (2) insert—

"(3) The Minister shall have due regard to the desirability of ensuring that the Children's Commissioner is under as few constraints as reasonably possible in determining—

(a) the Commissioner's activities,

(b) the Commissioners's timetables, and

(c) the Commissioner's priorities.".'.

New clause 48—*Remit of the Children's Commissioner for Wales*—

'In section 72B of the Care Standards Act 2000, after subsection (1)(b), add—

"(c) the exercise or proposed exercise in relation to Wales of any function of a UK Government Minister.".'.

Charlie Elphicke (Dover) (Con): The clause is extremely welcome in principle. I particularly welcome subsections (1) and (2) of new section 2 of the Children Act 2004. Subsection (1) states:

"The Children's Commissioner's primary function is promoting and protecting the rights of children in England."

Subsection (2) says:

"The primary function includes promoting awareness of the views and interests of children in England."

I want to consider the protection of freedom of religion in the United Kingdom. Members will be aware of submissions made by religious groups on that subject, and I want to draw attention to those of the Plymouth Brethren. In my role as a member of the Public Administration Committee, I have witnessed concerns being raised to do with the charitable status of the Plymouth Brethren and a number of minority religious groups. It is important to protect minorities and minority religious groups, but there is much concern that charitable status was given to the druids, yet denied to the Plymouth Brethren—a religious group who believe in a Christian God. It can seem as though religious freedom is sometimes a little under siege.

I want to press the Minister on paragraphs (h) and (i) of new section 2(3). Paragraph (h) states that the Children's Commissioner may

"investigate any other matter relating to the rights or interests of children",

and paragraph (i) states that they may

"monitor the implementation in England of the United Nations Convention on the Rights of the Child".

Will the Minister confirm that the Children's Commissioner's powers are not intended to affect religion, religious teaching, religious schools of any denomination or, indeed, any religion practised in the United Kingdom today?

Mr Robert Buckland (South Swindon) (Con): I am grateful to my hon. Friend for raising this important issue. Does he agree it is welcome that new section 2A states:

"The Children's Commissioner must have regard to the United Nations Convention on the Rights of the Child"?

That gives balance and allows for the considerations that he and I share about religion and religious faith being maintained. That is a welcome exhortation at the heart of the clause.

10.30 am

Charlie Elphicke: I thank my hon. Friend for raising that point. It is an absolutely key point, particularly in relation to proposed new section 2(3)(i), which monitors the implementation of the United Nations convention on the rights of the child. I am sure my hon. Friend is aware that article 30 of the convention states:

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

I have asked the Minister to look at the case raised by the Plymouth Brethren, but there is another religious community in my constituency, at Beech Grove near Nonington. Its members live almost like a latter-day monastery, except that they are both men and women. They are married to each other and they bring up children in their community. They have a particular Christian religious faith. They make and sell nursery furniture—good solid brilliant wooden nursery furniture—and give pretty much everything away to charity. They are dedicated to good causes. However, they worry about their charitable status and also about the security of their school, because they have a school on site, where they teach in their community.

In relation to religious communities, and indeed to minority religious groups, will the Minister confirm to the Committee that nothing is intended in the role of the Children's Commissioner that could in any way suppress those minority groups or minority religions? Will the role indeed preserve and protect their way of life so they can continue to practise it unhindered, free of any discrimination or imposition?

Mr Reed: New clause 37, to which I wish to speak, seeks to ensure that the Children's Commissioner is seen to be independent and is not unduly constrained in carrying out his or her role. It is particularly important that the commissioner is as free as possible to determine his or her own activities, timetables and priorities, if the public are to have confidence in their independence.

The Dunford review of the Children's Commissioner highlighted that around a quarter of respondents to the survey on the Office of the Children's Commissioner for England had the unprompted perception that the role of the Children's Commissioner in England had been hampered by the commissioner not being sufficiently independent from Government. The Joint Committee on Human Rights, when scrutinising the legislation earlier in its development, stated:

"The independence of the Commissioner from Government, both perceived and real, is of central importance to the effectiveness of the new Office".

The Committee recommended that

"the Bill contain clear statutory underpinning for the independence of the Commissioner from the Government, by including clauses which impose a clear duty on the Minister not to interfere with the independence of the Commissioner".

The new clause would create that statutory underpinning.

The commissioner is appointed and their budget determined by the Secretary of State for Education. Because of that relationship with the Government and

[Mr Steve Reed]

particularly with Ministers, it is important for the legislation to clearly set out that the commissioner is independent of Government. This makes it clear to the Minister not to interfere with the activity, timetable or priorities of the Commissioner. It also makes it clear that the commissioner is supported by the legislation, in the case of Government or a Minister trying to exert pressure on the postholder or on their office.

It is due to the current lack of independence that the OCCE is not a full member of the European Network of Ombudspersons for Children, an association of 41 independent children's rights institutions in 30 countries. The OCCE is one of only seven children's rights institutions which are able to have only associate membership, and are therefore excluded from the general assembly. The reform of the OCCE would be incomplete if the new OCCE did not meet international standards, obtain full international recognition, and was not on a par with the three devolved commissioners, who meet those requirements. I hope Ministers will be minded to support the new clause.

Lisa Nandy: New clause 48 is a probing amendment, designed to raise concerns about the current situation regarding the jurisdiction of the four Children's Commissioners. My amendment would allow the Welsh Children's Commissioner to have responsibility for all children in Wales, and not on devolved matters only. I appreciate that there are strong reasons why that may create its own complications, and I accept that it may not prove to be the right compromise. Nevertheless, it is important that the current problems are resolved.

The Children's Commissioner for Wales provided two examples of the confusion created by the current situation, where children can fall through the gaps because the commissioner's powers are linked to matters that reflect the responsibilities of Welsh Ministers and public bodies rather than being linked to children in general. In the first example, the Children's Commissioner for Wales receives a complaint from a child in Wales relating to a broadcast performance on television. It is widely assumed that broadcasting is a non-devolved matter and that the Children's Commissioner for Wales has no authority to act, but section 37 of the Children and Young Persons Act 1963 gives local authorities, including those in Wales, the power to grant licences allowing persons aged under 16 to take part in public performances. If the child's complaint relates to such a licence, the matter would, therefore, fall within the remit of the Children's Commissioner for Wales.

The second example concerns immigration, another field in which it is widely assumed that the Children's Commissioner for Wales has no authority to act. Under section 118 of the Immigration and Asylum Act 1999, housing authorities must ensure that tenancies of housing accommodation are not granted to persons, including children, who are "subject to immigration control" unless they are

"of a class specified in an order made by the Secretary of State".

Those powers have, however, been exercised by Welsh Ministers, so the Children's Commissioner for Wales also has some authority to act in relation to immigration matters.

The Committee can see from those examples that the situation is confusing. I have seen similar examples over the years, particularly where asylum-seeking children are concerned. In such cases, it has been wrongly assumed that those children do not fall within the remits of the Children's Commissioners for Wales or for England, so they have fallen through the gaps. The Children's Commissioner for Wales frequently has to investigate a complaint before the true problem becomes clear. As he rightly says, children should not be expected to know which is the relevant Children's Commissioner, or where the cause of their problem lies, before they raise a concern. On the—thankfully rare—occasions when agencies or officials are determined to be obstructive, the situation increases the likelihood that they will succeed.

I take this opportunity to pay tribute to the four Children's Commissioners for the way they work together to handle the situation and to ensure that all children are spoken for. However, the exercise and upholding of children's rights must not depend only on the good will of those involved. The Children's Commissioner for Wales is clear that the current situation is not acceptable. He thinks, as do I, that the Minister was right to listen to the Children's Commissioners and revoke the previous compromise, which satisfied nobody, but rejection of that compromise should not be taken to imply that the current situation is acceptable. I accept that new clause 48 is not perfect, but before I withdraw it, I would be grateful if the Minister would tell the Committee what he will do to resolve the problems I have outlined.

Mr Timpson: Clause 77 makes the primary function of the Children's Commissioner the promotion and protection of children's rights. To clarify the scope of the Children's Commissioner's role, the clause includes a non-exhaustive list of activities that they may undertake in the exercise of their primary function. The clause also clarifies that the previous primary function of promoting awareness of children's views and interests remains an aspect of the Children's Commissioner's new primary function.

The clause fulfils a commitment made by the Government in the light of the Dunford review. It will ensure that the Children's Commissioner is recognised internationally and has credibility in civil society. On that point, I reassure the hon. Member for Croydon North, who rightly stated that the Children's Commissioner is not a full member of ENOC. That is because the Children's Commissioner does not currently have a rights-based remit, and because the Secretary of State can direct the Children's Commissioner. The legislation addresses both those points, so we aim for the Office of the Children's Commissioner to have full membership of ENOC in the future, and we anticipate that that will happen. I hope that provides the hon. Gentleman with some comfort.

My hon. Friends the members for Dover and for South Swindon raised concerns about the potential for suppression of minority religions. I refer them to the assurance I gave in an earlier debate, that, as my hon. Friend the Member for South Swindon reiterated, the Children's Commissioner must have regard to the UNCRC in exercising his or her primary function. Nothing in the Bill can affect faith schools: although it is the role of the commissioner to make recommendations to Government, based on evidence, the changes that result from any

recommendations are for Government and Parliament to decide, not the commissioner, as the Office of the Children's Commissioner has no enforcement powers. There is another insurance: appointment through a public appointments process will provide ample opportunity to ensure that the individual who takes on the role of Children's Commissioner has been rigorously tested on their views, to make sure that they will carry out their duties, within the remit Parliament has provided, in a reasonable and fair manner.

Charlie Elphicke: I thank the Minister for his assurances. When the job description is drawn up for the Children's Commissioner, will he consider having as part of it acceptance of belief in religious freedom and tolerance in this country?

Mr Timpson: I hope my hon. Friend saw the note I provided to the Committee about the process for appointing a future Children's Commissioner, which says that it should be a fair and open competition, and sets out in some detail the process and how it will be conducted; clearly we want to make sure that it is fair and proper. I suggest that he looks carefully at the note and comes back to me with any suggestions he may have as to how we can improve the process.

New clause 37, which was tabled by the hon. Member for Croydon North, concerns the commissioner's independence, and raises an important point of principle. John Dunford's report identified that a perceived lack of independence from Government had affected the commissioner's credibility with children's organisations, and made various recommendations to counter those perceptions. The Government have acted on those recommendations in full: for example, we removed the provisions that allow the Secretary of State to direct the commissioner to carry out an inquiry and the requirement on the commissioner to consult the Secretary of State before initiating an inquiry, and are changing the term of appointment to a single, non-renewable six-year term, to remove the potential for political influence that exists in the current reappointment process.

The Bill also gives the commissioner substantial powers and freedom. For example, new section 2 of the Children Act 2004, inserted by clause 77, makes clear that the commissioner can investigate any matter relating to the rights or interests of children. It is also open to the commissioner to decide on his or her priorities and activities in the light of consultation on the draft business plan; I assure the hon. Member for Wigan that the Government do not and will not interfere with that process.

In short, the commissioner has a great deal of freedom already, without the introduction of the new clause tabled by the hon. Member for Croydon North. Furthermore, I do not accept that the OCC's status as a non-departmental public body compromises its independence. Many other public bodies that are required to be independent from Government operate effectively under the same model; for example, the Equality and Human Rights Commission, the Office for Budget Responsibility and the Low Pay Commission. The OCC cannot be completely exempt from the efficiency controls that all other publicly funded bodies are expected to comply with, nor do I believe that the commissioner's independence is compromised by the OCC's sponsorship by the Department for Education; arguably, in many ways its effectiveness is strengthened by that, through, for example, the DFE facilitating the OCC's contacts with other parts of Government.

As I said, the Government have no power to interfere with the remit of the OCC or its carrying out of that remit. However, the OCC has to operate within the remit, and although I fully support the view expressed by the hon. Members for Wigan and for Croydon North that the OCC should not be subject to political interference—I set out how we created safeguards to prevent that—it is also important that the OCC does not become completely disconnected from Government, becoming simply another lobby group. Unlike other children's organisations, the OCC has statutory powers that, for example, enable it to enter premises or request information so that it can produce evidence-based reports that reflect the views and concerns of children. Its reports and recommendations should be in accordance with that unique role. By maintaining a connection with the Government, the OCC will be better able to have influence and impact. That point was made by John Dunford in his report, and I agree.

10.45 am

New clause 48 relates to the recommendation from John Dunford that the Children's Commissioners in devolved Administrations should in principle be responsible for all relevant matters in respect of children and young people who normally reside in their countries. The proposed new clause is an attempt to deliver that recommendation. It is similar to an option that the Government included in the draft clauses that we presented for pre-legislative scrutiny, which was subsequently removed on the advice of the Joint Committee on Human Rights.

Even if the Children's Commissioner for Wales had a power to review a non-devolved matter, as the new clause proposes, it is not clear what he or she would then do with their findings. There would be no point in raising them with the Welsh Assembly, as they would not have the competence for the matter being raised, and it would be constitutionally inappropriate for a commissioner appointed and sponsored by the Welsh Assembly to be able to raise matters with the UK Government or Westminster Parliament.

The fact of the matter is that John Dunford's recommendation came about in response to a number of practical issues that he identified during his review. Since then, the four UK commissioners, who I pay tribute to for their work, have been able to address those issues under the existing legislation by establishing an operational protocol, which has ensured that they have worked more closely together and improved the co-ordination of their activities. Indeed, I understand that the Children's Commissioner for Wales has already led on a number of joint pieces of work. Drawing the primary function of the Children's Commissioner in line with the other UK commissioners will ensure that there is even less reason for there to be any practical difficulties in how they work together in the future. That is, again, a position with which the JCHR concurred.

On that basis, I would urge hon. Members to withdraw their new clauses. I commend clause 77 to the Committee.

Question put and agreed to.

Clause 77 accordingly ordered to stand part of the Bill.

The Chair: Before we move on, I have a proposition to put to the Committee. There are no amendments to clauses 78 to 83. If any Member wishes to pursue one of those six clauses in particular, I will not be able to do what I propose, which is to put the Question on all of them together. If that is agreeable, we will proceed on that basis.

Clauses 78 to 83 ordered to stand part of the Bill.

Clause 84

Children living away from home or receiving social care

Mr Reed: I beg to move amendment 274, in clause 84, page 54, line 16, at end insert—

'(5A) A child is within this subsection if he or she is detained in pursuance of—

(a) an order made by a court, or

(b) an order of recall made by the Secretary of State.

(5B) A child is within this subsection if he or she has been identified by a professional as a potential victim of trafficking.

(5C) A child is within this subsection if he or she is a separated migrant child.'.

The reforms in the Bill will require the Children's Commissioner to have particular regard to specified groups of vulnerable children when carrying out his or her functions. The amendment would extend that definition to include children living in custody and separated children who are seeking asylum or have been trafficked. Because of their current circumstances and past experiences, children living in custody, unaccompanied child asylum seekers, or those who have been trafficked have specific needs and are particularly vulnerable to having their rights infringed. They need the additional advice, assistance and attention offered by the commissioner. The UN convention on the rights of the child recognises the particular vulnerability of such children and devotes specific attention to their protection.

Trafficked children have often suffered physical, sexual or psychological abuse. Once here, the quality of support provided to them varies widely and is often woefully inadequate. A recent parliamentary inquiry concluded:

"Hundreds of them disappear from care every year and the majority are never found again."

They are also vulnerable to inappropriate criminalisation. The Education Committee report into child protection found that

"The police and the UKBA have a focus on detecting crime and implementing immigration policy which can lead to the criminalisation of abused and vulnerable children found in these situations. Such children must always be treated as victims—and children—first and not just as criminals."

Separated migrant children are particularly vulnerable. Such children may be fleeing war and persecution in their home country, or may have been abandoned in this country by their carers. The uncertainties that they face in relation to their immigration status, language and cultural barriers, inconsistent education and care provision mean that they need special protection. There is also significant evidence that the rights of those separated children are breached when they are in England. The children continue to be detained for immigration purposes if their age is not believed and they are increasingly experiencing destitution, including homelessness. A 2012 report by the Children's Society found that young people perceive the asylum process as a

"a confusing and emotionally distressing time"

and that some young people reported angry and aggressive behaviour being exhibited towards them. Regarding children in custody, the Secretary of State for Justice acknowledged last year that "children in custody are amongst some of the most vulnerable and socially disadvantaged and they have specific needs which may not be common to the wider population of young people."

Many children in custody have experienced neglect or abuse and come from deprived or disadvantaged backgrounds. As a result, they have much poorer outcomes than their peers. Children in custody have high rates of mental health problems. Some 20% of young people in custody have tried to harm themselves, compared with 7% of the general population, and about a tenth have tried to commit suicide at some point in their young lives. Children in custody are also more likely to have special educational needs. Some 18% of sentenced young people in custody had a statement of special educational needs, compared with only 3% in the general population. Once in custody, children also face policies and practices that infringe their rights, or have the potential to do so. For example, painful restraint techniques can still be used on children in custody, and children in custody continue to experience poor-quality education.

I ask the Minister to consider including children in those three extremely vulnerable categories within the compass of the Bill.

Mr Timpson: I fully recognise that the groups of children referred to in the amendment are at particular risk of having their rights infringed. The hon. Gentleman eloquently set out many reasons why that is the case, and I shall quickly touch on children in custody, which is something that I share his concern about.

There are encouraging signs that the number of children in custody is falling, but we still need to consider whether we are ensuring that the rights of all the children who are in custody and who will be in custody in future are properly protected and that they are receiving support and rehabilitation during their time in custody. Such support will give them a much better chance, when they leave custody, of making a better fist of their life than they had up to the point at which they entered custody. That is why I welcome the work of the Green Paper that is being undertaken by the Ministry of Justice on, in particular, education in the youth prison estate.

Only yesterday, I met the Under-Secretary of State for Justice, my hon. Friend the Member for Kenilworth and Southam (Jeremy Wright), who has responsibility for prisons, to discuss how we can do better in future on the secure college model, which is a suggestion in the consultation currently under way for the Green Paper, and any other models that we think would provide children in custody with not only the punishment for the crime they committed, but the opportunity to turn their lives around, so that they contribute to society positively. We should not miss out on giving them such an opportunity.

The purpose of the clause, which would introduce proposed new section 8A into the Children Act 2004, is solely and specifically to provide a definition that identifies

the groups of children who currently fall with the remit of the children's rights director. By effectively ring-fencing children in the CRD's remit in that way, it allows us to apply other provisions in that part of the Bill specifically to that group of children, in order to ensure that the focus on them does not diminish when the activities of the CRD are transferred to the Children's Commissioner.

Proposed new section 8A is therefore not an attempt to define vulnerable children for the purposes of the commissioner's primary function. Rather, proposed new section 2(4), which clause 77 would introduce, sets out the groups to whom the commissioner should have particular regard. While proposed new section 2(4) refers to the children defined in proposed new section 8A, it is also clearly stated that the commissioner should have particular regard to any

"other groups of children who the Commissioner considers to be at particular risk of having their rights infringed.",

as the hon. Member for Croydon North said a few moments ago. As I have already said, I find it extremely difficult to envisage how any commissioner would not consider the groups of children that the hon. Member for Croydon North identifies in his amendment as not being at particular risk of their rights being infringed, and I am happy to put that on the record.

John Dunford recommended that while the commissioner should be responsible for promoting and protecting the rights of all children, he or she should focus OCC's resources on the most vulnerable children. We have considered trying to construct a list of those groups of children who are most vulnerable, but we do not think it is possible to produce a list that will stand the test of time. Our view is that, in general, it is best to leave it to the Children's Commissioner to determine where to target his or her resources based on the issues that confront society at any particular point in time. That will give the commissioner the flexibility to address new concerns as they become apparent. Sadly, it will always be the case that new concerns, such as child sexual exploitation by groups and gangs, will emerge, and the formulation we have used allows the commissioner to respond to them when they do.

As the Committee will note, while in general we have avoided defining groups of children in this part of the Bill, we have made an exception when it comes to children within the CRD's remit. That is not because we believe that children within that remit are more vulnerable than, for example, children in custody, but because it is necessary to provide safeguards against any reduction in the support currently provided by the CRD to children within his remit when the new arrangements come into force, which is what John Dunford recommended. On that basis, I urge the hon. Gentleman to withdraw his amendment.

Mr Reed: I welcome the Minister's assurances, particularly those that have been put on the record. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 84 ordered to stand part of the Bill.

Clause 85 ordered to stand part of the Bill.

Schedule 5

Children's Commissioner: minor and consequential amendments

Lisa Nandy: I beg to move amendment 294, in schedule 5, page 168, line 9, at end insert—

(za) In sub-paragraph (1), after "Secretary of State" insert "with the consent of the Education Committee of the House of Commons".'.

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

Amendment 296, in schedule 5, page 168, line 11, at end insert—

(aa) after sub-paragraph (2) insert—

(2A) In appointing the Children's Commissioner the Secretary of State shall—

(a) have due regard to the views of—

(i) any parliamentary committee which has published a view on the proposed appointment;

(ii) children involved in the appointment of the Children's Commissioner, and

(iii) the advice of any selection panel, established for the purpose of interviewing candidates, as to their suitability for appointment;

(b) appoint an individual only if the Secretary of State reasonably considers the individual—

(i) has experience and knowledge relating to children's rights;

(ii) is able and willing to act independently of government;

(iii) enjoys the trust and confidence of the public (including children); and

(iv) is capable of effectively fulfilling the Children's Commissioner's primary function.".'.

Amendment 295, in schedule 5, page 168, line 14, at end insert—

(d) after sub-paragraph (7) add—

(8) The Secretary of State may only use his power under sub-paragraph (7) with the consent of the Education Committee of the House of Commons".'.

Lisa Nandy: The amendments deal with the appointment and dismissal of the Children's Commissioner for England. Amendments 294 and 296 give the Education Committee power of veto over the appointment and dismissal of the Children's Commissioner, and amendment 295 requires the Secretary of State to have regard to the views of the Select Committee, children, and the selection panel in the appointment of the Children's Commissioner, and only to appoint a commissioner who has sufficient experience and knowledge of children's rights, is able and willing to act independently, and enjoys the trust and confidence of the public in meeting the requirements of the job.

The amendments provide a number of different options, but they are all designed to build in greater independence to the Office of the Children's Commissioner. It is vital to get this matter right. Under the new system, the Children's Commissioner will be appointed every six years and so must be a strong voice for children and a champion of their rights. I warmly welcome the fact that the Minister has made information available to the Committee about the process for appointing a future

[Lisa Nandy]

Children's Commissioner. I read it with interest and was particularly pleased to see his commitment to ensuring that there will be involvement of children and young people in the appointment of the Children's Commissioner and the expectation that there will be a role for the Select Committee. Invoking the collective expertise of the House of Commons Select Committee is a good way to ensure that the Children's Commissioner will have sufficient independence of mind.

A commissioner who has not sufficiently impressed that Committee or children, as required by amendment 295, with their knowledge, independence of mind and willingness to champion children's rights should not be appointed. Furthermore, it is an important feature of an effective human rights institution that it is independent. As UNICEF makes it clear, that is its main source of strength and legitimacy. As the Government are currently strengthening the role of the Children's Commissioner, this is a golden opportunity to ensure that the Office of the Children's Commissioner meets more fully the Paris principles, that international benchmark of human rights institutions.

11 am

My hon. Friend the Member for Croydon North pointed out that the Children's Commissioner for England is not allowed to take up full membership of the European Network of Ombudspersons for Children, because the role falls short of those principles, unlike the Children's Commissioners for Northern Ireland, Scotland and Wales. I listened carefully to what the Minister said in response to my hon. Friend, and I was glad of his assurance that, because of reforms being made elsewhere in the Bill, the Children's Commissioner for England will be able to be a full member of ENOC.

I draw the Minister's attention to something UNICEF said. On the Bill, it said:

"The appointment and dismissal processes play a critical role in defining the independence of the institution and its ability to influence policies and practices. In order to meet the international standards and best practice the legislation must provide for greater Parliamentary involvement in the appointment and removal of a Commissioner."

It expressed concerns that the

"current version of the OCCE is not a full member of the ENOC due to its lack of independence."

I would be grateful if the Minister checked and clarified that in his response.

Leaving the appointment of the Children's Commissioner for England entirely within the gift of the Secretary of State has the potential, as UNICEF says, to undermine the independence of the office. That matters, because the commissioner is primarily, although not exclusively, monitoring the Department that appointed her. The transparency of the parliamentary process would help give children and the public more confidence in the independence of the office, which is extremely important.

Bill Esterson (Sefton Central) (Lab): My hon. Friend is making the case very well, using the UNICEF information, for the importance of this post being independently appointed. The amendment is consistent, I think she will agree, with how a number of senior appointments across Government are made with the involvement of Select Committees. Hopefully, that is the example she was drawing on. That additional level of scrutiny is a tried and tested approach. I hope the Minister will take that point on board, whether he accepts my hon. Friend's amendment or comes back to the matter later in the Bill's progress.

Lisa Nandy: My hon. Friend is right to recognise that the Government want to involve Parliament. For the reasons that both he and I have outlined, it is important that Parliament, with the expertise of the Education Committee—some members of this Committee are members of it—is heard and not ignored. My amendment would ensure that.

My hon. Friend is also right to point out that there is precedent for the amendment. An alliance of children's organisations, including the Children's Society, Children England and others, believe that enshrining the measure in law is important. The Children's Commissioner for Scotland is appointed by the Scottish Parliament and can be removed only by it. I urge the Minister to accept the amendment. It is unlikely to make his relationship with the next Children's Commissioner more uncomfortable, since he and I will have swapped places by then and he will, I hope, be working hand in hand with the commissioner to hold me to account.

The amendment would guarantee a more legitimate voice for children and give the public and, more importantly, children confidence that the commissioner is fully independent of Government. For all those reasons, I urge the Minister to consider carefully what I have said and take on board the concerns that have been expressed.

Chris Skidmore (Kingswood) (Con): As a member of the Select Committee on Education, I want to say a few words. I am wary that placing the amendment in primary legislation might bind the hands of the Education Committee. I am also on the Select Committee on Health, and we effectively run annual accountability hearings, to which we call bodies such as the Care Quality Commission each year, but that is the decision of the Committee, at Committee level. I am concerned that binding something in primary legislation might not be the best way forward. It could be done elsewhere by ensuring that the Education Committee said, "Actually, Children's Commissioner, we want to call you each year as part of the annual accountability hearing."

Mr Timpson: As the hon. Member for Wigan said, there is general agreement in the Committee that the role of the Children's Commissioner is important. I agree that great care must be taken to ensure that the appointment process is fair and effective. The amendments would involve Parliament and children in the appointment of the Children's Commissioner, and in defining some essential characteristics of the post holder.

I have, as the hon. Lady said, provided the Committee with a note on how we expect the appointment process to work, together with the OCC and Department for Education framework. That note confirms that I am in favour of Parliament being involved in decisions about the Commissioner's appointment, including agreeing the job description and person specification before the post is advertised. I hope that that reassures my hon. Friend the Member for Dover. I am also in favour of

holding a pre-appointment hearing—I have been involved in one—with the preferred candidate prior to their formal appointment. However, I am not persuaded that such arrangements should be set out in the legislation. The conventional process for deciding which public appointments should be subject to pre-appointment hearings is through agreement between the incumbent Government and the Liaison Committee. I hear what the hon. Lady says about who may be at what desk in future—I am sorry that we have had to revisit that point at this later stage of the Committee—but I understand that the Children's Commissioner is already on the list of agreed posts for this purpose, and will remain on it when the list is updated.

My note explains that the process for recruiting the next commissioner will be in line with the code of practice of the Commissioner for Public Appointments, which requires the appointment panel to consider the personal qualities and background knowledge required to fulfil the commissioner's statutory roles. In my view, it would be better to make those decisions when the need for an appointment arises, allowing for any adjustments to be made in the light of the experience of previous post holders and the prevailing circumstances, than to include provisions in the Bill that would need to be amended through primary legislation.

I agree that it is important to involve children in the process of appointing a new commissioner. We are therefore strengthening the provision in the 2004 Act, so that for all future appointments, the Secretary of State would have to take reasonable steps to involve children in the appointment. The note to the Committee sets out that a young person could be appointed to the recruitment panel, or a group of young people might interview candidates and make a recommendation to the panel. It would be at odds with this provision if the views of children involved in the appointment were not listened to or taken into account, so I do not think that that aspect of the amendment is necessary.

With regard to dismissal, the specified circumstances in which the Secretary of State could dismiss the commissioner represent a high threshold, as a dismissal decision could be overturned following judicial review if it was found to have been made for inappropriate or unjustified reasons, or if proper process was not followed. The courts provide ample protection against the commissioner being dismissed on arbitrary grounds, as has been suggested. There may also be situations in which the reason for the dismissal is confidential, and it may not be appropriate in those circumstances to share the reasons with Parliament. On that basis, and having provided a note that gives the hon. Member for Wigan strong reassurances about the appointment process, I urge her to withdraw her amendment.

Lisa Nandy: I am particularly reassured by what the Minister said about children, and what was set out on that subject in his note. Notwithstanding concerns that I have about independence and the way that the Children's Commissioner is appointed and dismissed, the Minister's note is helpful in setting out his intentions. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Timpson: I beg to move amendment 263, in schedule 5, page 169, line 11, leave out paragraph (b).

The Chair: With this it will be convenient to discuss Government amendment 226.

Mr Timpson: These are technical and consequential amendments. As part of our proposed wider reforms to the Office of the Children's Commissioner, we are removing the statutory requirement on Her Majesty's chief inspector of education, children's services and skills to appoint a children's rights director, and the statutory requirement on the Children's Commissioner to appoint a Deputy Children's Commissioner. Both the children's rights director and Deputy Children's Commissioner were, alongside other post holders, included in paragraph 4 of schedule 4 of the Safeguarding Vulnerable Groups Act 2006, which sets out the post holders who have regulated positions and are engaged in a regulated activity for the purposes of that Act. The changes that we were proposing in clause 86 and schedule 5 would have removed the children's rights director and Deputy Children's Commissioner from the list of post holders in the Act; however, paragraph 4 was repealed on 10 September 2012, after the draft OCC clauses were published, so the changes we were proposing are no longer necessary. I therefore urge the Committee to accept the amendments.

Amendment 263 agreed to.

Schedule 5, as amended, agreed to.

Clause 86

REPEAL OF REQUIREMENT TO APPOINT CHILDREN'S RIGHTS DIRECTOR

Amendment made: 226, in clause 86, page 54, line 40, leave out subsection (3).—*(Mr Timpson.)*

Clause 86, as amended, ordered to stand part of the Bill.

Schedule 6 agreed to.

The Chair: Before I call Ms Powell to move amendment 325, may I ask for Members' attention for a moment? At some point, we need to discuss the scheduling of this afternoon's business. My proposition is that we proceed until 11.25 am, when we will have to adjourn until 2 pm. At 2 pm, the Under-Secretary of State for Business, Innovation and Skills, the hon. Member for East Dunbartonshire (Jo Swinson), needs to attend a debate, so we might need to suspend the Committee for a time to facilitate that. Will the Whips and Front Benchers speak to me when we conclude at 11.25 am, so that we can work out a programme for how to proceed properly this afternoon? *[Interruption.]* Or perhaps Mr Jones can inform us of something now.

Graham Jones (Hyndburn) (Lab): To be helpful, I should say that I have to depart at 11.25 am, but I accept that there will be some interruption after 2 pm.

The Chair: Thank you, Mr Jones. We will try to make progress and organise matters so as to save as much time as we can. However, you need to think about this, because we could lose an hour and a quarter of the Committee's business time, so Members' contributions might need to be adjusted.

Clause 87

SHARED PARENTAL LEAVE

Lucy Powell: I beg to move amendment 325, in clause 87, page 55, leave out line 12.

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

Amendment 326, in clause 87, page 56, leave out line 3.

Amendment 327, in clause 87, page 59, leave out line 11.

Amendment 328, in clause 87, page 59, leave out line 46.

Lucy Powell: As we head into the final parts of the Bill, I should say that the Opposition welcome many of the provisions in them. The Under-Secretary of State for Business, Innovation and Skills will be reassured to know that, given that the last parts of the Bill on which she led were a little more controversial, and the debates on them slightly more heated. I hope these debates will not be quite like that.

It is important to put on record that these parts of the Bill build on many of the steps taken under the previous Government to entitle parents to time off to have children, and to give parents the right to flexible working, so that they can look after their children. The Labour party manifesto at the last election included further steps to help ensure that families can have a work-life balance, and shared parental leave is an important part of taking that agenda forward.

However, some of the organisations that follow these matters are a little disappointed, as am I, that the Bill does not go as far as we would like, or as far as is suggested in the Government's response to the "Modern Workplaces" consultation. I tabled these probing amendments to find out why we have not gone as far as we would like, and to prompt the Minister to answer some of those questions.

11.15 am

Regarding shared parental leave, the evidence is clear that paternity and parental leave are central components in involving fathers in the upbringing of their children, and they are also vital to the economic development of mothers who return to work, because without the full participation of fathers as caring parents, women will remain financially and socially disadvantaged for the remainder of their working life. Researchers in Sweden have shown that for every additional month of leave taken by a father, their partner's annual income increases by 7%.

Also, the first two to three months of fatherhood can affect the way that a father relates to his child for the rest of their life, and the taking of parenting leave by fathers is good for the whole family. UK fathers who take paternity leave are 25% more likely to change nappies and 19% more likely to get up at night for babies than those who do not; I am hoping that my husband will take up that role very shortly.A survey by the Equality and Human Rights Commission in 2009 found that 69% of fathers who took paternity leave said that it improved the quality of family life.

Among cohabiting couples with newborns, both the parents' belief that a father's involvement with a baby is important and the father's actual involvement are a good way of predicting the stability of the relationship thereafter. Once again, I am hoping that my husband will take that point. There are rewards not only for the family and the child, but for businesses; there is plenty of evidence to show that businesses that employ much more family-friendly policies improve their economic performance. The evidence is clear on why we should support greater parental leave. My amendments are about making that parental leave a day one right. Maternity leave is a day one right, available to all pregnant employees, and under the Bill adoption leave will also become a day one right for the primary adopter. My amendments would make shared parental leave a day one right, so that parents do not have to qualify by length of employment.

The restrictive eligibility criteria proposed by the Government mean that the new rights will be available only to certain couples; it is estimated that they will apply to less than four in 10 new maternities. The original "Modern Workplaces" consultation document recognised the need for

"a system of truly flexible parental leave, available to mothers and fathers on an equal basis. This will extend provisions to all working fathers, including those who are self-employed or change jobs during the pregnancy. This will allow parents greater flexibility to decide the best way for their family to balance work and caring responsibilities."

However, the proposals in the Bill do not go as far as the consultation document, and the extended provisions have been dropped. I hope that the Minister will tell us why.

Shared parental leave and pay will now be available only to

"couples who are both economically active",

and in order to share access to parental leave, parents will need to meet that test. They will also need to qualify for shared parental leave by having at least 26 weeks' continuous service with the same employer at the 15th week before the baby is due. It seems that the Government are making other parents who do not meet this test wait until at least 2018.

In the UK in 2010, there were approximately 782,000 maternities, but the maximum number of fathers who would be eligible for shared parental leave under these proposals would be 285,000, according to the Government's own impact assessment, which would cover only 36% of all maternities, and actual take-up is predicted to be considerably lower.

Many groups will not be able to access shared parental leave when it is introduced, particularly self-employed fathers, who will not be entitled to any paid leave; single mothers, who will not be able to access flexible leave arrangements; and couples where one partner is not working or does not have 26 weeks' continuous service with their employer at the 15th week before the baby is due.

Making shared parental leave a day one right would bring many more parents into the system. We know from the Government's assessment that take-up of the shared parental leave option is likely to be limited to between 2% and 8%. We heard in oral evidence to the Committee that the Fatherhood Institute's consultation suggested the figure would be nearer 2% than the 8% predicted by Government. I would like the Minister to

consider the amendments and let us know why she has reduced the options put forward in the "Modern Workplaces" consultation.

Jo Swinson: I am delighted to speak on the clauses in part 6 that relate to shared parental leave, which is an exciting policy to take through the House. I welcome the words of support from the hon. Member for Manchester Central. She has raised specific issues, and I hope to have the opportunity to discuss the details. Some of our discussion might stray into areas that will be set out in more detail in regulations. The Committee will be aware that there is a consultation under way to decide the best way to do that. It is nonetheless welcome to have the opportunity to discuss the issues in Committee.

I agree with the hon. Lady that there have been changes to maternity leave, and there is the introduction of additional paternity leave. All parties have recognised that the previous arrangement was too inflexible, and wanted something more suited to the needs of modern families, who want the most choice possible, as every family is different. Juggling the challenges of having a new baby is difficult enough without extra complexity being added by the state, so we are trying to make things more flexible.

There have been significant changes since the "Modern Workplaces" consultation, but I would not characterise that as rolling back. We have listened to the genuine concerns of various groups about the initial proposals. For example, in trying to give maximum flexibility to both parents, there was initially a period of 18 weeks of maternity leave and then shared parental leave, equally applied to both parents. There was a concern that that created the expectation that women would take only 18 weeks. Many women would understandably want to take significantly more leave than that. We did not want to create the impression that that would be a default period.

As a result of those concerns, we have changed the system to be more flexible. Maternity leave remains at 52 weeks, but shared parental leave can be triggered by ending maternity leave early and giving notice of the intention to take that up; that would then open up shared parental leave.

The amendments relate to day one rights. The day one right in the "Modern Workplaces" consultation for parental leave was necessary, because otherwise we would have reduced the day one right for maternity leave, and for obvious health reasons, that is essential, as giving birth is a significant experience, as one member of the Committee will shortly know. It requires a period of recovery, so a day one right is necessary there. I will come on to the other issues around day one rights, but I wanted to explain that that was why we changed the initial proposal in "Modern Workplaces"; that was done in response to the consultation and concerns raised. That is a good way for Government to proceed when developing policy, and it is good for them to listen, where details can change.

The hon. Member for Manchester Central was right to say that the role of fathers is key. I was intrigued by her statistic that dads who are at home in the early months are 25% more likely to change nappies; I am astonished that some manage to get away without doing that at all. I am sure that will not be case in her household, or in others, judging from remarks being made behind me.

The hon. Lady is right to highlight that we are making shared parental leave available where both parents meet an economic activity test. Self-employed people will often meet that test, and that can enable an employed partner to access the shared parental leave system. Self-employed women also have access to maternity allowance.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.