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Clauses 64 to 66 agreed to.
Schedule 2 agreed to.
Clauses 67 to 70 agreed to.
Schedule 3, as amended, agreed to.
Clauses 71 to 73 agreed to.
Schedule 4, as amended, agreed to.
Clauses 74 to 82 agreed to, some with amendments.
Schedule 5 agreed to.
Clauses 83 to 85 agreed to.
Schedule 6 agreed to.
Clauses 86 to 91 agreed to.
Adjourned till Tuesday 4 November at five minutes to Nine o’clock.
Written evidence reported to the House.
Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

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Monday 3 November 2014

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

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The Committee consisted of the following Members:

Chairs: † Mr Graham Brady, Martin Caton, Nadine Dorries, John Robertson

† Colvile, Oliver (Plymouth, Sutton and Devonport) (Con)
† Doughty, Stephen (Cardiff South and Penarth) (Lab/Co-op)
† Esterson, Bill (Sefton Central) (Lab)
† Garnier, Mark (Wyre Forest) (Con)
† Gilbert, Stephen (St Austell and Newquay) (LD)
† Gilmore, Sheila (Edinburgh East) (Lab)
† Griffiths, Andrew (Burton) (Con)
† Hancock, Matthew (Minister for Business and Enterprise)
† Jenrick, Robert (Newark) (Con)
† McDonald, Andy (Middlesbrough) (Lab)
† Morris, Anne Marie (Newton Abbot) (Con)
† Murray, Ian (Edinburgh South) (Lab)
† Murray, Sheryll (South East Cornwall) (Con)
† Perkins, Toby (Chesterfield) (Lab)
† Simpson, David (Upper Bann) (DUP)
† Stride, Mel (Central Devon) (Con)
† Swinson, Jo (Parliamentary Under-Secretary of State for Business, Innovation and Skills)
† White, Chris (Warwick and Leamington) (Con)
† Wright, Mr Iain (Hartlepool) (Lab)

Fergus Reid, Committee Clerk

† attended the Committee
Public Bill Committee

Thursday 30 October 2014

(Afternoon)

[MR GRAHAM BRADY in the Chair]

Small Business, Enterprise and Employment Bill

Clause 64

Exemption from requirement to register as early years provider

2 pm

Toby Perkins (Chesterfield) (Lab): I beg to move amendment 207, in clause 64, page 43, line 16, at end add—

‘(7) The Secretary of State shall make arrangements for a review of the impact and appropriateness of the reduction of the age threshold for childcare provision in a school setting in terms of—

(a) contribution to child development,
(b) suitability of facilities and accommodation, and
(c) maintenance of child protection standards.

(8) The Secretary of State shall lay a report of the findings of the review mentioned in subsection (7) before each House of Parliament within 18 months of section 64 coming into force.”

The Chair: With this it will be convenient to discuss amendment 208, in clause 66, page 44, line 19, at end add—

‘(2) The Education and Inspections Act 2006 is amended as follows—

(e) In section 118, subsection (1) at end add “, and
(f) the quality and appropriateness of the facilities and premises used by registered providers of early years childcare.”

Toby Perkins: It is a great pleasure to have the opportunity to speak about the amendments. Amendment 207 would exempt schools from having to register with Ofsted before taking two-year-olds. We support the intention behind the clause—we hope Government Members do, too, this time. It is legitimate to desire to expand the number of providers of childcare for two-year-olds. However, although the Government are well meaning, the clause will do little to encourage more schools to take two-year-olds. The Government’s ”Childcare and Early Years Providers Survey” shows that more than 90% of the two-year-olds who receive 15 hours of free early-education funding through the disadvantaged two-year-olds offer get private, voluntary or independent childcare. Despite Ministers’ pushing to get more schools to take two-year-olds, the numbers do not show progress.

When the Minister responds, will he explain how many schools the Government expect to take two-year-olds as a result of the measure, and how many new places for two-year-olds it will create? It would also be helpful if he can tell the Committee what has been achieved so far and why the Government’s efforts have fallen short of expectations.

Primary schools are suffering from a primary school places crisis. In many areas, there is not enough room for primary pupils, let alone for new premises for two-year-olds, who require specialist provisions suitable to their needs. The Government’s intention is right, but what means will they use to encourage schools to take young children, and how will they ensure the offer is sufficient for parents to take it up?

Amendment 207 is a probing amendment to question the appropriateness of school care for two-year-olds. We seek to ensure that the care provided by schools is age appropriate. The amendment asks the Secretary of State to review the impact and appropriateness of the age threshold for child care provision in schools. We want to ensure that child care contributes to child development, that premises and accommodation are suitable and that schools are aware of the differing child protection standards for younger children.

There is a lot of evidence to show that high-quality child care significantly boosts child development and narrows the developmental gap between disadvantaged two-year-olds and their better-off peers. The gap when children start school can be as much as 19 months, according to the Sutton Trust, and, as many children never catch up, it continues to grow. We support the Government’s intention to widen access to child care and encourage schools to take two-year-olds if parents in the area want it, but the care must be age appropriate.

The Minister will probably have seen the article in the **Sunday Telegraph** last week, throughout which two-year-olds were referred to as ”pupils”. We feel that is the wrong starting point. Two-year-olds may be cared for in schools, but they are not pupils in the traditional sense of wearing uniforms, reciting times tables and sitting in rows at desks. Young children need the right care, attention and nurturing to flourish. The nursery setting for a two-year-old is very different from the one for three and four-year-olds. Children develop in different ways at different ages. Space is important, as are quality of care and caring staff.

We would like the Minister to reassure us that we are not talking about expecting phonics for two-year-olds and that this provision will be introduced in schools at an age-appropriate level, while recognising that the expectations of a two-year-old are very different from those of a five-year-old. What steps do the Government intend to take to ensure that care is age appropriate? How will the Minister ensure that schools have the space to expand provisions in order to have an appropriate environment? What support will the Government give to schools to achieve those aims?

I turn now to clause 65. We recognise that childminders are a vital part of the early years workforce. We support measures that allow them to work in partnership with schools or other settings and work half their time on non-domestic premises. However, we have seen an 11% fall in childminders under this Government since 2009. Childminders are deeply hostile to childminder agencies, which is another Government reform. We feel that the clause will do very little to boost childminder numbers. Indeed, we have seen just two of the 20 providers that took part in the trial saying that they will set up an agency.
Will the Minister tell us what boost we will see to the profession as a result of the plans? How many new childminders are likely to set up as a result of the change?

Amendment 208 to clause 66 would ensure that premises are appropriate for a child care setting. It would give the chief inspector of schools a general duty to advise the Secretary of State on the quality and appropriateness of facilities and premises used by early years providers, including schools. It is important for Ministers to be aware and conscious of the appropriateness of settings. There is concern that a provider operating across multiple premises could register an appropriate setting in one area and an inappropriate setting elsewhere. That might be noticed only when an Ofsted inspection takes place. Ofsted was very conscious, when it gave evidence to the Committee, of the need for a proper inspection regime and for every setting to be investigated. It would not be a huge surprise if the first setting to be inspected was the one that the provider felt was the best; there might be a golden sample approach. What will the Minister do to ensure that the time lag between premises setting up and being inspected does not lead to an inappropriate standard of care? What conversations have the Government had with Ofsted to ensure that that does not happen?

We are very keen to support any steps that reduce regulation on business without having a corresponding impact on the safety or quality of provision. We are talking about caring for our youngest children. Ensuring that every young person has a strong start in life and the best opportunities is crucial. Any reductions in the regulation must not come at the cost of safety or quality of provision. With those questions on the record, I am pleased to say that we will support these clauses and what the Government are attempting to do. We are keen to hear more about how they will ensure that it is a success.

The Minister for Business and Enterprise (Matthew Hancock): It is good to be back in the hot seat again. Clauses 64, 65 and 66 all aim to improve standards and the ease of doing business in the child care sector. In discussions with providers, it has been brought to our attention that the clauses can help remove specific burdens.

Toby Perkins: The Minister said that the purpose of the clauses was to reduce regulation and increase standards. I understand clearly how they intend to reduce regulation. Would he say a bit more about the improvement in standards?

Matthew Hancock: I had barely finished clearing my throat. The improvement in standards is that, through the expansion of child care provision for two-year-olds, we hope to narrow the gap between two-year-olds from disadvantaged and from better-off backgrounds. Evidence shows that for those from relatively affluent families, the provision of statutory child care for two-year-olds does not necessarily have a strong impact on performance, but for those from disadvantaged backgrounds, child care provision in a regulated and high-quality setting can have big positive impact. That analysis underpins the Government’s early years approach and is shared across Government. The provisions are about improving social mobility and tackling a failure of social justice through improving standards, especially for those from disadvantaged backgrounds.

Anne Marie Morris (Newton Abbot) (Con): The Minister is being very generous. These provisions are important, and the only way that we can support the Government’s promise to provide 20% support for child care for families, which I hope will encourage more people to use child care facilities. If we do not have the facilities, which the provisions will increase, that offer will become less meaningful.

Matthew Hancock: Of course. The measure is complementary to the expansion of free child care for the most disadvantaged two-year-olds, of which the Government are is proud. The expansion of the state’s education offer further down the age range has happened under Governments of all stripes but the expansion, first of the offer for three-year-olds and now for two-year-olds, especially to those from disadvantaged backgrounds, is an important step forward. Those who are not as capable developmentally when they arrive at reception classes in primary schools tend to on average—this is not true for everybody—fall behind further. That entrenches social division, as opposed to supporting young children so that when they get into more formalised education at the age of five or six, they have the developmental, behavioural and cognitive capabilities to start at the same level. Evidence shows that those who fall behind tend to fall behind further. The hon. Member for Chesterfield said that the provisions will not, on their own, solve the problem. He is right; they are enabling measures. The legislation will not, on its own, require schools to open up for two-year-olds, but it will make it easier for them to do that. Combined with the extra state funding for the two-year-olds offer, that will strongly encourage many more schools to do it.

The hon. Gentleman asked specifically for numbers. At the end of the academic year, we estimate that 80,000 two-year-olds will benefit. We do not have a target breakdown of how many of those benefit through the expanded school offer, and through the private and voluntary sector because our goal is to deliver according to parents’ choices. However, I have no doubt that the legislation will mean that more of those children are attached to schools. I very much take on board, and the Government strongly commend, the hon. Gentleman’s point that the appropriate treatment of two-year-olds is different from the appropriate treatment of five, six and seven-year-olds. That will of course be taken into account.

2.15 pm

The hon. Gentleman mentioned differing child protection standards. That is important, but so is what happens in the classroom; we do not envisage that two-year-olds will be lined up in little chairs behind desks. The offer is, of course, different where nurseries are already attached to, in the boundaries of or under the governance of schools. I am sure that all of us will know exactly what that feels like from our constituency work. Many of us know it from day-to-day personal experience.

Bill Esterson (Sefton Central) (Lab): I was tempted to say that the former Secretary of State’s vision for the future of education possibly was as the Minister described. In her evidence, Gill Jones said that there were concerns that some head teachers will not want two-year-olds in their schools, for some of the reasons the Minister has given. Yet, some of his colleagues in the Department for
Education have made clear that their preferred route is to have nursery places in schools more and more. Would the Minister comment on that apparent contradiction?

Matthew Hancock: It is important to break these things down by what is happening. A third of primary schools already provide high-quality early education to three and four-year-olds, but only a couple of hundred—less than 2%—offer that to two-year-olds. Only 1% of disadvantaged pupils are in nursery classes in primary schools. Schools say that is, at least in part, because they have the bureaucratic burden of registering the two-year-old provision separately with Ofsted. They therefore have two separate inspections on different timetables. We have already talked about the evidence on the importance of this, especially for disadvantaged children. In 2012, the Sutton Trust showed that there is as much as a 19-month vocabulary gap between children from low-income families and those from high-income families. If we can take measures to narrow that gap it will help social mobility and help bring about social justice.

Toby Perkins: It would be really helpful if the Government had a strategy to reduce the gap between the huge wealth and huge poverty in this country, rather than always seeing it as an educational issue. If the gap between the rich and poor had not grown so much under this Government we might have more education equality.

Matthew Hancock: It is a pity that the hon. Gentleman had to go down that route, not least because inequality has fallen under this Government and the highest-paid 1% pay a greater proportion of income tax than under the previous Labour Government. I do not want to make those political points and point out the facts in response to what was a cack-handed, partisan and unfortunate approach from the Opposition. There is another connected issue, which is that differences in income are derived from differences in educational standards. One of the sustainable ways to narrow such gaps is to drive up educational standards, rather than excusing those gaps and blaming them on an unequal distribution of wealth. It is a great pity that the hon. Gentleman lowered himself to making such a point.

Amendment 207 would lead to a review of the impact and appropriateness of the changes in the clause. There are already good and sufficient checks and balances in place. They will continue and the amendment is therefore not necessary. Schools can and some already do provide high-quality education for two-year-olds—not enough, but some do. The amendment is therefore about expanding something that already happens, rather than seeking to introduce something new.

We will keep the rigour of Ofsted inspection. Like any other provider of early years child care, schools have to adhere to those standards through the early years foundation stage framework. That is the case for schools that already take two-year-olds and will continue to be the case once the clause comes into force. The framework clearly sets out the requirements and standards for learning and development, for the safety and well-being of children and for the appropriateness of accommodation—all the issues that a review under the amendment would cover.

Because they are already held to account by Ofsted for delivering age-appropriate EYFS-compliant provision, and because of Ofsted’s recent introduction of a separate early years judgment for schools, the ability of a school to provide quality early education will be assessed against those standards, with discrete judgment against their early years performance and wording. We do not need to amend the Bill because schools are already delivering against that framework in reception classes; the systems are already in place. I hope that I can reassure Opposition Members that systems are in place to ensure high-quality provision and the safety and well-being of children, including two-year-olds, without the need for a separate review.

Amendment 208 would alter clause 66, which introduces schedule 2 and will enable group providers of early years and later years child care to make only one registration application to Ofsted for all their premises. We heard rather compelling evidence from Ofsted on why that is necessary.

The provider is currently required to make separate registrations each time it wants to open up a new site. In recent years, there has been a growth in the market share for nursery groups: nurseries with three or more settings now account for almost a quarter of the sector’s capacity. However, a business operating a chain of, for example, 10 nurseries has to register separately 10 times. Likewise, a business running several after-school clubs has to register separately for each school. That gets in the way of providers delivering high-quality services.

Clause 66 and schedule 2 will enable providers to make one registration in respect of multiple premises. However, as we heard clearly from the evidence it gave, Ofsted will of course ensure that it uses its discretion to inspect and therefore judge the premises in question. We heard the inspections being described as “risk-based”, rather than being carried out according to rules that mean that sometimes resources have to go into inspection when Ofsted thinks that they could be better used elsewhere.

Andy McDonald (Middlesbrough) (Lab): Can the Minister clarify what he is saying about multiple sites? If a provider has 10 sites, are there not 10 sets of risks, personnel and circumstances? Will that thinking translate into the schools sector and academy groups so that where a group may have several schools under one brand, the same principle will apply?

Matthew Hancock: Of course Ofsted will take into account the number of sites, and therefore the complexity of a provider’s operations, in making a risk judgment on that provider. If, as seems reasonable to assume, provision across multiple sites is more complicated than provision on one site—I make no judgement on that, but it seems a reasonable assumption—one might expect that sort of factor to be considered in Ofsted’s assessment of the risks surrounding any one provider. However, it is for Ofsted to make that judgment. The provisions in the Bill allow it to make such a judgment in the most intelligent way possible, rather than as prescribed in legislation. I would rather the judgment was taken at that level than in primary legislation.
The clause also amends the existing power in section 69 of the Childcare Act 2006 to make regulations about the circumstances in which a provider’s registration may be suspended. Ofsted can currently stop child care from being provided if children being cared for might be at significant risk of harm. Child safety is paramount, and it is important that Ofsted continues to be able to do that when in future a single registration covers multiple settings. Depending on the prescribed circumstances, the regulations may allow a provider’s registration to be “suspended generally or only in relation to particular premises”. Schedule 2 also creates a new offence of “providing provision other than on approved premises”.

It is currently an offence to provide unregistered child care on premises where the law requires registration. Once the schedule removes references to registering in respect of the premises, it would be possible for a provider to fail to notify Ofsted of all their settings without committing an offence. This change prevents such a loophole.

Amendment 208 would ensure that Her Majesty’s chief inspector of schools kept the Secretary of State informed about “the quality and appropriateness of the facilities and premises used by registered providers of early years childcare.”

The statutory framework for the early years foundation stage is mandatory for all early years providers. It provides for the safety and suitability of premises, environment and equipment. The foundation stage framework is also clear that: “Providers must comply with requirements of health and safety legislation, including fire safety and hygiene requirements.” Ofsted already inspects all early years providers against those requirements and will continue to do so.

Section 118 of the Education and Inspections Act 2006, which sets out the chief inspector’s functions, already places a duty on the chief inspector to inform the Secretary of State about matters connected with the activities in his remit, including quality and standard. If requested by the Secretary of State, “the Chief Inspector must provide the Secretary of State with information or advice on such matters relating to activities within the Chief Inspector’s remit as are specified in the request.”

As an Education Minister, I have seen that legislation in action when discussing with Ofsted particular issues in the provision of education. That relationship works well, as does the information transfer. I would suggest that amendment 208 is already very much covered by the law. On the point that was made about the registration of multiple settings, that does not apply to schools. The risk-based approach will not, in this case, extend to schools and academy chains. Nevertheless, Ofsted does inspect schools and academies, and that is covered separately from the Bill.

The hon. Member for Chesterfield referred to clause 65, to which no amendments have been tabled. Through consequential amendments, the clause amends the definition of childminding to enable childminders to work on non-domestic premises for up to half their working time. Currently, some 53,000 registered childminders provide parents with more than a quarter of a million flexible home-based child care places. These measures expand the range of premises from which childminders can operate. We hope that that will provide them with new opportunities at a time when—as the hon. Gentleman said—the overall number of childminders has been in decline for some time.

For instance, the clause would give individual childminders the flexibility to run a small after-school club on school premises. It is not currently possible for childminders to work on non-domestic premises for any significant amount of time. We know from the consultations that some childminders would welcome that flexibility. It would help to make their businesses more sustainable, which we would all welcome. Of course, childminders will not be forced to provide care outside their home if they do not want to. We recognise that many parents choose a childminder precisely so that their children can be looked after in a home-based environment, and they will still be able to do so. With that explanation of the three clauses, and with the clarification and reassurances I have given, I hope that the hon. Member for Chesterfield will withdraw his amendments.

Toby Perkins: I return to the point about quality assurance. As I said at the start, we support what we see as a deregulatory measure. Of itself—I think we all agree on this—it will make a limited difference, but it is an enabling measure. The Minister claimed that the Bill was about improving standards. We are saying that we see it as a deregulatory measure that may increase provision, so we need to be careful that it has no downward impact on standards. It is important that we do not over-promise. Will the Minister clarify whether there is any specific measure in the Bill that he thinks will lead to an improvement in standards? If not, can we simply say that he will assure the standards as they are at the time that he chooses to reduce the regulatory burden?

2.30 pm

Matthew Hancock: I hope that the increase in standards will come from the expansion of the availability of provision for two-year-olds. This measure is a part of that, as is the expansion of the two-year-old offer. Evidence shows that the proportion of good and outstanding places in schools and in private and voluntary child care provision is almost exactly the same—it is around 80% in each. In our evidence session we heard that it is higher for private and voluntary places. In fact, the proportions are 80% and 82%, so they are essentially the same.

My broader point is that broadening the two-year-old offer, especially for those from disadvantaged backgrounds, is part of closing the gap and raising educational standards. As the hon. Gentleman says, the clauses are enabling measures that will contribute to that.

Bill Esterson: The discussion about how the clauses improve standards is really important. The evidence that comes to the Education Committee and others shows that the biggest determinant in raising standards is the quality of staff. How will these measures bring about an improvement in the quality of people providing child care?

Matthew Hancock: My argument is that the measures will help standards because they will extend the availability of high-quality child care. I strongly concur with the
hon. Gentleman that one of the strongest determinants of the quality of education is the staff. That is true at all levels of education, right from the get-go—from birth onwards. The point is that not only will standards in education be raised, but the gap between those from disadvantaged backgrounds and those from well-off ones will be closed by the provision of more child care for two-year-olds, especially for those from disadvantaged areas. The clause enables that to happen and will therefore help to raise the standard of education. I do not think that anybody is in any doubt that clauses 64 to 66, help though they may, are only a part of a much broader picture that we need to deliver in order to reach our goal. With that, I hope the hon. Member for Chesterfield will withdraw his amendment.

Toby Perkins: As I said, the amendment was a probing one. We are satisfied that the Minister has put those points on the record. We will continue to review the extent to which there is any negative impact in any way on standards, but on that basis I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 64 ordered to stand part of the Bill.
Clauses 65 and 66 ordered to stand part of the Bill.

Schedule 2
REGISTRATION OF CHILDCARE: PREMISES

Toby Perkins: I was hoping for a few words from the Minister. If he does not want to speak, we will take the information as read.

I do not want to dwell on this. We feel that there is real value in improving information and assessment of effectiveness across the sector; that is an important step forward. There is a requirement for similar provisions with regard to Wales and we also support them.

We are keen to hear from the Government on any concerns raised on abuse of information. We have discussed such concerns on previous occasions and it is important that when a wider range of information is made available, the necessary security is put in place. While we have those minor concerns, we look forward to offering our support to these important measures.

Matthew Hancock: I am so enthusiastic about clauses 67 to 69 that I was desperate to get on to talk about them. As I was beginning to say, they are small in terms of wording, but they are a very important part of the Bill. It is difficult for a Minister responsible for a Bill to choose their favourite clauses—it is a bit like being asked to choose between one's children, which would be a pernicious and wrong thing to do. Having said all that, clauses 67 to 69 are some of my favourites. They are some of the most important clauses in the Bill, if not the best, because they will open up everybody's ability to scrutinise the way that education affects people's lives, and because they introduce a level playing field for different education providers—schools, further education colleges, apprenticeships and others—so that people can compare them. That transparency will enable us to learn what works best. It will enable people to choose better the courses that suit them. We will know how the type and quality of courses, and education more broadly, affects people's lives and earnings. Therefore, I am a passionate supporter of the clauses.

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new league tables of destinations data helped people to understand better where courses lead people in life. However, the legal powers do not extend to schools and higher education data at present, so many students and parents are forced to make career-defining and lifelong decisions with limited information. The clause will level that playing field.

Let me give some important assurances about the confidentiality and protection of the newly linked information. First, the clause is an extension of an existing data-sharing provision. It could be said that it is about joining up government, because the Government already hold the data; it is a matter of linking them up. The security measures include, first, holding and transferring information only through secure processes and systems that have been rigorously tested; secondly, ensuring that only named people have access to data sets containing personal data; and thirdly, ensuring that data published more widely do not include student names and are only published at an anonymised, aggregate level. Those measures are all consistent with the Data Protection Act.

The linking and use of HMRC data under the clause will be limited to those in Government charged with delivering educational research and analysis. Those safeguards are important. The Bill will permit sharing only for the purpose of assessing the effectiveness of education and training. The privacy impact assessment is in place, and a criminal sanction is in place to protect personal information when disclosure is made other than for the purpose of an assessment function of the Secretary of State or a devolved authority. I hope I have provided adequate assurances that all necessary steps will be taken to ensure the security of all personal information. The clause will extend to Scotland and Wales, with the support of the Scottish and Welsh Governments.

Clause 68 is similar but slightly different. It will ensure the expansion of the use of performance tables, which have become a pivotal part of our education system and positively influence education choices. The collection and sharing of more information will further strengthen their role. The clause amends the Apprenticeships, Skills, Children and Learning Act 2009. Although we have legislation in place to collect and share pupil information with schools, we do not have comparable provisions for other providers of education and training. The clause will amend that anomaly.

At the moment, league tables can report only on schools. We want to be able to compare all education providers and have a level playing field. That will enable anyone in England and Wales to share student information they hold with the Secretary of State, Welsh Ministers, an information collator or a prescribed person. It will do that ultimately to allow for performance tables to report on the performance of all provider types.

The information gateway will also play a key role in improving provider performance because the information currently collected will strengthen our accountability system by informing Ofsted inspections and enabling a broader range of education training providers to self-evaluate in the same way that schools do now. Let me be clear. The clause will provide a gateway for student-level information from providers, but such information will not be published. The type of student information that can be shared and by whom will also be restricted. The Data Protection Act still applies.

Finally, on clause 69, thanks to destination data that we have now published, parents and students can see for themselves how successful their schools and colleges are at ensuring that young people fulfil their potential. Again, it is about ensuring we know better which courses improve people’s outcomes the most and whether they progress to university, further education, employment or, crucially, apprenticeships. However, it is also important that we share data securely with schools and colleges at a student level so that they understand how the measures are calculated and how the information can be used to inform their curriculum, their information, their advice and their guidance services.

**Anne Marie Morris:** May I ask the Minister about the destination data? One of the challenges is how far into the future that information is collected. At the moment, schools do not do that job particularly well. Does he have any view or thoughts—or will he provide guidance—on how much and to what extent into the future he will ask schools to collect those data?

**Matthew Hancock:** In the first instance, the provision will apply to the first year of their destination and that is partly because that information is available. Clause 67 allows HMRC data and therefore earnings data to be looked at further ahead and, in an anonymised way, how much people earn over time. Clause 69 is about the first year of their destination because at the moment we can share student level key stage 4 destination information with schools, but we are not legally able to do that with FE colleges. That is the anomaly that clause 69 addressed.

**Toby Perkins:** The hon. Member for Newton Abbot asked an important question. We all support the need for more transparency in the quality of data. On earnings data, different career paths will deliver greater earnings at different times depending on where someone is on that career path and how it works. It is always important that we do not end up providing information that may be factually accurate but does not give the whole picture. Has the Minister had any thoughts on that?

**Matthew Hancock:** Only to agree strongly with the point that there are reasons other than money to go into a career. In some careers, early earnings are high and then flatten off. Others start with low pay, which accelerates. Those are realities of life and the key is to make the information we have available in a way that is usable and intelligible with clear limitations on how it should be used appropriately. Specifically on clause 69, schools do not collect the data; we match them, sharing destinations one year after learning.

Nevertheless, those destination data are important because hitherto league tables have focused on exam results and that has consequently given schools an incentive to focus only or increasingly on exam results. Those league tables were better than none, but over 20 years they have had that consequence and these league tables, which include destination data, will broaden the incentive for schools to do what they know anyway is the best thing to do: produce rounded students who of
course have good exam results—they will always be important—but who also achieve a good destination in a good job, apprenticeship, higher education place or further education.

Technically, the clause enables the Secretary of State to provide destination information on a former student to the governing body of an English further education college. It also allows Welsh Ministers to share destination information on a former student with the governing bodies of a Welsh FE college. That can be shared as prescribed in regulations, but we expect that it will be the same as the categories of destination that we currently share with schools. Let me also be clear that any data shared with colleges under the legislation cannot be published by them in any way that identifies an individual. The destination information that we publish is aggregated. Individual students cannot be identified from published information and that will, and must remain the case. The Data Protection Act applies.

Finally, there is an interaction between clauses 69 and 67 because our intention is to improve the robustness of destination data by using the HMRC information to determine employment destinations in the future, which comes back to the point made by my hon. Friend the Member for Newton Abbot. To ensure that sensitive data are fully protected, any employment information derived from HMRC will not be shared back at student level with colleges.

To conclude, clauses 67 to 69 are perhaps technical, but they unlock the capability of the education system and the way it is held to account. They increase information, accountability and choices for individuals and allow those choices to be better informed. They allow colleges to make the best use of destination data to support all their students to make successful transitions into further learning or employment. They will support the education system of our country and I commend them to the Committee.

Toby Perkins: The Committee has had something of a preview of my thoughts on those clauses, but they are important steps. It is interesting that, when faced with a Bill that we feel provides for inadequate action on late payments, gives a slightly confused picture on pub companies and does not go nearly far enough on zero-hours contracts or the minimum wage, the Minister’s favourite clause, the bit that really gives him pride, is the relatively small contribution to educational clarity. That emphasises what we have been saying since Second Reading: the Bill is full of missed opportunities. Maybe if the Minister had given a little consideration to how we could take more serious steps on some of those points, he would have found other clauses that gave him equal pride.

Notwithstanding that, the measures are important. Any measures that improve transparency, accountability and business confidence in our qualifications and our educational sector are vital. The further education sector is crucial to supporting Britain so that it is ready to compete in the global race. It is vital that our further education institutions are given the best possible tools to monitor and improve their performance, and to ensure that parents, students and potential employers are very much aware of how that institution and those courses are performing.

The Government have spent three years undermining our further education sector and consequently we are nowhere near where we need to be on skills or vocational training. We have seen the careers service undermined, work experience scrapped, young apprenticeships devalued and steps that we have attempted to take to improve the standards of apprenticeships turned down. That is no way to rebalance our economy or boost our competitiveness. The provisions are small steps in the right direction.

I have already raised my reservations with the Minister, and he was right to say that any educational institution assessed against a certain measure will, as sure as night follows day, start performing to that measure. If we change the measure against which educational establishments are assessed, we might reasonably expect there to be an impact on the way they go about delivering their services. Within that limitation, we need to be careful to ensure, first, that the information, even though it is factually accurate, actually presents the whole picture and, secondly, that it does not have unintended consequences for delivery. He is right to say that specific earnings are not the only thing that matters in education or any career path. We do not want a situation in which important professions and careers are undermined because incomplete data or changing demands and availability of opportunities put people off pursuing a certain career path at a time when demand for such careers may have changed.

These clauses are steps in the right direction, and we are pleased to support them. We hope to see other, bolder moves in some of the other important clauses that we have yet to discuss so that the Minister may take pride in much more of this Bill.

Matthew Hancock: Like choosing between my children, it would be pernicious to make a final decision about my favourite clause because they are all so good. It is a pity that the hon. Gentleman did not really address the issues in these clauses. All he did was seek to make wider, erroneous and political remarks, completely forgetting to mention the massive expansion of apprenticeships and their increased quality under this Government, and completely omitting to mention that, under the previous regime, apprenticeships were often under a year in length and were apprenticeships only in name. We have put that right. He completely forgot to mention the incredible improvements in the quality of FE courses under this Administration because we have strengthened the requirements and introduced funding per learner, rather than funding per subject, so instead of cramming in easy exams, the focus is on the needs of the learner. He did not mention any of those things; he has obviously been completely off the heat on this, ignoring what has been going on in FE. I will therefore not address his points, because he is so erroneous.

On the particular parts of the hon. Gentleman’s contribution that addressed the clauses, I am very grateful for his support. It is good that the clauses have cross-party support. Of course, putting them into action in a way that ensures the provision of high-quality and proportionate information is an important step. That is exactly what we intend to do, and I am glad that he is reassured by the data security measures inherent in these clauses.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clauses 68 to 70 ordered to stand part of the Bill.
Schedule 3

REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL

3 pm

Mr Iain Wright (Hartlepool) (Lab): I beg to move amendment 198, in schedule 3, page 141, line 35, after “issuers”, insert “and the Secretary of State shall only specify descriptions of companies which he considers are already subject to disclosure and transparency requirements which would otherwise meet the objectives of this Part”.

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

Amendment 199, in schedule 3, page 141, line 40, leave out “negative resolution procedure” and insert “affirmative resolution procedure”.

Amendment 200, in schedule 3, page 143, line 2, after “subsection”, insert “which would otherwise meet the objectives of this Part”.

Amendment 201, in schedule 3, page 143, line 16, after “procedure”, insert “except for regulations made under paragraph (d) of subsection (9) which are subject to the affirmative resolution procedure”.

Amendment 202, in schedule 3, page 147, line 14, at end insert—

‘(1A) The Secretary of State must not grant such an exception to a legal entity except in exceptional circumstances.”

Amendment 203, in schedule 3 page 147, line 32, at end insert—

‘(4) For the purposes of subsection (3) “special reasons” includes reasons related to the national security of the United Kingdom or reasons related to the personal safety of an individual.

(5) Where the Secretary of State grants an exemption under this section the fact of the exemption must be included in the information contained in the PSC register of the relevant company or the central register.

(6) The decision of the Secretary of State to grant an exemption is subject to judicial review.’

Amendment 204, in schedule 3, page 151, line 1, leave out sub-paragraph (d).

Amendment 205, in schedule 3, page 151, line 33, at end insert—

‘(6) A direction given by the court under subsection (4) shall be reviewed by the court on an annual basis.”

Amendment 206, in schedule 3, page 159, line 32, at end insert—

(c) provide for the application to be determined by the court;

(b) provide for the register to show that, pursuant to an application under this section, restrictions on use and disclosure of information are in place.’

New clause 9—Duty to keep register updated—

‘(1) The Secretary of State may by regulations make provision prescribing the steps to be taken by Companies House to ensure that the information on PSC registers or, as the case may be, the central register is as accurate, reliable and up to date as possible.

(2) Regulations under this section are subject to the affirmative resolution procedure.’

Mr Wright: It is a pleasure to serve under your chairmanship, Mr Brady. Good governance is the means by which corruption and illegal activities, such as the creation of shell companies and money laundering, can be stopped. It should be a basic principle of effective corporate governance that stakeholders should know who really owns companies, and tax authorities and legal enforcers should be able to obtain such information quickly and efficiently through a central register, so that people cannot avoid tax or hide their ultimate beneficial ownership.

We in this country have a key role to play in that. We are at the centre of the world’s financial services industry. About a fifth of all global cross-border banking comes through the UK. Over 250 foreign banks are located in the UK. The City of London is still the largest currency trading centre anywhere on earth. There is scope, therefore, for corruption in international business to flow via the UK because of our central leadership role. Moreover, our links with British overseas territories and Crown dependencies can also provide a means whereby illicit business can be carried out in the shadows. Overseas territories and Crown dependencies account for a third of all the world’s shell companies, and I understand that recent corruption and illegal activity involving Democratic Republic of the Congo was routed through the British Virgin Islands.

The UK is the first country in the world to commit to a central public register of beneficial ownership. I welcome that, and I want to pay particular tribute to the Minister for all her work in that regard. I hope that she will agree that, to ensure that the legislation is as effective as possible, the Government need to consider four objectives: ensuring that the data are as accurate as possible; that the data are relevant and kept up to date in a timely manner; that the sanctions for not complying are of sufficient magnitude to warrant effective compliance; and that where exemptions are allowed by the Bill, they are done so only in clear and exceptional circumstances. The group of amendments before us helps to sharpen the Bill’s focus to ensure that all four objectives—objectives that I do not think will be disputed by the Minister—are met.

I will come to the point about ensuring that the data are as accurate as possible when the Committee considers amendment 197, but this group of amendments tends to concentrate on the exemptions allowed by the Bill. It is important that where exemptions are allowed—as I said earlier, there are perfectly reasonable examples of where that should be the case—it does not become a convenient and overly used means whereby beneficial ownership is bypassed and bad practice permitted.

My understanding is that the Government seem to think that companies that comply with the ownership disclosure requirements, as set out in the Financial Conduct Authority’s disclosure and transparency rules, should be required to obtain and hold beneficial ownership. The grounds for that are that such companies provide sufficient ownership information to the market, and are subject, as publicly traded bodies, to higher levels of regulation and scrutiny, and therefore, the risk of illicit activity is lower. Therefore, disclosure and transparency rules—DTR—issuers would be subject to exemptions.

Proposed new section 790B(2) of the Companies Act 2006, which would be inserted by schedule 3 of the Bill, states:

“In deciding whether to specify a description of company, the Secretary of State is to have regard to the extent to which companies of that description are bound by disclosure and transparency rules (in the United Kingdom or elsewhere) broadly similar to the ones applying to DTR5 issuers.”
Amendment 198 tightens that requirement and makes it clear that the Secretary of State shall only specify descriptions of companies that he considers are already subject to disclosure and transparency requirements. In accepting that amendment, the Government could achieve their stated policy position, which is to ensure that there is only a possibility for a company exemption where there is already an alternative mechanism for public transparency of beneficial ownerships, such as the publicly listed and traded companies I mentioned earlier. I am trying to work with the grain of Government thinking in that regard. Similarly, amendment 200 adds the wording “which would otherwise meet the objectives of this Part” to proposed new section 790C, again to clarify that any legal entities that are provided with an exemption must already provide equivalent ownership transparency.

Amendment 199 provides for greater parliamentary scrutiny of the nature of exemptions. There is a risk that a negative resolution, as currently required in the Bill, would go through relatively unnoticed. An affirmative resolution would make it clear that both Houses must consider, and may vote on, any such exemptions. Similarly, amendment 201 would ensure that when classes of companies are to be exempted from being published in the register, Parliament has the opportunity to consider them using the affirmative procedure.

There are many legitimate reasons why companies could be exempted from providing the necessary information. Personal safety of an individual is one, while issues relating to national security is another obvious one. The Bill states: “The Secretary of State must not grant an exemption under this section unless the Secretary of State is satisfied that, having regard to any undertaking given by the person to be exempted, there are special reasons why that person should be exempted.”

We propose to make it clear that national security and personal safety may also be explicitly included. Amendment 203 adds that clarity by inserting new subsections to that effect, while at the same time making it abundantly clear, for balance of appropriate transparency, that the fact of an exemption, when granted, would be included in the information contained in the register and that the decision can be challenged through judicial review.

Proposed new section 790O sets out a person’s right to inspect and to require copies of the register. The Bill states that any person may, on request, inspect the company’s register without charge. There is therefore no restriction on who can inspect the register free of charge. That is a welcome move towards scrutiny and transparency. However, subsection (4)(d) states that any request must give information on “whether the information will be disclosed to any other person”.

I would like to probe the Minister on the thinking behind that because there is a risk that it would restrict proper transparency. If a person passed on the information to a researcher or journalist, which seems incredibly proper transparency. If a person passed on the information to a researcher or journalist, which seems incredibly unreasonable, amendment 201 would ensure that when classes of companies are to be exempted from being published in the register, Parliament has the opportunity to consider them using the affirmative procedure.

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was accurate, reliable and up to date and to outline his or her thoughts on this in regulations. Subsection (2) would ensure that the resolution was subject to the affirmative resolution procedure in this House.

I want to work with the Government on this. I want to praise the Minister for what she has done personally to ensure that this is on the agenda. I hope that she appreciates the spirit in which the amendments have been tabled: we want to work with her and help her to achieve her objective. I look forward to hearing what she has to say.

Jo Swinson: I thank the hon. Gentleman for his amendments and the spirit in which they were tabled. I know that he is feeling somewhat torn at the moment because he is very interested in this important transparency issue but also has a significant interest in the debate currently on the Floor of the House on park homes. He was particularly involved in that previously as a Minister. I know that my right hon. Friend the Member for Mid Dorset and North Poole (Annette Brooke) was complimentary about his record on that issue.

Before referring to the amendments I should like to talk briefly about the overarching principle of schedule 3, which the amendments seek to change, and clause 70, which introduces it. As the hon. Gentleman outlined, transparency and trust in business are crucial and fundamental to making the UK an attractive place in which to invest and do business. The vast majority of companies already abide by those principles. They are open in their operations and contribute an enormous amount to the economy and to wider society. But some companies are not so transparent and it is not always for good reason. Complex structures that are used to hide ultimate ownership and control erode trust in the UK. Such structures can also be used to facilitate a range of serious illicit activities, such as money laundering and tax evasion. The Government are committed to ensuring that consumers, investors and society can understand who is really exercising significant influence and control over our companies.

Schedule 3 is at the heart of these reforms. It requires companies to obtain and hold information on people with significant control over the company. These are individuals who directly or indirectly control more than 25% of the company’s shares and voting rights or who exercise some other form of control over the company and its management. Such people are referred to in the anti-money laundering context as a company’s beneficial owners. The Bill places statutory obligations on companies and individuals to ensure that the information that we will be requiring is up to date. We need to make sure that the register is accurate and robust, as has been outlined. It has to be held in a register, which we call the PSC—persons of significant control—register and made available for inspection by the company.

Private companies may elect not to hold their PSC register themselves but instead to keep the information about their PSCs on the public register at Companies House. Criminal penalties of up to two years in prison will apply to companies and individuals who fail to provide information, or provide false information.

3.15 pm

The information must be provided by the company to the registrar of companies on incorporation and thereafter updated at least annually as part of the new confirmation statement requirements that we will discuss when we come to clause 80. With limited exceptions, the information will be made publicly available. That will create a single, easily accessible source of information on people with significant control over UK companies, in order to help law enforcement agencies to tackle the criminal misuse of companies; to help businesses to identify who really owns the companies with which they do business; and to help civil society and the wider public—both here and overseas—to hold our companies to account.

We have carefully considered the effect of the new requirement on business, which is why companies that are already subject to stringent ownership disclosure requirements—such as those listed on the main market of the London stock exchange—will not be required to have a PSC register. Furthermore, where a company is owned by another company that is already keeping a PSC register or is exempt from the requirements, the company need only provide details of that other company on its PSC register. That will avoid unnecessary duplication without affecting the overall integrity and utility of the register.

We have also considered the impact on individuals, which is why we have provided for a protection regime in secondary legislation that will allow individuals who are at serious risk of harm to apply to have their details withheld from the public register. We published a discussion paper on the issue earlier in the week, and we will be preparing regulations following analysis of the responses. If Members have particular views or concerns about how such individuals should be protected and how the regime should work, I encourage them to respond to the consultation.

The PSC register is a complex reform, and much of the detail will have to come in secondary legislation. It is right that that is where the detail is, as it will allow us to make changes more easily in the light of experience and changing circumstances. It will also ensure that we can seek the views of stakeholders. We will be embarking on that process over the coming months—indeed, it has already started with the discussion paper that we published this week.

Last year, under the UK’s presidency, all G8 members agreed to take action to tackle the misuse of companies, including through measures to ensure that companies know who ultimately owns and controls them. I am proud that the UK is now leading the way globally to deliver that ambitious agenda. Nevertheless, collective international action is vital, which is why we are continuing to work with our international partners—including those in the G7, G20 and EU—to encourage them to take equally robust action and make it harder and harder for those who want to undertake illicit activities to do so.

The amendments tabled by the hon. Member for Hartlepool are intended to ensure that the policy and the data we have on the PSE register are as robust as possible, and that exemptions are created only in the most clearly and narrowly defined circumstances. I hope to reassure the Committee that such changes are not necessary to achieve the desired outcomes, which match the Government’s intentions.

Proposed new section 790B of the Companies Act 2006 will allow the Secretary of State to exempt companies from the register provisions through regulations, provided that he has first had
"regard to the extent to which companies...are bound by disclosure and transparency rules...broadly similar to those applying to DTR5 issuers."

That means that the Secretary of State must already give careful consideration to whether the companies that he proposes to exempt are making adequate information on their ownership and control publicly available, which is why amendment 198 is unnecessary.

Amendment 199 would require regulations to be subject to the affirmative resolution procedure. We have suggested the negative resolution procedure in the Bill, given that the Secretary of State must already have regard to significant factors and that any decision will be subject to judicial review. Nevertheless, I can understand the points that have been made on that by the Opposition, so I will consider the issue further.

Amendments 200 and 201 call for a similar change with respect to entities that may be relevant legal entities under proposed new section 790C. I will endeavour to take away those suggestions and return on Report with a view on whether the affirmative resolution procedure would be more appropriate for the changes concerned.

On amendment 202, proposed new section 790J will allow the Secretary of State to exempt individuals and legal entities from the requirements of the new part 21A if he is satisfied that there are special reasons for doing so. To be clear, the power would be used only in exceptional circumstances. That is the intention of the amendment, but it is implicit in the current drafting, so the amendment is unnecessary. I hope that that reassurance has clarified the issue.

When speaking to amendment 203, the hon. Gentleman highlighted several reasons that could lead to the granting of such an exemption. It is important to recognise that, with the potential sensitivity of those issues, it would not be appropriate to require that information to be stated on the public or company register. The amendment calls for decisions under proposed new section 790J to be subject to judicial review so I hope that it will help the Committee to confirm that that procedure is already built in.

Looking at amendments 204 and 205, I agree that it is important that people can easily and quickly inspect the register. The provisions that we have set out in chapter 3 build on precedents for inspection of the register of members. I understand the concern behind the proposed removal of the requirement for those inspecting the register to confirm whether the information will be disclosed to anyone else and for what purpose. There is a worry that the genuine ability to research, investigate or access that information might be impinged upon or hindered in some way; I hope to reassure the Committee that that is not the case. The PSC register is intended to publicly disclose information on the owners and controllers of UK companies. Therefore, investigation or writing articles—getting the information available to hold companies to account—is a proper purpose for inspecting the register. However, some purposes would not be, so it is important to have the protection that is written into the legislation.

Mr Wright: Like what?

Jo Swinson: The hon. Gentleman is very impatient. He should have let me finish my next sentence, which would have been quicker than intervening. The safeguard would, for example, ensure that fraudsters could not pass on information to their associates. The provision could protect against identity theft or, indeed, things such as junk mail. We do not intend to create a marketing database; we do not want commercial companies to use the measure as a mechanism for marketing. It is about transparency and proper accountability. I hope that is reassuring.

Amendment 205 suggests that a court should annually review its decision to direct a company not to allow inspection of the PSC register. That is unnecessary because it is not really clear what the court would review. If the circumstances were exactly the same as when the initial decision was passed, the court decision would be the same and that would continue; but if the purpose had changed significantly, which I presume is the contention behind the amendment, the company and the court would already be required to consider afresh whether that should continue. The amendment builds on the existing provisions for updating information. I understand the hon. Gentleman's desire that the information is kept up to date, but the ability to do so already exists. If there was no longer a need for inspection not to take place, that should already be changed under the current drafting.

I turn to amendment 206. The snappily titled proposed new section 790ZF enables the Secretary of State to make regulations to protect the PSC information from public disclosure on application to the registrar of companies. The amendment would allow regulations to enable an application to be determined by the court, in addition to the registrar, and it would allow regulations to provide that the registrar shows that the protection was in place. We do not think that the court is the best authority to determine the applications in the first instance. That would just increase the cost and time involved in an application for protection. It is not clear that the court would be any better placed than the registrar to make that final decision. The registrar is likely to ask for information in making that kind of decision from other authorities such as the police, and there is already a precedent for that. For example, the registrar does that when applications are made to protect the residential addresses of directors. We absolutely agree that the fact that information has been suppressed—that specific nugget of information—should be publicly available. That position was clearly set out in our recently published discussion paper on the protection regime. We look forward to receiving views in the coming weeks and will take on board the Committee's discussions as part of that process.

New clause 9 would give the Secretary of State the power to make regulations to ensure that the PSC information is accurate and current. I absolutely agree with the spirit of that. The data must be as accurate, reliable and up to date as possible. However, the new clause is not necessary to achieve that aim. The Bill already requires that information to be updated on an ongoing basis and at least once every 12 months at Companies House. That seems a proportionate approach to ensuring that up-to-date information is always easily accessible. It is also in line with shareholder information, which is closely related.

We have already included a power in the Bill—proposed new section 853J of the Companies Act 2006—which would allow us to amend the frequency with which information...
is updated at Companies Bill House. We anticipate that there will be a need to review whether that power needs to be exercised when the formal review of the PSC register takes place within three years of implementation. That will be an opportunity to see how it is working and whether there is a need to change the time scales. We therefore have the power to do that without resorting to primary legislation. There is also a duty on the company and anyone giving information to the company to ensure that the PSC information is accurate, which is enforced by the criminal offences that apply to anyone failing to provide that information.

Public scrutiny is an important additional tool in ensuring data accuracy. That is why it is so important that the register is made accessible to the public. We already have one of the world’s most open registers, accessed more than 240 million times a year. That incentivises companies to comply and highlights any errors or anomalies. Finally, it is important to recognise that Companies House has already taken a number of steps to improve the integrity of its data. For example, 9 million submissions underwent multiple checks in 2013-14, resulting in nearly 400,000 being rejected. Robust and adequate checking mechanisms are therefore already in place to ensure accuracy. I hope that that reassures the Committee and that Members will be happy to withdraw their amendments.

Mr Wright: I thank the Minister for her comments, which were made with passion and eloquence. We are working together with regard to the spirit of the legislation. I am grateful to her for looking again at amendment 198 and others in respect of affirmative resolution procedures. That is very helpful. The clarification about the need for judicial review not necessarily having to be on the face of the Bill was helpful, as I was not aware of that.

Will the Minister look again at new clause 9? I understand her point about filing and reporting requirements on an annual basis, but the question has been raised several times during the Committee’s deliberations of whether there is a way of using new technology to have real-time information. How can we ensure that the information does not become obsolete the moment that the register is up? I do not want to press the new clause to a Division, but I am keen for us to look at how we can incorporate technology to ensure that the register is as relevant, up to date and accurate as possible. However, I am reassured by her comments. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Jo Swinson: I beg to move amendment 79, in schedule 3, page 142, line 9, leave out “jointly with others” and insert—

“as one of a number of joint holders of the share or right in question”.

This amendment clarifies that where a share or right is jointly held by two or more individuals, each individual must be registered as a person with significant control if one or more of the specified conditions is met.

The Chair: With this it will be convenient to discuss Government amendments 80 to 134.
only in rare circumstances in the context of the PSC register: for example, when the fact of a lawyer knowing that someone is a person of significant control arises only from advice given in respect of litigation—it might be that a lawyer, in advising a client on a share transaction, identifies that someone is a PSC.

If a lawyer incorrectly claims legal professional privilege as a reason for their non-compliance with a notice from a company they will have committed a criminal offence through their failure to respond. Furthermore, the PSC will commit a criminal offence if they do not disclose their interest in the company to the company where they are not already on the register, irrespective of whether their lawyer is bound by LPP. Where the company cannot identify a PSC because the lawyer is unable to respond without breaking privilege we are considering how that might be reflected on the public register so that it could act as a trigger for further investigation and scrutiny.

The sixth group makes it clear that entry in a company’s PSC register does not require the company to have regard to the interests of the persons registered. Entry in the register does not confer rights on a person in relation to the company’s shares or indeed any other rights. The amendments will therefore avoid potential conflict or confusion between the company and anyone who might claim to have rights in respect of it.

The seventh group clarifies a company’s obligations in providing a copy or allowing inspection of the PSC register and register of members. That removes any ambiguity in the provisions as drafted.

The eighth group ensures that we treat limited partnerships proportionately and in a way that is consistent with our policy intentions. Where a company is owned by a limited partnership we want to capture anyone who has the ability to control the management of that limited partnership in the PSC register. However, we do not want to record in the register the potentially hundreds of limited partners who have no ability to control their limited partnership, nor do we want to record details of the individuals who have an interest in such limited partnerships. The amendments ensure that outcome.

Finally—you will be glad to hear, Mr Brady—the ninth group ensures consistency with existing provisions of company law and that prosecutions are made only when in the public interest. New schedule 1B to the Companies Act 2006, inserted in that Act by schedule 3, enables a company to apply restrictions to shares and voting rights in certain cases. It is a criminal offence to breach those restrictions. Section 798 of the 2006 Act, on which the offence provisions are modelled, requires the Secretary of State’s consent to prosecute; for the purpose of consistency we want to ensure that the same regime applies in schedule 1B.

Section 1112 of the Companies Act 2006 makes it a criminal offence knowingly or recklessly to provide false or misleading information to the registrar of companies. While it is an important tool in terms of our ability to maintain the integrity and accuracy of company data on the public register, we must ensure that it is not abused. That will be particularly important in light of the increased amounts of information on the public register following implementation of the PSC register and increased scrutiny. For that reason we have provided that in future, the consent of the Secretary of State or the Director of Public Prosecutions will be required to prosecute under section 1112. That will act as a safeguard for companies against private prosecutions that may be malicious or vexatious. It will ensure that prosecutions are only made in the public interest.

Amendment 79 agreed to.

Amendments made: 80, in schedule 3, page 142, line 38, at end insert—

‘(9A) A relevant legal entity is either “registrable” or “non-registrable” in relation to a company—

(a) it is “non-registrable” if subsection (8)(a) applies in respect of it by virtue only of it having significant control over some other legal entity that is also a relevant legal entity in relation to the company;

(b) otherwise, it is “registrable”,

and references to a “registrable relevant legal entity” in relation to a company are to a relevant legal entity which is registrable in relation to that company.

This amendment provides that a relevant legal entity (RLE) is non-registrable in relation to a company if it is only an RLE because it has significant control over another entity that is an RLE. See also amendment 108.

Amendment 81, in schedule 3, page 143, line 22, after second “a” insert “registrable”.

This amendment is consequential on amendment 108.

Amendment 82, in schedule 3, page 143, line 27, after second “a” insert “registrable”.

This amendment is consequential on amendment 108.

Amendment 83, in schedule 3, page 143, line 37, after “a” insert “registrable”.

This amendment is consequential on amendment 108.

Amendment 84, in schedule 3, page 144, line 1, leave out from “who” to “, or” in line 2 and insert “falls within subsection (5A)”.

This amendment and amendments 85 and 86 enable a company to serve notice in order to obtain information on a wider range of persons for the purposes of the PSC register by including legal entities that would be relevant legal entities were they subject to their own disclosure requirements.

Amendment 85, in schedule 3, page 144, line 3, at end insert—

“(5A) The persons who fall within this subsection are—

(a) any registrable person in relation to the company;

(b) any relevant legal entity in relation to the company;

(c) any entity which would be a relevant legal entity in relation to the company but for the fact that section 790C(8)(b) does not apply in respect of it.”

See the explanatory statement to amendment 84.

Amendment 86, in schedule 3, page 144, leave out lines 6 and 7 and insert—

“(i) any person who falls within subsection (5A), or”.

See the explanatory statement to amendment 84.

Amendment 87, in schedule 3, page 144, line 13, leave out from “must” to end of line 16 and insert—

“state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.”

This amendment provides that addresses of a notice from the company under section 790D must respond within one month from the date of the notice, rather than within a period (not exceeding three months) specified in the notice as previously.

Amendment 88, in schedule 3, page 144, line 24, after “or” insert “registrable”.

This amendment is consequential on amendment 108.
Amendment 89, in schedule 3, page 144, line 27, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 90, in schedule 3, page 144, line 31, at end insert—
“(*) A person to whom a notice under subsection (5) is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.”
This amendment makes clear that in responding to a request for information under section 790D(5), a lawyer is not required to provide information that is subject to legal professional privilege.

Amendment 91, in schedule 3, page 144, line 37, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 92, in schedule 3, page 144, line 42, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 93, in schedule 3, page 145, line 6, after first “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 94, in schedule 3, page 145, line 7, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 95, in schedule 3, page 145, leave out lines 22 to 24.
This amendment is consequential on amendment 96.

Amendment 96, in schedule 3, page 145, line 25, leave out “(8)” and insert “(7)” to:
This amendment applies section 790D(7) to notices under section 790E. This will require responses to such notices within one month from the date of the notice, rather than within a period (not exceeding three months) specified in the notice as previously.

Amendment 97, in schedule 3, page 146, line 7, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 98, in schedule 3, page 146, line 16, leave out “28 days” and insert “one month”.
This amendment provides that a person must supply information to the company under section 790G if the circumstances specified in subsection (1)(a) to (d) of that section have continued for at least one month, rather than 28 days as previously.

Amendment 99, in schedule 3, page 146, line 19, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 100, in schedule 3, page 146, line 24, leave out “14 days” and insert “one month”.
This amendment provides that a person must comply with the duty to supply information under section 790G(2) within one month from the date on which all the conditions in subsection (1) were first met, rather than 14 days as previously.

Amendment 101, in schedule 3, page 146, line 30, after first “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 102, in schedule 3, page 146, line 37, leave out “28 days” and insert “one month”.
This amendment provides that a person must update information under section 790H if they have not received notice from the company under section 790E within one month of a change occurring, rather than 28 days as previously.

Amendment 103, in schedule 3, page 147, line 1, leave out “42 days” and insert “2 months”.
This amendment and amendment 104 alter the time by which the section 790H(2) duty to update information must be complied with to the later of the end of two months from the date the change occurred or one month from discovering the change, rather than within one month and 14 days as previously.

Amendment 104, in schedule 3, page 147, line 3, leave out “14 days” and insert “one month”.
See the explanatory statement to amendment 103.

Amendment 105, in schedule 3, page 147, line 27, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 106, in schedule 3, page 148, line 16, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 107, in schedule 3, page 148, line 24, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 108, in schedule 3, page 149, line 10, after “a” insert “registrable”.
This amendment provides that a company needs to note information in its PSC register on a relevant legal entity only if it is a registrable relevant legal entity in relation to the company and not if it is non-registrable. See also amendment 80. This mirrors the position for individuals.

Amendment 109, in schedule 3, page 149, line 14, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 110, in schedule 3, page 149, line 34, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 111, in schedule 3, page 149, line 38, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 112, in schedule 3, page 150, line 5, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 113, in schedule 3, page 150, line 13, at end insert—
“(*) A company to which this Part applies is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or rights in or with respect to the company.”
This amendment makes it clear that entry in a company’s PSC register does not give rise to any obligation on the part of the company to have any regard to the interests of the person so registered.

Amendment 114, in schedule 3, page 152, line 30, leave out “there were no” and insert “whether there are”.
This amendment clarifies that a company must tell those inspecting or receiving a copy of the PSC register whether there are any further changes to be made to it.

Amendment 115, in schedule 3, page 152, line 43, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 116, in schedule 3, page 152, line 46, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 117, in schedule 3, page 153, line 5, after first “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 118, in schedule 3, page 153, line 8, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 119, in schedule 3, page 153, line 26, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 120, in schedule 3, page 154, line 18, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.
Amendment 121, in schedule 3, page 155, line 15, after “or” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 122, in schedule 3, page 157, line 8, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 123, in schedule 3, page 157, line 12, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 124, in schedule 3, page 157, line 14, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 125, in schedule 3, page 157, line 27, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 126, in schedule 3, page 157, line 36, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 127, in schedule 3, page 164, line 25, at end insert—
“Limited partnerships
22A (1) An individual does not meet the specified condition in paragraph 2, 3 or 4 in relation to a company by virtue only of being a limited partner.
(2) An individual does not meet the specified condition in paragraph 2, 3 or 4 in relation to a company by virtue only of, directly or indirectly—
(a) holding shares,
(b) holding a right, or
(c) controlling the exercise of a right,
in or in relation to a limited partner which (in its capacity as such) would meet the condition if it were an individual.
(3) Sub-paragraphs (1) and (2) do not apply for the purposes of determining whether the requirement set out in paragraph (a) of the specified condition in paragraph 6 is met.
(4) In this paragraph “limited partner” means a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business).”

This amendment provides that in the case of a limited partnership, a limited partner or individual holding a direct or indirect share or right in a limited partner will not meet the specified conditions mentioned (that is, will not be a person with significant control) by virtue only of that fact.

Amendment 128, in schedule 3, page 165, line 15, leave out “14 days” and insert “one month”.
This amendment allows a company to issue a restrictions notice within one month of a warning notice having been issued, rather than 14 days as previously.

Amendment 129, in schedule 3, page 171, line 17, after “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 130, in schedule 3, page 171, line 26, after second “a” insert “registrable”.
This amendment is consequential on amendment 108.

Amendment 131, in schedule 3, page 171, line 31, leave out “relevant” and insert “registrable relevant”.
This amendment is consequential on amendment 108.

Amendment 132, in schedule 3, page 171, line 33, at end insert—
“5A In section 120 (information as to state of register and index), in subsection (1), for “there were no” substitute “whether there are”.”

This amendment amends section 120 of the Companies Act 2006 to clarify that a company must tell those inspecting or receiving a copy of the members register whether there are any further changes to be made to it. This brings section 120 into line with the new section 790S (see amendment 114).

Amendment 133, in schedule 3, page 172, line 4, at end insert—
“7A (1) Section 1126 (consents required for certain prosecutions) is amended as follows.
(2) In subsection (1), at the end insert—
“section 1112 of this Act (general false statement offence);
paragraph 5 or 6 of Schedule 1B to this Act (breach of certain restrictions imposed under that Schedule)”.
(3) In subsection (2)(a)—
(a) omit the “or” at the end of sub-paragraph (ii), and
(b) after sub-paragraph (iii) insert “or
(iv) section 1112 of this Act,”.
(4) In subsection (2)(b), after “section 798 of” insert “, or paragraph 5 or 6 of Schedule 1B to”.
(5) In subsection (3)(a)—
(a) omit the “or” at the end of sub-paragraph (ii), and
(b) after sub-paragraph (iii) insert “or
(iv) section 1112 of this Act,”.

This amendment amends section 1126 of the Companies Act 2006 to require the consent of the Secretary of State to prosecute certain offences under new Schedule 1B to that Act and of the Secretary of State or Director of Public Prosecutions to prosecute offences under section 1112 of that Act.

Amendment 134, in schedule 3, page 172, line 16, at end insert—
“registrable relevant legal entity (in Part 21A) section 790C(9A)”.
This amendment is consequential on amendment 80.—(Jo Swinson.)

Schedule 3, as amended, agreed to.

Clause 71

Amendment 135, in schedule 3, page 173, line 1, after “section 798 of” insert “, or paragraph 5 or 6 of Schedule 1B to”.

This amendment amends section 798 of the Companies Act 2006 to require the consent of the Secretary of State to prosecute certain offences under new Schedule 1B to that Act.

The Chair: With this it will be convenient to discuss clauses 72 and 73 stand part.

Robert Jenrick (Newark) (Con): I apologise for not having been at the earlier sittings, but I can imagine how fascinating they have been. I wanted to make a few remarks and ask some questions of the Minister. I have been at the earlier sittings, but I can imagine how fascinating they have been. I wanted to make a few remarks and ask some questions of the Minister. I have not heard mentioned today, of privacy in private enterprise and the right of law-abiding people, in particular families and family businesses, to protect the privacy of their assets and so on.

We have heard a lot of talk, even today, on criminality, which we all want to tackle, but we have to accept that the vast majority of people are not using complex tax structures for criminality; they may be doing so to lower...
their tax bills. Has any assessment been made of the number of companies, out of those 2.5 million that are of interest to the Government in this respect—companies in which we think that there might be some impropriety and wrongdoing that we want to tackle? I suspect that the number is very small. That is not to downplay those individuals and companies. The Government have obviously taken a legitimate and perfectly reasonable view that the fundamental question of privacy is less important than the overriding imperative to tackle corruption and tax evasion. I understand that entirely.

My second question, however, which perhaps is more pertinent, is about the practicalities. Will the measure work? What will be the unintended consequences? In my prior life, I worked as a corporate lawyer, and I am aware of some of the incredibly complex tax structures and corporate structures set up by companies, even perfectly legitimate ones. I suspect that criminals, if they put their minds to it, will be able easily to evade the measures, and a burden will be placed on, relatively, if not completely, legitimate companies.

I would like some clarification on what I see as the potential loophole in the measures, which is that anyone can operate in the UK using a branch of a foreign company. Those who want to incorporate in the UK legitimately may be forced, if they want to avoid the measures, to incorporate abroad. Anyone who might have impropriety or criminality in mind will simply incorporate abroad and use a branch to operate in the UK. It concerns me that although we might leave the Committee Room feeling as though we have done something good, all the criminals out there will find an easy way around our proposals. That is certainly the advice that I have received from law firms in jurisdictions such as the British Virgin Islands, Bermuda and the Cayman Islands, which regularly deal in such companies.

Toby Perkins: I am listening with great interest to what the hon. Gentleman is saying. I have almost come to the conclusion that working collaboratively with our partners across Europe might be a good way to deal with the problems that he has outlined. Is he suggesting that if we worked a little more on a cross-European basis in addition to striding out and making laws on our own, we could resolve the problem? Has he spoken to any of his colleagues about that?

Robert Jenrick: Clearly, the way to tackle the problem is to work collaboratively internationally, not just in Europe, and I know that the Government are doing that. There is a risk of being the first jurisdiction in the world to take such a step because some countries, such as our partners in China and in emerging markets, will choose to incorporate elsewhere. It is not unreasonable to be the first country in the world to implement such measures, but we have to be aware of the risks that that entails for our financial services industry. I would be grateful for the Minister’s thoughts on what I believe to be an obvious, gaping loophole and on what, if anything, we can do to mitigate that if we want to proceed down this line.

I do not believe the assertion I have heard—not in the Committee, but elsewhere—that transparency will be achieved by spotting errors. That is unlikely to succeed, because the structures we are dealing with are incredibly complex. The likelihood of individuals trawling through registers and spotting holes is quite small. The only exception might be in the case of complex disputes and litigation between partners. In the case of a Russian oligarch who takes action against another Russian oligarch, for example, one might spot that the other has not carried out the correct level of transparency and alert the authorities. That is not a bad thing, but I doubt that there will be large numbers of such cases.

Although no one likes to stand up for tax havens, we have an obligation to our overseas territories and Crown dependencies, which most regularly deal with such situations. What have the Government done to discuss the issues with them? They will be at the front end of this, because any big business that wants to create complex tax structures, and any criminals who want to use tax structures and corporate structures for impropriety, will go through jurisdictions such as the BVI, Bermuda or the Cayman Islands. How joined up is our approach with what they are doing, and what pressures are we putting on them to improve their practices?

The strategy chosen by some of those territories, such as the BVI, has been to regulate more tightly their corporate service providers—the companies that create and establish corporate structures in the first place—which the World Bank has deemed probably the most effective way of tackling criminality and tax evasion. How are we working with them to ensure that efforts are fully joined up?

My last point is on penalties, which seem to have a broader application. If we take the view that the vast majority of companies and individuals are perfectly legitimate, the penalties are quite steep for failing to carry out the correct level of disclosure. The area is relatively complex, and some families or corporations might have tax structures that are extremely complex but still legitimate. In the penalties, as far as I can see, there is no obligation to prove dishonesty, dishonest intent or a deliberate attempt to deceive.

3.45 pm

Clearly, the benefit of that approach is that it forces all individuals and companies to be as transparent as possible and prevents the obvious excuses from criminals and those trying to evade taxes, but it does mean that some perfectly legitimate people out there will be caught, with serious penalties potentially imposed. Obviously we would hope that, in due course, the courts will take a flexible and lenient approach, but I am curious about the Minister’s view. Is it appropriate to set a level of dishonesty or intent to deliberately conceal, so that we do not unnecessarily penalise perfectly legitimate business people?

Jo Swinson: I will happily respond to the points raised by the newest member of the Committee—my hon. Friend the Member for Newark. We appreciate his stepping into the breach at short notice. He raises some genuinely interesting points about how we can ensure that the measure works in practice in the way we want. He also raises the important issue of privacy, which we have conducted a full privacy impact assessment, which is published on the gov.uk website. We have also considered privacy in light of the European convention on human
rights, which I hope he supports. Both the assessments that we have undertaken indicate that our proposed measures are lawful, necessary and proportionate.

My hon. Friend asked about the problem that we are trying to solve. As most companies try to do the right things, he asked whether the measure was really necessary. For obvious reasons, it can be difficult to get an accurate assessment of the exact extent of the criminality, but various estimates are available. The European Commission’s 2013 impact assessment on anti-money laundering and terrorist financing measures suggests that global criminal proceeds potentially amount to 3.6% of GDP. The Home Office judged in 2010–11 that organised crime in the UK generated some £13 billion, of which it estimated that about £10.5 billion is laundered. The Metropolitan police estimates that, in cases where hidden beneficial ownership is an issue, between a third and half of an investigation can be spent on identifying the beneficial owners through a chain of ownership layers, so this additional layer of transparency will benefit our crime-fighting authorities.

On the questions of practicality, whether it will work and whether it is an undue burden, the impact assessment points to the cost to business being some £97 million, but that is split across 3 million companies. If we think about the total number affected, the cost is not disproportionate when we get the advantage of transparency and trust in business, so that the UK has a sound reputation as a trusted place to do business. My hon. Friend highlights the importance of the international element. The UK acting on its own would not be sufficient to address the problem. He talks about the risk of being first, but I would also talk about the advantage of being first and showing global leadership, which will affect the UK’s reputation. Of course it is vital that the international community takes this seriously, which is why we have not just been pushing ahead with this in the UK; we have also been showing international leadership through organisations such as the G7 and the G20 and trying to ensure that other countries follow our lead.

My hon. Friend also asked whether the measure will be effective. Transparency can be a very effective tool. Obviously, non-governmental organisations and civil society look at such information when they look into things such as corruption and money laundering. The media, the free press and journalists will also use this information.

Bill Esterson: Effectiveness is the key point, is it not? How much money does the Minister think this will raise?

Jo Swinson: I do not think that this is necessarily about raising money. We clearly hope there will be a benefit through the reduction of criminal activity, but the primary benefit will be for the UK’s reputation and in people having trust when dealing with the business community and other organisations. It is not necessarily easy to put a figure on that, but it is a necessary element of the government business in which UK companies work, and we definitely want to preserve it. This measure will enhance that reputation and that climate of greater trust.

It is interesting that the CBI has outlined the fact that one of the specific challenges that the business community faces is the issue of trust. In fact, it has been doing a lot of work on what the business community can do to improve trust, and this measure—obviously taken forward by the Government, but supported by many in the business community—will help to rebuild some of that trust.

The specific issue of the overseas territories was mentioned. Obviously the situation varies between the different Crown dependencies and overseas territories. Each one that has a financial services industry has already completed a consultation, and the respective Governments are looking at the results. Bermuda, for example, already has a private central registry of company beneficial ownership, and the Crown dependencies are also committed to consulting on those issues. The Government are working closely with those overseas territories and Crown dependencies. Indeed, the Minister responsible for the overseas territories visited the British Virgin Islands on 8 October—and had some productive discussions about this issue. Of course, more dialogue at ministerial and official level will take place with all the territories in the lead-up to December’s joint ministerial council. I hope that provides some reassurance on that issue.

The final point that my hon. Friend the Member for Newark raised was about the penalties, and whether there is a need to prove intent to deceive. I understand where he is coming from, but we need to ensure that there is accurate information; it is the responsibility of companies to provide that information. In the same way that we expect them to provide information to Companies House, for example, this information should be provided. Companies House does not accept the excuse that a company did not intend to get it wrong when it submits its annual return incorrectly, and this falls into the same category: there is a duty, an onus and a responsibility on companies to ensure that the information they are providing is indeed accurate. If we qualified that with a provision to suggest that there had to be some kind of intent to deceive, the clarity of just having to provide the right information up front would be lost.

Question put and agreed to.
Clause 71 accordingly ordered to stand part of the Bill.
Clauses 72 and 73 ordered to stand part of the Bill.

Schedule 4

ABOLITION OF SHARE WARRANTS TO BEARER

Jo Swinson: I beg to move amendment 135, in schedule 4, page 178, line 36, leave out “1144” and insert “1143”. This amendment corrects a cross-reference to provisions of the Companies Act 2006 to ensure that the “company communications provisions” of that Act apply to Schedule 4 in their entirety.

The Chair: With this it will be convenient to discuss Government amendments 136 to 144.

Jo Swinson: I will endeavour to speak to all these amendments in such a way that the Committee understands their purpose, but in a way that is not overleng.
Amendments 135 to 144 are technical in nature. They are about supporting a smooth process for abolishing bearer shares. Clause 73 and schedule 4 will automatically commence two months after the Bill receives Royal Assent. That is earlier than other clauses, which are referred to in schedule 4. So, as a tidying-up exercise, amendments 141, 143 and 144 will ensure that those clauses are disregarded until they come into force.

Amendment 142 ensures that where a UK company with bearer shares in issue is dissolved or struck off before any bearer shares are cancelled, it is permitted to reduce its share capital upon restoration to account for the cancellation of those bearer shares.

Amendments 135, 136 and 137 apply provisions from the Companies Act 2006 to ensure that the transitional provisions operate properly. Finally, amendments 138, 139 and 140 ensure that the terms used in schedule 4 have the same meaning as in the 2006 Act, that so companies will not have to learn new terminology to convert their bearer shares. Those amendments are fairly minor and technical, and I hope uncontroversial.

Amendment 145 updates clause 76. It is about providing tools to ensure that we can implement an effective policy of prohibiting corporate directors, with exceptions. As currently drafted, the power in clause 76 allows the Secretary of State to set out circumstances in which, and the conditions subject to which, the use of corporate directors is allowed. The amendment simply provides that these could include approval by a regulatory body.

The Committee will know that the use of corporate directors reduces the transparency and accountability of individuals' control of a company. That is why clause 76 sets out the general requirement that the director of a company should be an individual—an actual person. None the less, we have to be pragmatic, because there are some circumstances in which we might consider that corporate directors are less risky. The clause also provides a power for the Secretary of State to set out exceptions to the requirement that directors should be natural persons, and therefore situations in which the use of corporate directors will continue.

We intend to publish a discussion paper shortly on the exceptions regime, to help us develop specific plans for those exceptions. However, as I have mentioned, the amendment will enable us to allow exceptions to be based on approval by a regulatory body. To give an example, at the moment the secondary legislation could specify that companies that make balloons can have corporate directors. Under the amendment, the secondary legislation would be able to say that companies that have the approval of a balloon company regulator could appoint a corporate director. That provides an additional route to implementation by giving a role to those closest to companies, and it provides a means of more precisely targeting exceptions. Basically, we want to ensure that we have the tools to implement policy effectively.

The amendment will also mean that we can respond to any changes in the policy landscape in future—with, of course, further parliamentary scrutiny. I hope the Committee will support it, and I reassure the Committee that following consultation, we intend to bring forward during the passage of the Bill specific proposals for exceptions to the prohibition of corporate directors.

Finally, the amendments to clause 79 are technical, such is the nature of company law. Much of it seems to be technical, and it is important to get the details right. As currently drafted, clause 79 refines the definition of shadow directors. The clause ensures that Government Departments and Ministers cannot be deemed shadow directors in the course of normal interactions with a company. The Government are in a unique position. They can influence companies in a number of ways, including by giving advice, guidance and sometimes specific direction. The Government need to be able to that in order to safeguard the economy in the interests of the country. There is a chance that under the current definition, the Government could be said to be acting as a shadow director in some circumstances, which could expose the Government to significant financial liability and put taxpayers' money needlessly at risk. I do not think the Committee would wish that to happen, and clause 79 will ensure that it does not.

The clause clarifies that when Government are giving advice or guidance, or instructing or directing a company in the course of its functions, they cannot be considered a shadow director. The amendments would change the clause in three ways: first, by inserting a consistent definition of “shadow director” into the Insolvency Act 1986 and the Company Directors Disqualification Act 1986; secondly, by inserting provisions to ensure that the devolved Administrations are treated in the same way as Ministers of the Crown; and thirdly, by bringing consistency to the drafting of the clause in the light of the amendments. Ministers and Departments in devolved Administrations are not covered by the exemption for Ministers of the Crown, but amendments 147 and 149 ensure that they will be treated in the same way.

Amendment 147 broadens the exemption to cover individuals giving advice and guidance when exercising a function under an enactment. That change is made so that the devolved Administrations’ actions are covered in the same way as those of Ministers of the Crown. Amendment 149 ensures that legislation made by the Welsh Administration is included within the definition of an enactment. Interestingly, legislation made by Scotland and Northern Ireland is already included within the definition of enactment in the Companies Act.

Amendment 148 tidies up the drafting of the clause to ensure consistency of wording. New clause 6 inserts the definition of “shadow directors” into the Insolvency (Northern Ireland) Order 1989 and the Company Directors Disqualification (Northern Ireland) Order 2002. That will ensure that the definition is consistent across the UK.

Amendment 150 ensures that the measures in the Northern Ireland orders will come into force at the same point as the measures in UK legislation. These are basically clarifying amendments that tidy up the drafting, and I am sure the Committee will accept that they are necessary to make the Bill make sense.

Amendment 135 agreed to.

Amendments made: 136, in schedule 4, page 178, line 38, at end insert—

"Company filings: language requirements
14A Sections 1103, 1104 and 1107 of the Companies Act 2006 (language requirements) apply to all documents required to be delivered to the registrar under this Part of this Schedule."

This amendment ensures that the language requirements for documents required to be filed with the registrar under Schedule 4 are consistent with the requirements under the Companies Act 2006.
Amendment 137, in schedule 4, page 179, line 21, at end insert—
“(i) section 1129 (legal professional privilege);
(ii) section 1132 (production and inspection of documents).”

This amendment ensures that legal and professional privilege and production and inspection of documents provisions in respect of an offence committed under Schedule 4 are consistent with the provisions that apply in relation to offences committed under the Companies Act 2006.

Amendment 138, in schedule 4, page 179, line 26, at end insert—
“Companies Acts” has the same meaning as in the Companies Act 2006 (see section 2 of that Act).”

This amendment ensures that references to the Companies Acts in Schedule 4 have the same meaning as in the Companies Act 2006.

Amendment 139, in schedule 4, page 179, line 33, leave out “Act 2006” and insert “Acts”

This amendment and amendment 140 make drafting improvements to reflect that where Schedule 4 uses expressions defined in the Companies Act 2006 those expressions are defined in that Act for the purposes of the Companies Acts rather than just for the purposes of the 2006 Act.

Amendment 140, in schedule 4, page 179, line 34, leave out “that Act” and insert “those Acts”

See the explanatory statement for amendment 139.

Amendment 141, in schedule 4, page 179, line 34, at end insert—
“Transitory provision

19A (1) Until section 82 (option to keep information on central register) comes into force, this Schedule has effect as if, in each of paragraphs 1(3) and 6(5), paragraph (b) (and the “or” preceding it) were omitted.

(2) Until section 85 (contents of statements of capital) comes into force, paragraph 7(3) of this Schedule has effect as if—

(a) paragraph (c) were omitted, and

(b) after paragraph (d) there were inserted “, and

(c) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”

This amendment provides that until clauses 82 and 85 come into force, the section 1032A inserted by sub-paragraph (1) has effect as if in subsection (7)—

(a) paragraph (c) were omitted, and

(b) after paragraph (d) there were inserted “, and

(c) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”

(3) Until section 82 (option to keep information on central register) comes into force, the section 1032A inserted by sub-paragraph (1) has effect as if, in subsection (8), paragraph (b) (and the “or” preceding it) were omitted.”—(Jo Swinson.)

This amendment ensures that references to the Companies Acts rather than just for the purposes of the 2006 Act.

Schedule 4, as amended, agreed to.

Clauses 74 and 75 ordered to stand part of the Bill.

Clause 76

Requirement for all company directors to be natural persons

Amendment made: 145, in clause 76, page 49, line 21, at end insert—

“(c) in section 22(5) of the Company Directors Disqualification Act 1986 (expressions used generally), in the definition of “shadow director”, for the words from “(but)” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment (within the meaning given by section 1293 of the Companies Act 2006); or

(c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.

(1) In section 22(5) of the Company Directors Disqualification Act 1986 (definition of “shadow director”) for the words from “(but)” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;
(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;
(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).”.

This amendment amends the definitions of “shadow director” in the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 to ensure consistency with the definition in section 251 of the Companies Act 2006 as it is being amended by clause 79 (and see amendments 147, 148 and 149).

Amendment 147, in clause 79, page 51, line 14, leave out “or a direction” and insert “, a direction, guidance or advice”.

This amendment provides that a person exercising a function conferred by or under an enactment is not a shadow director for the purposes of the Companies Act 2006 where that directors act on advice or guidance given by the person in the exercise of such a function.

Amendment 148, in clause 79, page 51, line 17, leave out “issued” and insert “given”.

This amendment makes a minor change to ensure consistency in the language used in the provisions being inserted by clause 79 into section 251 of the Companies Act 2006.

Amendment 149, in clause 79, page 51, line 19, at end insert—

‘(5) For the purposes of this Part, each of the following is a review period—

(a) a period of 12 months beginning with the day after the end of the previous review period;
(b) each period of 12 months beginning with the day after the end of the previous review period.

This amendment is consequential on amendment 26.

The Chair: With this it will be convenient to discuss Government amendment 26.

Jo Swinson: The aim behind the amendments is to ensure that all companies file a confirmation statement. They deal with a situation in which a company has not filed a confirmation statement for a previous review period. Under proposed new section 853A of the Companies Act 2006, where that happens there will be no obligation to file a confirmation statement for any future review period. That is because the obligation to file a confirmation statement is linked to a review period. The beginning of a review period depends on a confirmation statement being filed.

The link between the confirmation date and the start of the review period is necessary. Once a company delivers a confirmation statement, the clock is restarted and it has 12 months before the next confirmation statement is due. That flexibility is a key benefit of clause 80. For example, if a company’s review period runs from 1 February 2014 to 31 January 2015 and the company delivers a confirmation statement early—say, 30 November 2014—the company’s next review period would start the next day, on 1 December 2014, and run until 30 November 2015.

The confirmation statement will be particularly important, as it will be the vehicle for the majority of companies to provide publicly available information about their register of people with significant control. We do not want to provide a loophole that would allow unscrupulous companies to avoid disclosure of the information. Amendment 26 therefore amends proposed section 853A(5). It creates a default review period of 12 months starting from the day after the last review period ended. That applies even when a confirmation statement has not been delivered for the previous review period. New subsection (5A) ensures that companies will still have flexibility about when they confirm that their company information is up to date.

We do not believe that it is right that if a company fails to file a confirmation statement for one period, there should no longer be an obligation for it to file further statements. The amendments will prevent that.

Amendment 25 agreed to.

Amendment made: 26, in clause 80, page 52, leave out lines 16 to 18 and insert—

‘(5) For the purposes of this Part, each of the following is a review period—

(a) a period of 12 months beginning with the day after the end of the previous review period.

(5A) But where a company delivers a confirmation statement with a confirmation date which is earlier than the last day of the review period concerned, the next review period is the period of 12 months beginning with the day after the confirmation date.”—(Jo Swinson.)

This amendment provides for a default review period of 12 months from the end of the previous review period. This default review period will apply where no confirmation statement has been delivered by a company for the previous review period.

4 pm

Stephen Doughty: I beg to move amendment 197, in clause 80, page 57, line 38, leave out subsection (2) and insert—

‘(2) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); and
(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
(ii) in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both);
(iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).”.

As you will note, Mr Brady, I have had a short temporary promotion in the absence of my hon. Friend the Member for Hartlepool, who is in the Chamber, and my hon. Friend the Member for Edinburgh South, who is in Westminster Hall.

The amendment is a brief, probing one. My hon. Friend the Member for Hartlepool mentioned that one of the principles of the Bill should be to ensure that sanctions are severe enough to help compliance, but
that they should also be applied consistently. The amendment would ensure that sanctions would be the same for companies that did not have and maintain a record of their PSCs, and those that did not provide information to the public register. The intention of the amendment is to help ensure that the information makes it to the register and can be used meaningfully. I would welcome some brief reassurance from the Minister, and some comment.

Jo Swinson: The hon. Gentleman makes a robust case for his promotion not just to be temporary, while the former Minister is otherwise engaged.

The amendment would increase the penalty for not delivering a confirmation statement from a fine to imprisonment. We all want, of course, to ensure that there are robust penalties to deter and sanction those who do not comply with the important provisions in the clause. However, I do not believe that an increase in the penalty is necessary. The most important thing is that the information is delivered to Companies House and put on the register in a timely way. That will mean that people can have a look at the most up-to-date information about the company.

The enforcement activity that Companies House undertakes is already focused on achieving that. As part of the annual return process, it sends reminders to a company in good time before the filing deadline. If a company fails to file an annual return, the first aim of Companies House is to seek compliance. Of course, when its help and advice does not achieve compliance, it is necessary to have an effective response. So if the company still fails to comply, Companies House prosecutes it and its directors. Last year it prosecuted almost 2,000 companies for failing to file the annual return.

There is also the possibility that a director may be disqualified for repeated contraventions of company law. I know from my ministerial correspondence that hon. Members will get in touch from time to time confirming the imposition of such penalties. The issue is taken seriously, and rightly so.

I understand the concern that there should be sufficient incentives to ensure that information is provided in a timely manner. Companies must send updated information about any changes to the PSC register to Companies House with the confirmation statement. However, imprisonment is a punishment that should be reserved for the most serious offences. In practice, even if the law allowed it, magistrates and judges would be unlikely to sentence someone to prison for not delivering a confirmation statement. The penalties for non-compliance with company filing requirements reflect existing Companies Act 2006 penalties, which are the appropriate comparator. There is no compelling case to increase the penalties in this case.

It should be noted that that approach to enforcement works. Compliance rates for the annual return to Companies House currently run at some 98%, so the sanctions are sufficient. Fines are and can still be issued. Indeed, future fines will be unlimited under the Bill. Plenty of sanctions are already available, so I hope that that reassures the hon. Gentleman.

Stephen Doughty: It is important to put on record the diligent hard work that the staff at Companies House do. Companies House is in a constituency neighbouring mine, but many of my constituents work there and it is important that they are supported in their work, which is vital to maintaining the stability of our corporate law and compliance. I have listened carefully to what the Minister has said and I am content with it, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 80, as amended, ordered to stand part of the Bill.

Clause 81

Section 80: Related Amendments

Amendment made: 27, in clause 81, page 59, line 10, after “(5)” insert “and (5A)”.—(Jo Swinson.)

This amendment is consequential on amendment 26.

Clause 81, as amended, ordered to stand part of the Bill.

Clause 82 ordered to stand part of the Bill.

Schedule 5 agreed to.

Clauses 83 to 85 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clauses 86 to 91 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.

—(Mel Stride.)

4.7 pm

Adjourned till Tuesday 4 November at five minutes to Nine o’clock.
Written evidence reported to the House
SB 52 The British Exporters Association (BExA)
SB 53 Carol Ross
SB 54 Law Society
SB 55 Finance & Leasing Association (FLA)

SB 56 Adam Robertson
SB 57 James Watson
SB 58 Gareth Epps
SB 59 Simon Clarke
SB 60 R3 – supplementary evidence