PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

EDUCATION AND ADOPTION BILL

Third Sitting

Thursday 2 July 2015

(Morning)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5·00

PBC (Bill 004) 2015 - 2016

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Monday 6 July 2015

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

The Committee consisted of the following Members:

Chairs: †Mr Christopher Chope, Sir Alan Meale

† Berry, James *(Kingston and Surbiton)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Donelan, Michelle *(Chippenham)* (Con)
† Drummond, Mrs Flick *(Portsmouth South)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Fernandes, Suella *(Fareham)* (Con)
† Gibb, Mr Nick *(Minister for Schools)*
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† James, Margot *(Stourbridge)* (Con)
† Jones, Graham *(Hyndburn)* (Lab)
† Kyle, Peter *(Hove)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
Pugh, John *(Southport)* (LD)
† Timpson, Edward *(Minister for Children and Families)*
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Trevelyan, Mrs Anne-Marie *(Berwick-upon-Tweed)* (Con)
Walker, Mr Robin *(Worcester)* (Con)
Wilson, Sammy *(East Antrim)* (DUP)

Fergus Reid, Glenn McKee, Joanna Welham, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 2 July 2015

(Morning)

[Mr Christopher Chope *in the Chair*]

Education and Adoption Bill

11.30 am

The Chair: We now begin line-by-line consideration of the Bill. Before we do, let me say that, should Members wish to remove their jackets during the Committee's meetings, they may so do. I hope Members will also make sure all electronic devices are turned off or switched to silent mode.

I am going to make a few other preliminary announcements, including some that I would not normally make, because this is the first Standing Committee for a lot of Members present. As a general rule, my fellow Chair and I will not call starred amendments—amendments that have not been tabled with adequate notice. The required notice period in Public Bill Committees is three working days, which means that amendments should be tabled by the rise of the House on Monday if they are to be considered on Thursday, and by the rise of the House on Thursday if they are to be considered the following Tuesday. I am making an exception to that rule today, and I shall come to that in due course.

First, however, a brief explanation of how our arrangements normally operate may be useful to those who are new to them. The selection list for today's sitting, which you probably all have before you, shows that various amendments have been grouped for debate. That happens at the discretion of the Chair, but such amendments normally have a similar theme or cover the same issue. The person who has tabled the lead amendment—the first amendment—in the group is called first to speak, and the Chairman will then call others who catch his eye. In a Standing Committee, it is possible for Members to speak on more than one occasion, so if they are dissatisfied with the Minister's explanations—I am sure they will not be—they can always come back for a second bite at the cherry.

At the end of the debate on a group of amendments, I shall again call the Member who moved the lead amendment if they wish to respond to the debate. Sometimes, the lead amendment will be a probing amendment, and the person who moved it will seek leave to withdraw it. We have to go through that process; we cannot just assume that the amendment disappears—it either has to be put to a vote, or the Committee has to give the Member leave to withdraw it.

It may be possible to ask for a Division on, for example, the third or fourth amendment in the group, and that is at the Chair's discretion. However, it is normally helpful if the Chair is informed in advance of a Member's desire to put an amendment other than the lead amendment to a vote. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments, although, obviously, we do not have any today.

Decisions on amendments do not take place in the order in which amendments are debated, but in the order in which they appear on the amendment paper. An amendment—say amendment 15—may have been discussed with a group of amendments earlier on the selection list, but we would not actually vote on it until we reached it in chronological order on the amendment paper. I hope that is helpful. The Chair and the Clerk are both available to help Members who want advice.

We sometimes have an issue with stand part debates. We can have one on each clause, but if the substance of a clause is covered sufficiently in debates on the amendments to it, the Chair will advise that there will be no separate stand part debate. Normally, we will give you advance notice, so that the Committee knows where it stands.

Today I have, exceptionally, selected two starred amendments, which arose from issues that were presented in the oral evidence on Tuesday, which meant that the required notice could not be given in time for the deadline. I understand that the text of the amendments was circulated to Committee members yesterday afternoon.

We agreed a programme motion on 30 June, which is reproduced at the end of the amendment paper. The motion sets out the order in which we have to consider the Bill, so today we start with clause 13 and amendment 1.

Clause 13

Local authority adoption functions: joint arrangements

Steve McCabe (Birmingham, Selly Oak) (Lab): I beg to move amendment 1, in clause 13, page 8, line 18, leave out "give directions" and insert "make orders".

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

Amendment 2, in clause 13, page 8, line 23, leave out "A direction" and insert "An order".

Amendment 3, in clause 13, page 8, line 36, leave out "a direction" and insert "an order".

Amendment 4, in clause 13, page 8, line 37, leave out "a direction" and insert "an order".

Amendment 5, in clause 13, page 8, line 39, leave out "A direction" and insert "An order".

Amendment 6, in clause 13, page 8, line 41, at end insert—

'( ) Orders under subsection (1)—

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.".

These amendments Nos 1 to 6 would require joint arrangements proposed by the Secretary of State to be implemented only after approval by both Houses of Parliament.

Steve McCabe: It is a great pleasure to serve under your chairmanship, Mr Chope. I look forward, as I am sure we all do, to your firm but fair guidance in the course of the coming sittings.

The amendment is relatively simple. It challenges the Government intention to delegate substantial powers to the Minister to make changes in our adoption arrangements

without any further reference to Parliament or scrutiny by parliamentarians. As can be seen in the transcript of the witness sessions, the Minister described the powers as a backstop, powers he hopes not to use. He told the Committee that he aspires to achieve all of his changes by consent and persuasion. I understand that he has also given that assurance to a recent adoption conference.

The Minister has been so persuasive in that respect that one of the witnesses, Sir Martin Narey, a mind for whom I have the utmost respect and admiration, thought that the legislation itself, rather than the intent, was designed to be non-prescriptive and innovative in changing our adoption arrangements. Of course, that is not quite true. I have no doubt that the Minister's intention is to bring about the changes through consent and persuasion, but obviously if he was 100% confident of achieving that and 100% confident that he could bring us to such an outcome, he would not be seeking the powers in the first place.

We are being asked to give extensive powers to the Minister—to the Minister of the day—but Ministers come and Ministers go, so we can have no guarantee that the present incumbent's successor would necessarily take a similarly benign view of such matters. The Minister himself, when we were at an event together shortly after the election, told the audience that he had calculated the probability of his remaining in his present post—strangely enough, the odds were not outstanding. Ministers come and Ministers go.

The Minister for Children and Families (Edward Timpson): Foiled them again.

Steve McCabe: Yes, the Minister certainly has foiled them again—that is good. I wish him well and hope that he will continue in his post for quite some time. As we all know, reshuffles are fickle affairs, a bit like a Boris bus—one can never be too sure when the next one will turn up.

I tabled the amendment for two reasons. First, it provides me with the opportunity to query whether it is right that the Minister should have such unconstrained power as back-up, after setting out to convince us that it is not necessary and that he hopes never to use it. Mr Chope, in another parliamentary guise you are only too aware of the dangers of too much unnecessary legislation. Many is the Friday I have listened to you wax lyrical on such dangers, warning us that we have far too much legislation and should only legislate when it is absolutely necessary. That is the situation today with clause 13 and the power that would be afforded to the Minister to give directions under proposed new section 3ZA(1).

If the situation changed and if the Minister's optimism and persuasive charm relating to achieving consensus evaporated, and he or a successor found himself or herself driven to use coercive powers to make changes in our adoption system, those powers should have been acquired by parliamentary order, subject to parliamentary scrutiny.

Kevin Brennan (Cardiff West) (Lab): My hon. Friend is reaching the nub of the argument and the essence of the amendment. Unless the amendment is agreed to, we will be legislating and putting this measure into the Bill—not writing an instruction for the Minister for his term of office—where it will remain unaltered unless altered by further legislation. Should not we always bear in mind at all times that it is not a matter of good will towards a particular Minister, but about legislation that will sit there unaltered unless we amend it?

Steve McCabe: My hon. Friend is right. This is a decision for the foreseeable future and once put in place it will not be subject to parliamentary scrutiny, which is the whole purpose of our being here today. Since the Minister and his officials and advisers believe that such an order, or powers of direction, would be used very sparingly indeed, altering it would hardly be likely to take up a great deal of parliamentary time. We have to assume, judging by the Minister's reasoning, that any orders to be decided on in the House would be remarkably sparse. In fact, it is fair to say that it would be merely a guarantee or a backstop for Parliament, and a chance for Parliament, rather than a Minister or his officials, to have the final say on changes that were about to be imposed. Such changes could not possibly be consensual: indeed, they would be controversial and objected to in some quarters; otherwise, the Minister clearly would not have resorted to parliamentary powers to impose them. Is not that, as my hon. Friend the Member for Cardiff West says, the very reason we are here? We are here to scrutinise legislation, safeguard against excesses on the part of the Executive and ensure that Parliament, not Ministers, provides the checks and balances on excessive use of power.

Secondly, discussing the amendment provides the Minister with the opportunity to explain the manner and circumstances in which he might the use the powers he is seeking. During the witness session, I drew his attention to a remarkably similar situation in the other place during discussion of clause 3 of the Children and Families Act 2014. On that occasion, his noble Friend Lord Nash accepted that a power to require all local authorities to undertake joint arrangements would need to be subject to "full and rigorous scrutiny" by Parliament.

11.45 am

However, when Lord Nash was pressed by Baroness Hughes on whether the steady use of powers of direction—the very powers that the Minister seeks today—could result in exactly the same outcome but without parliamentary scrutiny, the noble Lord fell back on issuing assurances that such a thing was not the Government's intention. He then announced that any decision to use powers of direction would be

"preceded by a letter setting out the Secretary of State's intention…This would explain the underlying reasons and provide the affected local authorities with an invitation to respond. Only then would the Secretary of State take a final decision to issue the direction."—[*Official Report, House of Lords,* 9 December 2013; Vol. 750, c. 625.]

When I raised that with the Minister during the evidence session, he was unable to indicate whether he intended to follow the same procedure, should Parliament grant him those powers of direction.

Kevin Brennan: Is not the point that—*[Interruption.]* I am sorry, I cannot take an intervention from the Minister for Schools during an intervention. Is not the point that the Minister using the orders in this way

[Kevin Brennan]

might be subject to judicial review, which would delay matters even further, at great expense and time? If there were a parliamentary process by which such rare decisions could be scrutinised, it would be much more efficient.

Steve McCabe: I cannot believe that any of us would want unreasonable delay or the incurring of unreasonable expense. We want to be sure that the powers secured by the Minister are fair, reasonable and adequate for the required purpose, but also subject to sufficient scrutiny, so that they are not open to misuse or abuse.

James Berry (Kingston and Surbiton) (Con): On the previous point, will the hon. Gentleman explain why parliamentary scrutiny would make anything quicker when the judicial review avenue would still be open, notwithstanding parliamentary scrutiny?

Steve McCabe: I believe that the hon. Gentleman is one of several legal practitioners on the Committee. In fact, I think that is also your background, Mr Chope. I might not be able to rely on all the civil service support that the Minister has, but I see that there will be no shortage of advice available to me today.

The hon. Member for Kingston and Surbiton is right to acknowledge that judicial review would still be an option. I am not surprised that he, as a lawyer, spotted that; I suppose it is in his DNA. However, my point was that it would be possible, through parliamentary scrutiny, to judge at a much earlier stage whether, on balance, Parliament thought this a fair and reasonable proposition. Presumably, an application for judicial review would take into account whether the decision that Parliament had arrived at could be judged as reasonable. I do not know if the hon. Gentleman wants to give me the benefit of his legal opinion, but that seems a reasonable conclusion for a layman to draw.

When I put it to the Minister during the evidence session that he might choose to follow the procedure recommended by his noble Friend when challenged on a similar point, the Minister relied on telling us that it would be a "transparent process". When he responds, will he say a little more about that transparent process? How does he envisage implementing the powers if Parliament decides to grant them?

Since the purpose of the legislation is to give the Minister a back-up that he has virtually no intention of using, I cannot see why he would resist such an obviously sensible back-up from the Opposition. The amendment merely adds a little parliamentary insurance to the proposals before us today.

Amendments 2, 3, 4 and 5 are consequential and there is no real purpose in my spending further time on them. Amendment 6 requires that the order made under subsection (1) should be subject to an affirmative resolution. Again, were the Committee to find in favour of what the Opposition are suggesting today, it would be logical to find in favour of amendment 6 as well.

The amendment is simple and straightforward. I am challenging the necessity for the Minister to have powers of direction. If it is essential that he has such enormous powers, I suggest that it would be much better for Parliament to be the final decision maker. Were we to find ourselves in that position, it would make sense for any order to be subject to an affirmative resolution.

Bill Esterson (Sefton Central) (Lab): It is a pleasure, as ever, to serve under your chairmanship, Mr Chope. I look forward to our deliberations over the next couple of weeks.

As my hon. Friend the Member for Birmingham, Selly Oak has said, the amendments raise the question why the powers are needed. Like him, I have every faith in the Minister. He has been an excellent Minister for Children and Families for several years. He brings to the role a great deal of expertise in both a professional and personal capacity. Everybody in the sector and in this Parliament would acknowledge his good will on this subject and on many others. I served with him on the Committee that considered the Children and Families Bill in the previous Parliament, which discussed many measures to improve the outcomes for looked-after children and to improve adoption, and we have discussed such measures on other occasions.

Like my hon. Friend, I am curious to know why the Minister feels it necessary to have the power in clause 13 to give directions, rather than to make orders as the amendment suggests. As we have heard in the evidence sessions and as we have seen in the written evidence, there is already very good practice around the country. For many years organisations have formed consortia that address the issues referred to in clause 13. Those consortia fulfil the functions referred to in new section 3ZA(1) and detailed in new section 3ZA(3)—the recruitment and assessment of persons as prospective adopters, the approval of prospective adopters, the crucial decisions about matching adopters with children placed for adoption, and, as we heard in evidence, the crucial support for adoptive families after placements have been made. The question that readily springs to mind from my hon. Friend's comments and the evidence that we heard on Tuesday is, if good practice is already in place, why do we need to go as far as to allow the Minister or his successors to give directions?

Steve McCabe: Does my hon. Friend think that the proposition could have the perverse effect of destabilising the arrangements that the Minister seeks to put in place? We could have voluntary arrangements working throughout the country and, if the Minister were to intervene and use his powers of direction in a particular situation, he might inadvertently send a signal to those arrangements that were working that says, "What you have isn't quite what he is looking for."

Bill Esterson: Some of those who gave oral evidence on Tuesday made a similar point. They were concerned that directing changes when existing arrangements were working well and to the benefit of children coming forward for placement could undermine those children's quality of placement and indeed their life chances. We therefore need to tread extremely carefully. I suspect that that explains why the Minister and others have said that they are aware of that danger and, therefore, they do not intend to use those provisions. If they do not intend to use them, why put them in the Bill in the first place?

We heard in evidence some of the concerns picked up by consortia throughout the country, which included the challenge of finding suitable prospective adopters for children who are not in the same geographical location, with all the potential difficulties that arise

from not being near to the birth family or others once an adoption placement is made and, as my hon. Friend the Member for Birmingham, Selly Oak said, the dangers of interrupting existing good practice. To return to his intervention, without wishing to risk a further intervention from the hon. Member for Kingston and Surbiton—

Steve McCabe: He might charge us.

Bill Esterson: As long as he does not charge me, I will be more than happy. Without risking a further intervention or wanting to challenge his legal expertise or that of the other lawyers in the room—

Graham Jones (Hyndburn) (Lab): Too many!

Bill Esterson: It is amazing how many lawyers find their way into this place, but it is probably time to move on from criticising the legal profession.

My hon. Friend the Member for Cardiff West made the important point that we should avoid delays by any means—let alone the risk of judicial review—given the importance of permanence, of the attachment of young people coming into the care system and of the need to make swift decisions about where a child should be placed and whether every effort should be made to keep them with their birth parents or within the extended family, or whether another form of permanence is right for them. Coming back to the Children and Families Act 2014, one thing that the Minister has rightly focused on in his efforts over the past few years is increasing the speed of decision making. It is important to ensure that a child has the certainty of permanence, and any delay is to be avoided as much as possible.

12 noon

Kevin Brennan: I hope that the Minister will accept the amendment, because it is sensible, but if he does not, should he not at the very least be prepared to replicate in his response Lord Nash's remarks in the other place, which my hon. Friend the Member for Birmingham, Selly Oak quoted? Should he ensure that there has been proper information, consultation and so on before he issues such draconian orders?

Bill Esterson: My hon. Friend is right. Every effort should be made to ensure that existing good arrangements are kept in place and are not disturbed, that any changes are an improvement on existing arrangements and in particular that good practice—there is much good practice around the country and internationally—is shared so far as is possible. Through that, we can keep in mind what I am sure everyone on the Committee and in the sector is committed to: doing the right thing for the children who come into the care system, whether that is adoption or other forms of permanence.

Edward Timpson: I think it is a stroke of luck that we once again find you, Mr Chope, chairing an important Bill on children and families, as you did in the previous Parliament. I am grateful to Opposition Members, particularly those who have spoken and who have put their names to amendments. The amendments in this group would require the Secretary of State to seek approval from both Houses of Parliament on any proposal for joint arrangements.

Before I get into the meat of the issue, I acknowledge the role that the hon. Member for Birmingham, Selly Oak played in the previous Parliament in scrutinising legislation on adoption and children in care. I am grateful for the constructive and helpful way in which he went about his business, which helped improve that legislation. I am sure that the way he approaches this Bill will have a similar effect.

It is true that I looked at the theory of Freakonomics and discovered that I had a less than 10% chance of finding myself in exactly this position again. Be that as it may, I intend to make the most of the opportunity that I have been afforded, starting with the Bill before us.

Before I speak to the amendments, I will briefly outline the thinking behind clause 13, because the hon. Member for Sefton Central has asked why it is needed. I will also outline the approach to implementing regionalisation in adoption. It is right to point out at the outset that the clause was in the Conservative manifesto, which the Government were elected on, and we intend to fulfil its contents. After much effort by myself and others, the creation of regional adoption agencies found its way into the final draft of the Bill.

Steve McCabe: I am sorry to intervene on the Minister so early, but will he clarify something? He says that the clause was in the Conservative manifesto, but presumably he means that it contained the intention to set up regional adoption agencies, rather than the intention to take the powers of direction specified in the clause.

Edward Timpson: I am sure that the hon. Gentleman has read the Conservative manifesto from cover to cover, so he will be familiar with the content on our intent to set up regional adoption agencies. The issue now is how we put them into practice and provide the underpinning to ensure that we fulfil that intent in this Parliament, which is why we are discussing the clause. The existing adoption system is highly fragmented, with around 180 agencies recruiting and matching adopters for only 5,000 children a year. Many agencies are operating on a very small scale, which, as well as being inefficient, leads to too much ineffective practice across the system.

The hon. Member for Sefton Central—I thank him for his kind words and continued interest and deep involvement on these issues—asked why we need the clause if there is already good practice in place. I remind him of what Carol Homden of Coram told the Committee on Tuesday:

> "There is huge variation in performance between different agencies across the country, which results in a postcode lottery for children. It is important that we bring together the agencies and organisations in the pursuit of excellence and best practice for all children."—[*Official Report, Education and Adoption Public Bill Committee,* 30 June 2015; c. 43, Q106.]

That is exactly what we are seeking to achieve through regional adoption agencies—to help address those issues.

Bill Esterson: I agree with the Minister—there is wide variation and we clearly need to improve quality. How often does he envisage applying the clause? Earlier, he

[Bill Esterson]

said that it was not his intention to use it very much at all, so will he give us a sense of how often he thinks he will use it?

Edward Timpson: I am sure that the hon. Gentleman will appreciate that our approach to this issue is to ensure that there is local development of regional adoption agencies, based on those working on the ground and their knowledge and experience of how best to meet the challenge. We do not want to presuppose the amount of intervention that may be required to ensure consistency across the country. If we were to do so, as Sir Martin Narey made clear in evidence to the Committee, there is the danger of a top-down approach that would not bring about the best organisation of the different agencies. If those agencies are organised in the right way, we know that that will improve the three issues that the clause addresses, namely recruitment, matching and support. I will discuss those issues later on in my remarks, so the hon. Gentleman will have to be patient and learn more about the work that is already going on with local authorities and voluntary adoption agencies so that they can provide solutions themselves rather than being dictated to from the centre.

I will address each of the three issues—matching, recruitment and support—in turn. There is still an average of eight months between placement order and match. That is far too long. Research on family finding and matching by Professor Elaine Farmer found that in 30% of the cases looked at the delay was associated with an unwillingness to seek a family outside a local authority's own group of approved adopters. Successful matching relies on looking at a wide range of potential adopters from the very beginning.

Despite impressive increases in the numbers of recruited adopters, there are still too few who are willing and able to adopt harder-to-place children. Recruitment from a wider geographical base than an individual local authority, taking account of the needs of children across a number of local authorities in a regional recruitment strategy, could lead to fewer children waiting.

At the moment, we know that the special support that many adopted children need is simply not available in their area because the number of adopted children is too low. Assessment and commissioning of specialist support on a regional scale will allow providers to expand their services and provide better value for money for the taxpayer, while also helping to ensure that all adoptive families receive a consistently high quality of assessment and provision.

To realise each of those improvements, we want to support local authorities and voluntary adoption agencies in delivering regional adoption agencies. We are absolutely committed to working closely with them to achieve just that. That is why we are providing £4.5 million of support in 2015-16; we wish to help early adopters of the regional adoption agency model accelerate their development and early implementation.

To answer the question put by the hon. Member for Sefton Central, we are confident that councils will step up and grasp the opportunity to improve their adoption services. As Sir Martin Narey said on Tuesday,

"I have yet to meet an adoption manager or director of children's services who does not think that this is something that could make things better."—[*Official Report, Education and Adoption Public Bill Committee,* 30 June 2015; c. 44, Q107.]

However, we recognise that we cannot be totally sure that all local authorities will voluntarily move to regional adoption agencies. That is why we introduced the clause, which gives the Secretary of State the power to direct local authorities to have certain adoption functions carried out on their behalf.

Steve McCabe: I am curious to know what the Minister's last remark is based on. Which local authorities have suggested that they do not want to co-operate with his plans? Does he have evidence from Ofsted inspections or other sources that a number of local authorities are determined to thwart his plans? Is that the basis on which he is seeking these powers?

Edward Timpson: This is not the forum for naming individual local authorities that wish to co-operate or otherwise. To do so would damage the negotiations that are taking place. It is clear that where arrangements have been made to bring together local authorities' adoption services and voluntary adoption agencies, there have been different levels of interest, intent and commitment. That is why we cannot be totally sure, despite the strong, positive signals from the sector and the work of the Adoption Leadership Board, that every one of the 152 local authorities will be involved in some way, shape or form within our timeframe for regional adoption agencies to be up and running across the country.

I can see what Opposition Members are driving at with their amendments, and I sympathise with their desire to ensure that decisions, particularly ones of this importance, are transparent and scrutinised properly. However, I am concerned about the suggestion that all proposals for joint arrangements should be approved by both Houses of Parliament. Before I explain why, I assure hon. Members that our decision making on this matter will be open, the process will be fair and we will involve all interested parties in the right way. The hon. Members for Birmingham, Selly Oak and for Cardiff West both made a challenge about transparency and scrutiny.

The Secretary of State's decision to use the power will be made following extensive discussions with all the agencies involved, and it will be proportionate and reasonable. Agencies will have ample opportunity to design their own arrangements before any directions are considered. That is one of the reasons why we made it clear in the clause that local authorities could, through a direction, determine the shape of their regional adoption agency.

The Secretary of State does not need the permission of Parliament when she exercises her powers of intervention in respect of failure in local authorities' children's social care services. When the Doncaster trust and the Slough trust were created recently, the whole of those authorities' children's services were moved to a trust model without the permission of Parliament being sought in the way that the amendments set out. Those powers would sit legally uncomfortably with the group of amendments, should they be accepted.

A more appropriate and proportionate approach than returning to Parliament is to work closely with all those involved—the individual local authority and voluntary agencies, the Adoption Leadership Board and the regional

adoption boards. This collaborative way of doing things is crucial, and it is a core tenet of our approach. The sector has the expertise and the local knowledge required to inform the decision.

I will reflect on the suggestion made by the hon. Member for Birmingham, Selly Oak that we should be required to send a letter to any local authorities we are minded to direct with an invitation to respond. I will come back to him on Report with my decision.

Kevin Brennan: I am grateful for the Minister's remarks, and I am sure that my hon. Friend the Member for Birmingham, Selly Oak is, too. A letter would be a useful addition to what is on offer. The Minister said that our proposal would sit legally uncomfortably, but is it not different to the Secretary of State's other powers, to which the Minister referred? Those powers are used where children are genuinely at risk. Does he envisage that he will introduce such arrangements because children are at risk, and therefore, in an emergency situation, or because it would be a better administrative arrangement? That would make a difference to the way in which the power could be exercised by the Secretary of State.

12.15 pm

Edward Timpson: Of course, a failing local authority could be directed to arrange for another agency to carry out all its children's services functions on its behalf even if its adoption function was not inadequate. The adoption services would still be moved as part of such a direction, so I do not see the differentiation. It is an interesting point, which we need to think through. In terms of the proportionality of what we are doing in the Bill, given the seriousness of removing all of a local authority's children's services functions and giving them to another body, if it is not the case with the latter, it should not be the case with the former. However, I have made it clear that the process needs to be very transparent and I am willing to reflect on some of the issues that the hon. Member for Birmingham, Selly Oak has raised. In view of that, I hope that he feels reassured enough to withdraw the amendment.

Steve McCabe: I am grateful for the Minister's comments, but we are none the wiser now as to how often he might be tempted to use the powers. I hoped to clarify that in discussing the amendment. I notice that he stressed in his comments that matching was a key element, and he drew on the evidence given to the Committee by the chief executive of the Thomas Coram Foundation. However, in giving evidence, Andy Leary-May from Adoption Link said of the joint arrangements that matching was not the biggest issue, and that quite a lot of progress was being made. He said that the biggest issue was support, which we will come to later in the clause and which the Government seem to have overlooked in the construction of the proposals.

The other thing that has become apparent this morning is that the Minister cannot—or will not—say whether there is evidence of recalcitrant local authorities out there. We do not know why he has been advised to put the clause and powers into the Bill. He is unable to say. I cannot believe that he woke up one morning and, after reading through the Conservative manifesto again, thought, "Hey, that's a good idea! I'll just insert this into a Bill." I assume that he has some basis for the proposals, but we have no idea of the scale of the problem. So my earlier point was that the power of direction will apply to the entire sector and be subject to no further parliamentary scrutiny. This is not a case of not any proposals, but relates only to proposals that are ordered by the Minister. He says that if we were to accept the amendment, we would be intervening on any proposals, but proposals that happen voluntarily are not affected. The amendment would affect only proposals that the Minister wants to order.

The Minister's colleague might want to assist, but I was not persuaded by the parallel drawn by the Minister with the powers already available to the Secretary of State. I am more inclined to share the view of my hon. Friend the Member for Cardiff West about a power that is normally used to intervene in a failing authority or agency. It is a power that is exercised when there is evidence that something is going wrong, but the intention of this measure is to give the Minister the power to intervene if he feels that he is not getting his own way. That is what it is about—consent, but only on his terms. If authorities come up with valid reasons for not wanting to go down the route that the Minister indicates, they will be subject to his powers of direction and there will be no further scrutiny. I am not sure that that is the right way to proceed.

I said at the outset that I have a great deal of respect and admiration for the Minister. I am grateful to him for his offer to reflect on our suggestion of a letter of intent. It is a bit of a crumb, but one is always grateful. Having listened to the Minister and the concerns that those in the sector and hon. Members have expressed and having looked at the extent of the powers, I am not persuaded by what the Minister says today. The decision is a fundamental one; it is about whether Parliament scrutinises powers and has the final say or whether powers are subject to the whim of a Minister, which is not what we are looking for. I would like to push the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

Brennan, Kevin	Kyle, Peter
Esterson, Bill	Lewell-Buck, Mrs Emma
Haigh, Louise	
Jones, Graham	McCabe, Steve

NOES

Berry, James	James, Margot
Donelan, Michelle	Nokes, Caroline
Drummond, Mrs Flick	Timpson, Edward
Fernandes, Suella	Tomlinson, Michael
Gibb, Mr Nick	Trevelyan, Mrs Anne-Marie

Question accordingly negatived.

Steve McCabe: I beg to move amendment 7, in clause 13, page 8, line 26, at end insert

'( ) Where a direction under subsection (1) is to be given the Secretary of State must first publish a statement setting out the criteria against which he has selected the body or bodies who will carry out the functions in the direction."

This amendment would require the Secretary of State to disclose the criteria against which the body or bodies taking on adoption functions have been selected.

The Chair: With this it will be convenient to discuss amendment 13, in clause 13, page 8, line 41, at end insert

'( ) Where a direction under subsection (1) specifies that the functions are to be carried out by more than one agency, the specified bodies offered an opportunity to participate must include at least one voluntary organisation acting as an adoption society as defined by the Adoption Act 1976."

This amendment aims to ensure that smaller voluntary adoption agencies, specialising in finding families for harder-to-place children, are not excluded from or by the new arrangements.

Steve McCabe: I should stress at the outset that amendment 7 is a probing amendment designed to help the Committee and the sector understand more about the Minister's thoughts on the kinds of regional arrangements most likely to speed up adoption and increase the number of successful adoption placements for children. During the evidence session, we heard different views expressed. Sir Martin Narey, to whom we referred earlier, told us that he was attracted to the Minister's ideas because, as the Minister indicated, he felt that the Minister did not have a single view of what would contribute to a successful regional model—I think he meant "singular view"; "not a single view" could be interpreted to mean something else. The point was that the Minister did not have a singular view on what constituted a successful model. Sir Martin appeared to indicate that different models might emerge according to region and circumstance, which sounds reasonable.

Carol Homden, chief executive of the Thomas Coram Foundation for Children, told us about the benefits of the models that it uses, with outstanding success, in places such as Kent and Cambridgeshire.

Mrs Emma Lewell-Buck (South Shields) (Lab): Does my hon. Friend agree that we need to be careful not to assume that regionalisation in itself will improve services? As we heard in evidence on Tuesday from the Consortium of Voluntary Adoption Agencies and the chief executive of the Thomas Coram Foundation, bringing together a group of poorly performing local authorities and agencies will not improve services, but make them worse.

Steve McCabe: I am grateful to my hon. Friend for that point. The Department's own paper is called "Regionalising adoption". I was struck by the fact that some witnesses seemed to indicate that the key element of a consortium is the component parts and what they can all bring to the table. To be fair, the section on voluntary agencies in the document makes that point. The assumption that we should simply organise matters on a geographic basis has obvious weaknesses.

To return to my point, we heard different things from witnesses. We heard about the wonderful work that the Thomas Coram Foundation does, but of course that, as the Minister well knows, is almost unique as a charity. It is cash rich; it has tremendous reserves, wonderful fundraisers and a tremendous level of volunteer support. I am full of admiration for its work, but unfortunately not many organisations in this field are like the Thomas Coram Foundation.

I would like to know what the Minister would be trying to achieve. Let us forget the earlier argument about imposition and powers of direction. I would like to know what the Minister is going to try to achieve by consensus and what he will seek to impose if he cannot achieve it by consensus. He must have some idea of the criteria and the priorities that would influence his judgment if he were, under new section 3ZA(2), to

"specify who is to carry out the functions, or…require…authorities to determine who is to carry out the functions."

I imagine that that would occur if previous discussions had arrived at a stalemate due to a lack of agreement or a general reluctance to commit. In such circumstances, the Minister, I presume, would feel that the time had come to give a lead. It would be useful to know what the nature of that lead would be. Would it be influenced by size and geography? Would it be influenced by the potential number of adoptions that his new arrangements might accomplish? Would he be influenced by the need to retain particular staff with obvious expertise in areas of specialism? Would he want to specify the inclusion of particular voluntary agencies?

I do not expect the Minister to set down a blueprint today, but the idea that Parliament should legislate to give a Minister powers without any idea of the likely shape of the end product or the factors taken into consideration when trying to achieve it is, frankly, ludicrous. We are being asked to approve powers to create an entity that can take any shape or form on the whim of the Minister or those able to exert the most influence on him.

I was particularly struck by the evidence from Carol Homden of the Thomas Coram Foundation when she emphasised "excellence for children". There must be some models that in the Minister's experience are more likely than others to achieve that excellence. I also noticed that she made reference to the benefits of a clear tracking system and concurrent planning. Would they have to be essential features of any consortium or grouping ordered by the Minister to carry out those adoption functions? *[Interruption.]*

12.30 pm

Kevin Brennan: On a point of order, Mr Chope, it is quite hard to follow proceedings when the Minister for Schools and the Whip are having a private conversation. If it is necessary, could they do it outside the Committee room?

The Chair: That is a good point. Committee proceedings should not be disturbed by people being noisy. We are not prohibiting people from having discussions but I would prefer long discussions to take place outside of the Committee Room.

Steve McCabe: Annie Crombie, the chair of the Consortium of Voluntary Adoption Agencies—a woman with a wealth of experience in the field and who has previously worked closely with the Government on adoption matters—emphasised quality and specialisms as the key factors in any new arrangements. Would the Minister require those in any construction developed to carry out adoption functions, and how would he indicate or specify such a thing?

During the evidence session, Anna Sharkey, the chief executive of Adoption Focus, expressed her concerns, like my hon. Friend the Member for Cardiff West, that the size and criteria for the new arrangements needed to

be considered carefully. I press the Minister on what, in his mind, he is trying to design. What does success look like and how can he be sure that he has got this right?

I noticed that, during the evidence session, the Minister asked about the risk of being overly prescriptive and he has referred to Sir Martin Narey's comments on that. The chief executive of Coram indicated that obviously there would be a problem if we devoted too much energy to trying to design the perfect arrangements in advance. She was worried that that may divert people from the key task of successfully placing children. I absolutely understand those concerns and I understand the Minister's caution. I stress again that I support him in his wish to secure more successful adoptions and prevent unnecessary delays that could well leave children languishing in the care system when they need a fresh start and a chance to rebuild their lives.

Alison O'Sullivan, the president of the Association of Directors of Children's Services, pointed out that, while children should not languish in the system, we should not automatically assume that waiting means languishing. It is not necessarily a bad thing that children are waiting because the right family placement must be found. There is a slight problem with the notion of time. Of course, we do not want unnecessary delays—I know, from my experience in a previous life, how damaging that can be—but if the existing care arrangements are good and well managed, waiting need not necessarily be bad.

For example, it would be perfectly sensible to wait to find the right placement when trying to get siblings adopted together or to place a child with particular difficulties, disabilities or special needs. Mrs O'Sullivan reminded us that while children are waiting, our duty remains the same. We have to ensure that those arrangements are the highest quality care that we are capable of providing.

Carol Homden reminded us of the store she places in concurrent planning. It is not necessary for social workers to assume that they will go down a single planning track, to the exclusion of all else. It is perfectly possible for a department to adopt a set of planning arrangements so that it can say, "This outcome is desirable or worth trying to achieve." That will be most obvious when considering the possibility of a planned return home, which may be worth trying to achieve, but it makes perfect sense simultaneously to plan for adoption because a planned return home might not happen.

What exactly is the governing factor in the constructions and consortium arrangements that the Minister has in mind? Many of the people to whom I have spoken have commented on the fact that this legislation is particularly narrow. It is as if we are not paying sufficient attention to other care situations. We find ourselves thinking that the key factor is only to think about adoption and the speed of adoption in order to convince ourselves that if adoption is not taking place, waiting is intrinsically bad.

Louise Haigh (Sheffield, Heeley) (Lab): My hon. Friend makes an important point. The Bill makes it seem that the Government feel that adoption is the only solution for children in care. Figures from the Fostering Network show that, of the 65,000 children and young people in care, only 4,000 want or need to be adopted. Adoption is not an appropriate solution for the vast majority of children in care, who might be in care only temporarily. He is right on that point.

Steve McCabe: When only about 5% of children in the care system at any given point are likely to be adopted, it is dangerous if we become too focused on adoption to the exclusion of all else. The difficulties are obvious.

Returning to the notion of waiting, we need to be concerned about the quality of the care arrangement or placement that a child is experiencing now. I fear the unintended risk of saying, "We are pursuing adoption, and the focus must be on making that happen." That is almost like being in a waiting room or a transport lounge, and the danger is that we will not place sufficient attention or focus on the quality of the care that the child is currently experiencing, which would be a dereliction of duty.

Bill Esterson: I am glad that my hon. Friend has returned to the issue of getting the right form of permanence for children in care. We heard in both written and oral evidence that not only should we be considering all forms of permanence but that there should be a move towards a less fixed form of adoption and fostering, perhaps with less distinction between the two. Some of that was partly discussed with reference to opportunities such as concurrent planning and fostering to adopt. What is his view on those ideas?

Steve McCabe: The amendment relates to the part of the Bill that asks the Minister about the arrangements that he proposes. I am inclined to the view that we should think of permanence as a continuum. As I recall, Mr Elvin in his evidence suggested there was a danger of elevating adoption to a superior role, perhaps with the consequence that other models were devalued. I would share that anxiety.

I said at the outset that this is a probing amendment; I have no desire to press it to a vote. I hope the Minister recognises that it would be helpful to hear more from him of what he thinks will constitute successful regional adoption arrangements. As I said earlier, I recognise his desire for maximum flexibility; I can see why he does not want to be pinned down to a blueprint. Could he say what, if anything, he rules out? What are the prerequisites for success, in his judgment? It would help if he could indicate the things that are uppermost in his mind.

Mrs Flick Drummond (Portsmouth South) (Con): We heard clearly from Adoption Link that there was not much in this from the adopter's point of view. Does the hon. Gentleman agree that having regional organisations would be better? At the moment, variations in agency policy with different criteria are creating problems. Surely having regional organisations would give much more balanced criteria and enable more adopters to understand the criteria being put forward.

Steve McCabe: I am grateful to the hon. Lady for that intervention. Let me clear: I am not saying that regional arrangements are bad. I suspect there is a degree of consent across the Committee that the direction

[Steve McCabe]

of travel is right. What I am querying—and is central to the point that she makes—is what are successful regional arrangements or consortia? What do they look like? What are the factors by which we should judge them? She rightly stresses the point made by Mr Leary-May of Adoption Link, that adopters often feel that they, of all people, do not have enough say or consideration in existing arrangements. If implicit in the hon. Lady's intervention is the suggestion that new regional arrangements could take into account that adopters need to be given further consideration and support and more involvement, then she and I are on the same wavelength. I repeat that I am not opposed to regional arrangements; I think the Minister is on the right track. I want to ensure that his end product meets his aspirations. That is the purpose of this debate.

Peter Kyle (Hove) (Lab): I note the cross-party consensus that devolution and regional powers are good because they take the necessary powers much closer to the young people affected by the Bill. We must also remember that the key thing we are trying to achieve is the relationship between the young people being adopted and the agencies. We must ensure that we do not focus so much on devolution to regions that we forget the relationship between adoption agencies, the young people being adopted and the local authorities. Is that not the point of amendment 13?

Steve McCabe: I recall that one of the last witnesses of the day made an apt point about regional arrangements and consortia. These arrangements must have sufficient geographic context for it to be possible for adopters to get in touch with the various parties. He warned against the dangers of a structure in which that simple point was overlooked. In that respect the hon. Gentleman is right.

As to amendment 13, which is grouped with amendment 7, I am, as I have said several times, conscious of the Minister's wish not to be too prescriptive in the design of the arrangements that he envisages; and I am extremely conscious that it is not possible to insist on including a voluntary adoption agency in every set of arrangements that might emerge. I remember working many years ago for an organisation that adopted such an approach, and needless to say it got into considerable difficulty in trying to put it into practice; it is not possible.

12.45 pm

The purpose of amendment 13 is clear, however: it is to do all that is reasonable to ensure that smaller voluntary agencies—those with the real expertise—will not be excluded from participation in the design or operation of the arrangements.

We heard from Mr Thornbery of Adoption UK that one consequence of the reorganisation in Wales was that voluntary agencies were squeezed out. I appreciate that the Minister has been at pains to tell us that he does not intend to follow the model adopted in Wales exactly; that was a centralised reorganisation taking 22 local districts, I think, and forcing them into five constructs. I appreciate that that is not the road that the Minister says he plans to travel. However, we heard that the consequence in Wales was that the voluntary agencies were squeezed out.

Mr Thornbery reiterated his concern that the Bill does not have anything in it that could prevent such a course from being taken here. He felt that a lack of such safeguards could amount to a considerable setback. In fact, I think that he said that one of his concerns was that the Bill does not address the concerns of voluntary adoption agencies.

Mr Elvin told us that he was concerned about the way contracts might be drawn up, and the possible impact on the voluntary sector. He drew on his experience of fostering contracts, and pointed out that an agency might think it had secured a sensible and viable contract, but that if six months later the local authority or whoever was responsible for the arrangements in the case were to try to squeeze the costs down, that attempt to change the contractual arrangements would destabilise the whole structure.

Anna Sharkey pointed out that local authorities must of course rely heavily on the voluntary sector to find families for those children who are often described as harder to place. The Minister said in evidence to the Committee that he had spoken to a conference of the Consortium of Voluntary Adoption Agencies, and wanted to make it clear that they are an essential part of the solution. He pointed out that on pages 12 and 13 of the Department for Education paper "Regionalising adoption", there is a whole section dedicated to extolling the virtues of voluntary adoption agencies and offering some examples of how they might work within a regional partnership. However, it is of course a DFE paper explaining Government thinking on regionalising adoption, not guidance, statutory guidance or law, so there are no guarantees that the Government's best intentions will come to fruition.

It would be better if the Minister indicated that he will take steps to ensure that voluntary agencies are offered full opportunities to participate from the outset and are not be sidelined in early discussions because local authorities argue that they may have a subsequent contractual interest. I understand that there is some anecdotal evidence that one or two local authorities have already taken that approach. We need to know that voluntary agencies will not be added to a set of already-established arrangements as an afterthought; they must be an integral part of the collaboration.

"Regionalising adoption" refers to

"bringing together the best of the voluntary and statutory sectors."

The Minister could achieve that by accepting our amendment, but I suspect that he might be reluctant to do so. I cannot imagine why, but there we have it. None the less, if he cannot do so, will he set out for us and for the voluntary sector what steps he intends to take to ensure that the voluntary sector's skill, knowledge and expertise are utilised to their full extent in any regional adoption agencies?

Bill Esterson: I want to pick up on some of the points made about the smaller agencies' concerns about the establishment of regional agencies. The quality of work often found in the smaller agencies is incredibly important. I come to this issue having experienced the value of a small adoption agency that specialised, at the time, in

placing hard-to-place children; my wife and I adopted two siblings. The expertise, advice, guidance and support we received were all exceptionally good, and some of that was due to the fact that we used a smaller agency that could concentrate its time, energies and expertise.

Its inevitable problem, of course, was that funding was always a struggle. It ended up becoming part of a much larger organisation, and I am afraid that much of that expertise is no longer with us. I know that there are other examples; my hon. Friend the Member for Birmingham, Selly Oak mentioned the experience in Wales. We should work hard to ensure that in our attempts to improve the situation, we do not end up making matters worse.

My hon. Friend the Member for Birmingham, Selly Oak said that delay can sometimes be the right thing for siblings or children with complex needs—provided, it is fair to say, that they are in a good placement. Although I do not disagree with that, I think there is always a balance to be struck between delay in order to get the right decision, and ensuring that that delay does not continue longer than necessary and that it is not bound up in lack of expertise and opportunity to find the best permanent placement for children, particularly those who find it difficult to be placed.

I want to pick up on some of the evidence that we heard on Tuesday. On the point about voluntary agencies and smaller agencies, Hugh Thornbery told us that,

"there is no necessary direct correlation between quality and size, and it would be tragic if we lost some of the real expertise that exists within some of the smaller voluntary adoption agencies, which focus particularly on trying to find the right family for some of the hardest-to-place children."—[*Official Report, Education and Adoption Public Bill Committee,* 30 June 2015; c. 53, Q19.]

His expertise, experience and credibility are such that we should take that on board. When the Minister replies to the debate, I, like my hon. Friend the Member for Birmingham, Selly Oak, will be keen to hear how he plans to make sure that such specialist knowledge and expertise are not lost because smaller agencies become less viable in the new structure. We do not want a repetition of the experience in Wales where smaller agencies were pushed out by local authorities. What assessment have the Government made of the potential impact of voluntary agencies becoming unviable and being unable to serve children's best interests? Such questions need to be answered.

The debate on amendment 13 is an appropriate place to look at the suitability of the adoption system for finding placements for particularly vulnerable children, such as those with disabilities, older children, sibling groups and children from black, Asian and minority ethnic backgrounds. I hope that the Minister can tell us more about how his proposals will help with the placement of hard-to-place children. As Andy Leary-May told us on Tuesday,

"unless we address the problems that exist…the children with the most complex needs may wait longer to find a suitable placement."—[*Official Report, Education and Adoption Public Bill Committee,* 30 June 2015; c. 56, Q23.]

Louise Haigh: My hon. Friend is making an excellent speech. Does he agree that a key performance indicator in this area should be not simply how long it takes to place children, but the breakdown in adoption places? Voluntary agencies are incredibly successful in that regard, with only 3% of adoptions breaking down.

Bill Esterson: That is an excellent point. Support is needed to make sure that those of us who adopt children overcome the very difficult challenges that we may face. Of course, children who are adopted have often had the most difficult start in life, which is why they have ended up being placed for adoption, and the challenges of dealing with the emotional difficulties and other background issues that those children present when they come to live with a new family are immense. It is incredibly important to ensure that support services are in place, albeit the level of breakdown overall is relatively small. I am glad that my hon. Friend raised that point, and I hope that the Minister will address the concerns expressed by my hon. Friend the Member for Birmingham, Selly Oak, some of which I have touched on in my remarks, not least about children who are sometimes described as harder to place—although I feel that that is an unfair description of children who, through no fault of their own, have ended up in a situation where they need the support of a new family.

Ordered, That the debate be now adjourned.—*(Margot James.)*

12.59 pm

Adjourned till this day at Two o'clock.