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Public Bill Committee

EDUCATION AND ADOPTION BILL

Fifth Sitting

Tuesday 7 July 2015

(Morning)

CONTENTS

CLAUSE 2 under consideration when the Committee adjourned till this day at Two o'clock.

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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

Tuesday 7 July 2015

(Morning)

[Sir Alan Meale *in the Chair*]

Education and Adoption Bill

9.25 am

The Chair: Before we start, I remind Members that the sitting will run to 11.25 when we will rise for Question Time. We will resume at 2 pm. Members have requested to dispense with their jackets, and I have agreed to that.

Clause 2

Performance standards and safety warning notices

Kevin Brennan (Cardiff West) (Lab): I beg to move amendment 14, in clause 2, page 2, line 9, after "period of compliance" insert ", which shall not be less than 15 working days,"

This amendment sets a minimum period—15 working days—within which the governing body must respond to a warning notice before the schools becomes eligible for intervention.

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

Amendment 15, in clause 2, page 2, line 19, at end insert—

"(ba) in subsection (4) for paragraph (b) substitute—

"(b) the reasonable action which they require the governing body to take in order to remedy those matters within the compliance period""

This amendment ensures that any actions which the governing body is required to take can reasonably be undertaken within the compliance period.

Amendment 21, in clause 2, page 3, leave out line 10

This amendment restores the definition of "working day" to section 60.

Kevin Brennan: I understand that we will have the pleasure of your company all day today, Sir Alan. We are very happy to serve under your experienced chairmanship.

This morning we continue the process of steadily reversing towards the beginning of the Bill, having disposed of clause 13 last Thursday. We are now considering clause 2. Clause 13 was about the adoption part of the Bill. We now move to the element that deals with schools. As we consider amendments 14, 15 and 21, I want to observe what the House of Lords Constitution Committee said last week about the Childcare Bill that is progressing through Parliament. I have a copy of the Constitution Committee's report on that measure, and it is apposite to the amendments to the Education and Adoption Bill. At first I thought the report had nothing to say about the Childcare Bill, because when we open it, the pages are blank, but if we look carefully, on the first page there are three short paragraphs about it. These words are relevant to the Education and Adoption Bill and the amendments:

"In our last report, published in June 2015, we drew attention to a concerning trend—a tendency by the Government to introduce vaguely worded legislation that leaves much to the discretion of ministers."

That might describe the provisions that we are discussing today. It goes on to describe the Childcare Bill as

"a particularly egregious example of this development."

That is why that Bill is now in a little trouble in the other place.

The Minister for Schools (Mr Nick Gibb): This Bill is very specific. The hon. Gentleman will have had details of the regulations that we intend to table on the definition of "coasting" schools. The clauses that we will debate are very specific and do not leave much discretion to Ministers. As for the definition of "coasting", detailed regulations will be scrutinised by a Committee of this House.

Kevin Brennan: I am grateful to the Minister for his intervention. I understand why he felt the need to put that on the record. When this Bill makes its short journey through Central Lobby to the other end of the building, I am sure their lordships' Constitution Committee will look carefully at our deliberations and at the content and detail of this Bill. They will also note the way in which we have been conducting our business here.

We are on clause 2, having completed clause 13. Detailed regulations were not available in time for Second Reading or the beginning of Committee stage but were published at 10 pm on the evening before evidence sessions began. Our witnesses did not have the opportunity to look at the draft regulations before giving evidence, other than the one who stayed up for hours in the night to study and attempt to make sense of them. Those witnesses might have views about the constitutional propriety and legislative sense of doing business in that way, but we shall have to wait and see.

The amendments look at the period within which a governing body must issue warning notices, with the purpose of probing Ministers' intentions. A warning notice is currently issued by a local authority to tell a governing body that it must take specific action, or further intervention will occur. The Bill provides that the Secretary of State can issue a warning notice to a maintained school directly. That notice will give the governing body roughly three weeks—15 working days, in effect—to take the action specified. The Bill does not set a time limit, and Ministers' intentions are therefore not entirely clear. I hope that the Minister will be able to clear that up in his response to the amendments.

For example, Ministers might envisage much more significant actions being required during the period of a warning notice. If so, warning notices might be in place for much longer than currently envisaged. If that is the Government's intention, will the Schools Minister elucidate the maximum time he envisages a warning notice lasting? We would like to have a reasonable idea of what period we are talking about. Is it four weeks, rather than the current three weeks? Is it six weeks, 12 weeks, six months, a year or years? As the Bill is drafted, we simply do not know what Ministers' intentions are.

Can the Minister give some examples of why it might be necessary to have lengthier warning notices than are currently issued? If that is Ministers' intention, why is it necessary?

On the other hand, it is possible that the opposite is true. With the Bill effectively removing the right to object or appeal against warning notices, we want to be sure that the warning notice system is used fairly and transparently. In other words, do Ministers envisage a shorter period than 15 working days for a warning notice? Again, as the Bill is drafted, we do not know.

To probe that, amendment 14 proposes that the minimum period of compliance be restored, so that we can at least know Ministers' intentions. If a longer period is appropriate, we would want the flexibility to achieve it, provided that we have the clarity I mentioned from Ministers about their intentions. If governing bodies are to engage seriously with the process of warning notices, they need assurance that they have the appropriate amount of time to do so properly.

There is only so much a school can do in 15 working days. Simple changes of rules or procedures could be possible within that period, but developing a complex action plan takes time, and implementing it takes even longer, as does negotiating with potential partners. It cannot be done quickly. That is why the requirements of a warning notice need to be reasonable, though no doubt Ministers always believe that they are reasonable in their actions. That is why amendment 15 would introduce reasonableness.

An example of a warning notice from Ministers is that sent by Lord Nash to the Gloucester academy on 16 December 2013. Hon. Members might be surprised that Ministers occasionally send warning notices to academies. Ministers usually say that academies are the answer to everything and that academising schools will solve all the problems of the education system. Surprise, surprise, it turns out that academies are also schools and just as likely to fall into problems as any other school, because they are institutions made up of human beings. They are not infallible and changing the name on the front of the institution from school to academy does not guarantee that they will not have to be subject to an intervention.

Peter Kyle (Hove) (Lab): My hon. Friend's point about academisation being the only solution was also raised in the evidence session. I point him to the response from Sir Daniel to my question. I asked,

"And you think that academisation is the only response to coasting…?

Sir Daniel Moynihan: No".—[*Official Report, Education and Adoption Public Bill Committee,* 30 June 2015; c. 14, Q26.]

He then gave a list of other measures that can tackle coasting. Does my hon. Friend think that that relates to his point?

Kevin Brennan: It does, although we will deal with that in more detail when we get to the part of the Bill that relates to coasting schools. I am not surprised that my hon. Friend is anxious to reach that element since it is clause 1 and he might reasonably expect that by now we would have reached it. We are in a curious time warp, which the Government introduced, whereby we have travelled forward in time to clause 13, are now back to clause 2, will gradually move through clauses 2 to 12 and eventually re-enter the time machine to go back to clause 1 next week.

Mr Gibb: That is to give the hon. Gentleman time to scrutinise the regulations that we tabled last week.

Kevin Brennan: The Minister is keen on science and I am sure his purpose is to remind the Committee that time is relative. That is why we are enjoying time being shifted around by the Minister rather like in "Harry Potter and the Prisoner of Azkaban" where a time-turner is given to Hermione so that she can attend more than one lesson at once. That is another proposal that the Minister might possibly be considering.

Before we get too confused about where we are, I referred to the intervention that Lord Nash issued to an academy, because currently Ministers can issue warning notices to academies. The clause would give them the ability to issue warning notices to maintained schools directly.

Here is that example of the warning notice. The school in question, the Gloucester academy, had one month to respond to it. The Committee might think that sounds rather generous, compared with the 15 working days that I mentioned earlier as the period in the amendment and in current legislation. In fairness, the Minister gave that academy one month, although that included Christmas and new year. Perhaps it was not quite as generous as it first sounded.

Under that warning notice the requirements were:

"Implementing the necessary strategies to (1) improve the quality of teaching and learning, including the quality of feedback and assessment and the use of teaching spaces in the new building, (2) improve the attitudes of a significant proportion of students towards their learning, (3) improve the knowledge of faculty leaders about appropriate use of additional funding to support those relevant groups of students, (4) improve staff morale".

These could all be said to be reasonable things to expect a school to undertake under a warning notice. I have no objection to any of those proposals—they all seem eminently sensible—but a new timetable also had to be written by the beginning of the January term. Anybody who has, like myself, been involved in timetabling —albeit my experience was in an analogue age—knows how complicated that is. It is not just a case of drawing numbers on squares on a board in the senior staff room; it involves having the right staff for the right lessons at the right time and not clashing with anybody else. The timetable had to be written by the beginning of the January term and specialist teachers found for every class in every year group, all within the period of the warning notice.

Nowhere does it say what level of progress would need to be made within the one-month compliance period. There is no indication of the expectation of the level of progress that could reasonably be made within this period. Neither does the warning notice offer, as one might expect that it would, any support or advice as to how all these things might be achieved in a school that, we must assume, already lacks capacity to improve itself; otherwise, it would already have been in a position to have done so. It seems to me that it is necessary for a warning notice to set reasonable targets, as we have set out in amendment 15. By requiring actions that are reasonable, schools can be given targets that are precise and genuinely achievable within the compliance period.

Bill Esterson (Sefton Central) (Lab): Does my hon. Friend share my concern that the type of warning notice that Lord Nash used for an academy, as he just described, with the items he listed and the ability to deliver on them within the timeframe he gave, might be what the Government have in mind for maintained schools? How would the 15 days that my hon. Friend is envisaging enable these things to happen? Things such as staff morale take an awful lot longer than 15 days, as he said. How will his amendment help to deliver if this is the kind of warning notice the Government have in mind?

Kevin Brennan: As I explained at the outset, my amendment is an attempt to probe the Minister's thinking by putting the 15 days back in, although I acknowledge that it can take considerably longer than 15 days for the sorts of actions outlined in a warning notice to take place. The Minister may be able to give more detail about the period he envisages, whether he thinks the interventions should be reasonable and whether a reasonable length of time should be allowed for making the interventions.

9.45 am

My hon. Friend raises a good point. It is quite difficult to know exactly what Ministers' intentions are in relation to maintained schools, because they took some powers back in 2011. I will return to this later, but it is relevant to the intervention and to these amendments. As the Schools Minister will recall, they took some powers when he and I were similarly jousting over these sorts of things back in 2011. He took some powers at that time in the 2011 Act to amend the Education and Inspections Act 2006, so that the Secretary of State would be able to direct a local authority to issue a warning notice. That power has already been taken in 2011 for the Secretary of State to be able to direct at a local level for a warning notice to be issued. So we already have some power in this area—not only in relation to academies.

How the Government have used that power since 2011, when they took this additional power, ought to be a good indication for us of what their intentions are now in relation to the Secretary of State being able to issue a warning notice directly themselves, which is what is envisaged in the clause.

It ought to give us a clue as to why Ministers think it is so important, so crucial, so pressing, so urgent a matter that they need to write this down in primary legislation. Goodness knows, they do not think many things ought to be written down directly on the face of a Bill these days, as we have seen from the report I read out earlier from the House of Lords Constitution Committee. Normally, they would much prefer to take Henry VIII powers and so on in order to achieve their goals, but in this instance they think it is absolutely so pressing that they need to write on the face of the Bill that the Secretary of State should be able directly to issue warning notices.

Mr Gibb: I am slightly baffled as to which the hon. Member would prefer. Would he prefer more vaguely drafted legislation or does he prefer what we are doing in this Bill, which is very specific legislation regarding the powers of regional schools commissioners?

Kevin Brennan: I suspect that the Minister might not be surprised if I say I beg to differ about exactly how precise this Bill is in what it does. I suspect that will form some part of our exchanges in the next few days.

Returning to the power that was taken in 2011 by the Secretary of State, ably represented in Committee at that time, as now, by his Schools Minister, presumably there has been a pressing need which explains why that power is no longer sufficient and why the Secretary of State now needs to take the power directly to issue the warning notices. If there was something terribly wrong about the way that local authorities work—issuing warning notices or failing to issue warning notices—Ministers would presumably have had to use the power that they took in the 2011 Act a lot; perhaps to issue dozens, maybe hundreds of warning notices since taking that power to direct local authorities to issue those notices.

What is the actual number of occasions that the Secretary of State has issued such directions since that power became available in November 2011? According to a written answer from the Minister for Children to my hon. Friend the Member for Edmonton (Kate Osamor) on 16 June this year, the Secretary of State has issued directions not on hundreds, or dozens of occasions or even double figures; the Secretary of State has issued directions to local authorities to issue warning notices on precisely four occasions in the last four years.

How can the Minister argue that there is a need so pressing for the Secretary of State to have to lay down primary legislation in order to issue orders directly herself when the Government are struggling to average one direction per year to local authorities since they took the power to direct local authorities to issue those warning notices?

The Opposition believe that Ministers should have to demonstrate that they need to acquire more power and are not just doing it to sound tough. If they really needed this power, surely there would have been many more occasions on which they would have chosen to direct local authorities to issue warning notices than there have been in the past four years since they took that power under the 2011 Act, which amended the Education and Inspections Act 2006. We will listen with interest to the Minister's justification for taking that approach in the light of the coasting attitude to the need to issue directions to local authorities over the past four years.

Even if the Minister is unable to accept amendment 15 as we have drafted it—I understand that Ministers generally have an aversion to accepting any wording proposed by the Opposition—will he assure the Committee that any actions set out in warning notices by Ministers will be reasonable? What is his assessment of the example I gave of an academy warning notice required by Ministers? I do not argue with the prescriptions within that warning notice—they seem to be fairly standard proposals. Do Ministers seriously put forward the idea that they are the sorts of things that could reasonably be achieved in full during a one-month warning notice period?

John Pugh (Southport) (LD): Would it be helpful if the Minister told us how many warning notices—over and above four—have been given to academies?

Kevin Brennan: Yes. I apologise for not having that answer to hand myself. I am sure that if the Minister does not have that number before him or in his mind, he

will—through the well-established process of parliamentary in-flight refuelling—be able to obtain that information by the time he gets to his feet.

Mr Gibb: I happen to have that figure at the top of my head: 107 warning notices have been issued to academies.

Kevin Brennan: We are, as ever, mightily grateful to the Minister for his remarkable memory. I thank him for the almost magical way in which he brought that figure to mind for us.

Will the Schools Minister explain what capacity there will be within the offices of regional schools commissioners to have the ability to issue and carry through warning notices if, indeed, that is how he envisages the process? Would he elucidate a little more the process and the involvement of regional schools commissioners in the ministerial issuing of warning notices? In the oral evidence session, we heard about the capacity constraints on regional schools commissioners. Is the Minister able to tell us more about that? I look forward to his responses and to any other contributions from members of the Committee. Does he agree with us that in clause 2 it might be reasonable to set out the minimum reasonable requirements?

Mr Gibb: It is a pleasure to serve under your chairmanship, Sir Alan, as we begin the clause-by-clause scrutiny of the schools elements of the Bill following thorough scrutiny of clause 13 last week. The Bill gives regional schools commissioners and local authorities the power to intervene to secure swift action in schools that are not providing children with the quality of education that will enable them to meet their potential. There are several ways that underperformance manifests itself in our schools and the Bill ensures a strong strategy for dealing with each of the situations that can affect schools and lead them to underperform.

The key legislation is the Education and Inspections Act 2006, which gives local authorities, and in some circumstances the Secretary of State, the power to intervene when schools are underperforming. The Committee will remember that this legislation, introduced by the last Labour Government, only found its way on to the statute book because the Conservative Opposition voted for it. Had we not done so—had we abstained or voted against the Bill—it would have fallen. It was a piece of principled opposition, under the leadership of the then newly elected Leader of the Opposition, my right hon. Friend the Member for Witney (Mr Cameron). In my judgment, it was a key decision that led to the election of the Conservative-led coalition in 2010. If I were giving advice to the Labour Party to help it win an election in the future, I would say that it needs to look at the lessons that we learned after 2005 and to adopt that approach to opposition. Though, of course, I am not here to give such advice to the Labour Party.

Clause 2 amends section 60 of the 2006 Act. As currently drafted, that section gives power to local authorities to issue a warning notice to schools when there is a real concern about standards, or the safety of pupils or staff at a school is threatened, or there has been serious breakdown in the way that the school is managed or governed. This is what section 60 is designed to address, but the grounds for intervention are different from those for failing schools—those judged inadequate by Ofsted—which are set out in sections 61 and 62 of the 2006 Act. They are also different from the powers that we are seeking in order to tackle coasting schools, which have been touched on briefly in this debate and which would appear in proposed new section 60B of the 2006 Act, introduced in clause 1 of the Bill. Coasting schools are automatically eligible for intervention.

The purpose of clause 2, which allows for the issuing of warning notices where there is concern about the performance of a school, is to give the same power to the Secretary of State that currently exists only for local authorities. The clause thus changes the words "local authority" in section 60 to "relevant authority", which is defined as including the Secretary of State as well as the local authority. This relevant authority would be able to issue a warning notice to the governing body of a school. Critically, the clause allows regional schools commissioners, on behalf of the Secretary of State, to issue such a warning notice rather than having to wait for the local authority to do so.

Despite the existence of these powers, 51 local authorities have never issued a warning notice to any of their schools. Where action is needed, because a local authority has failed to act or has acted ineffectively, it will now be possible for regional schools commissioners to move quickly and directly. A warning notice gives a school the opportunity to show that they can make the necessary changes but, if they cannot, regional schools commissioners and local authorities can take further steps.

Kevin Brennan: I am sure that the Minister has anticipated what I will ask. If his concern is that 51 local authorities have not issued warning notices to any of their schools, yet he took the power in the 2011 Act, which amended the 2006 Act, to enable the Secretary of State to direct them to do so, why has it happened on only four occasions?

Mr Gibb: The power to direct a local authority to issue a warning notice was included because a high number of local authorities—51, as I said—have never issued warning notices. The power is complex and time-consuming, because we have first to direct a local authority to consider issuing a warning notice and we can only do so where it refuses. Also, the local authority is still able to make a judgment on its compliance with a warning notice, even when directed to do so by the Secretary of State. There have been circumstances in which an obstructive local authority that does not want to intervene can block the process. That is why we are introducing these powers for the Secretary of State to intervene directly without having to go through the indirect process of directing a local authority.

10 am

Kevin Brennan: The Minister says that local authorities have obstructed that process on occasions. Will he give us some examples, so that we understand why the position is so pressing that the Minister has to legislate in this way?

Mr Gibb: I was giving a hypothetical example of where a local authority could obstruct—*[Interruption.]* I understand that there may be circumstances where a local authority can obstruct and will endeavour to find specific examples to give to the Committee.

[Mr Gibb]

It is clear from the way that the Bill is drafted what has to happen when the Secretary of State issues a direction to a local authority to issue a warning notice: the secondary process has to be gone through. Of course, the key issue is that the local authority then judges whether a school's governing body has complied sufficiently with that warning notice. We want to sweep away those intermediary steps so that we can take swifter action to deal with underperformance of schools.

I understood from the opening remarks of the hon. Member for Cardiff West that there was agreement in the Committee and that the Labour Opposition wanted to take swift action to deal with underperformance. If, as it appears, there is no desire by the Labour Opposition to intervene swiftly in schools that are not providing the quality of education that a young person needs, it would be good to get that on the record.

Kevin Brennan: As the Minister has directly challenged me, let me say that, of course, we want swift and appropriate action to be taken: that is our position. He has to explain to us why the clause is necessary, but as yet Committee members—certainly, Labour members—have not been convinced by his arguments, not least because he is unable to give us any examples of obstructionism under the current process, and because the powers to direct local authorities to issue notices already exist. We are yet to be convinced.

Mr Gibb: I wish that the hon. Gentleman would be convinced. The fact that only four directions have been issued should be an indication that they are not, in practice, as workable as was hoped when the amendments to the 2006 Act were made in 2011.

Steve McCabe (Birmingham, Selly Oak) (Lab): If the Minister does not have examples of local authorities that have been obstructive, will he give examples of situations where he would have liked to issue an order but could not do so, because of the difficulty and complexity involved?

Mr Gibb: I am sure there are plenty of examples of underperforming schools where this provision would have been helpful. We are trying to avoid the situation in schools such as Downhills, where assiduous campaigning prevented standards from being improved and tried to prevent academisation. As a consequence of introducing measures, there has been a huge improvement in the quality of education that young people there receive. We are taking these powers to deal with those kinds of issues, to act directly, not indirectly, and ensure that we can take action swiftly.

Let me deal with the amendments. Amendment 14 would amend clause 2 by introducing a minimum compliance period of 15 days for a warning notice. Under current legislation, there is a fixed 15-day period within which governing bodies are required to comply with a warning notice, regardless of why it was issued. This restricts the use of notices in many cases, so it makes sense to give schools more time, in certain circumstances, to bring about the necessary change. In other instances, of course, more urgent action is needed.

Under the changes that the Bill proposes, we will remove the requirement for compliance with a warning notice within 15 days. Regional school commissioners and local authorities will be able to set timescales for compliance on a case by case basis. We expect that flexibility to be supported by local authorities as well as regional school commissioners, given that these changes will undoubtedly make warning notices a more effective tool and therefore more likely to be used.

There is a need for flexibility in setting a compliance period in some cases. Local authorities and regional school commissioners might want to allow more time for improvements to show up—for example, in exam results. That could be when a school was on a downward trajectory but new leadership had been brought in, or where a national leader of education is working with a school. In those cases, regional school commissioners and local authorities would have greater confidence and would want to review the impact before any further action was considered. On the other hand, regional school commissioners or local authorities might in some cases want to set the compliance period at less than 15 days—for example, to address a breakdown in leadership and governance or a threat to the safety of pupils and staff. Here there may well be circumstances where a local authority or a regional schools commissioner cannot wait 15 days to see whether a governing body will act to address an issue. Amendment 14 would take away the flexibility for regional school commissioners or local authorities to act swiftly in some of the most urgent cases.

Kevin Brennan: I appreciate the clarification about both the longer and shorter period. One of my questions was whether the Minister envisages any maximum length of time during which a warning notice could be hanging over a school. By the same token, does he envisage a minimum period in which it will be reasonable to comply, even in the instances that he has outlined of an emergency?

Mr Gibb: We do not envisage a maximum period. There are certain powers in the 2006 Act, for example, the power of the Secretary of State to direct a governing body to enter into arrangements or the power to suspend delegated budgets. There is a two month period within which the powers can be used if there has been a failure to comply with a warning notice, but that is not quite the same thing as a period in which to comply with a warning notice. We want flexibility for local authorities and regional school commissioners to act more swiftly than within 15 days—or, in terms of compliance, less swiftly, when a longer period is needed to demonstrate that standards have improved.

Amendment 15 would amend clause 2 to state specifically that governing bodies can be required to take only reasonable action to remedy matters identified in a warning notice. I can understand the hon. Gentleman's concern that regional school commissioners and local authorities should act reasonably when issuing warning notices. However, I can reassure him that the Secretary of State is reasonable and always acts reasonably. I understand the hon. Gentleman's point that we cannot assume that every future Secretary of State will be as reasonable as my right hon. Friend. We have to prepare for the worst, such as the prospect—unlikely though it is—of a Labour Secretary of State. Let me reassure

Opposition Members that the Secretary of State and the regional school commissioners acting on her behalf have a common law duty to act rationally and reasonably—the same common law duty that applies to local authorities. It would be unlawful for them to require a governing body to take any action that a governing body could not reasonably be expected to carry out.

Kevin Brennan: Am I right that the Minister is proposing to the Committee that, rather than ensure that the test of reasonableness is contained in the Bill, he would prefer that this was fought out in the courts, perhaps in some sort of lengthy dispute about whether the Secretary of State or regional school commissioners had acted reasonably? That is the very thing I thought he was trying to avoid with this Bill.

Mr Gibb: It would not make any difference whether the phrase was in the legislation or we were relying on common law. This is a long-established common law principle, on which there is a whole raft of case law. It is not necessary for it to be in the Bill because it applies to all legislation on the operation by public sector bodies of these kinds of powers and duties. It should also be borne in mind that regional schools commissioners are exercising the Secretary of State's powers and the Secretary of State is accountable to Parliament for any decisions that regional schools commissioners make.

Amendment 21 aims to restore the definition of the term "working day" to the Bill. The reference to working days in current legislation exists only to help with the interpretation of the fixed compliance period of 15 working days. As the Bill proposes to remove this fixed period, there is no need to define working days. Regional schools commissioners and local authorities will now be able to define their compliance period in terms of months or end date, for example, as well as days, whichever is clearest and most relevant to the circumstances. On the basis of those explanations of the purpose of this part of clause 2, and our response to the amendments, I hope that the hon. Gentleman will feel that he does not need to press them.

Kevin Brennan: I thank the Schools Minister for his response. I should have mentioned, as he rightly did, that amendment 21 is purely a technical amendment that it was necessary to table because of our proposal to restore the minimum time period for complying with a warning notice.

In some ways, the Minister's contribution raises more questions than answers, and we need to ponder those further. He said that we were considering the Secretary of State's acquisition of this particular power because local authorities had been obstructing the current process. As I said, that process was introduced by the amendments to the 2006 Act that the Schools Minister made in 2011 to enable the Secretary of State to direct local authorities to issue notices. It would be concerning if local authorities were deliberately obstructing the law passed through Parliament in 2011 so, perfectly reasonably, I asked the Minister for examples of when and how local authorities had carried out obstructionist tactics to try to get in the way of the Secretary of State exercising her lawful power of instructing local authorities to issue warning notices. He was not able to give us an example.

We are legislating here. This is the law of the land we are creating, so we ought to be able to say to Ministers, "If this is your justification, show us the practical real-world examples of where there has been genuine obstruction of Ministers exercising their lawful power." If that were demonstrable in any serious manner, we would, as reasonable people, have to take that very seriously indeed when taking our views on the clause and the Bill. However, he was not able to give us an example, even after a reasonable pause for in-flight refuelling, so I am concerned by the justification that the Minister has for the clause. Can he provide compelling evidence that what he said is correct—that there is genuine, systematic obstructionism that prevents the Secretary of State from being able to exercise her lawful power in this area?

The Minister alleged that local authorities were obstructing the Secretary of State's power to instruct them to issue warning notices. Following that, he perhaps slightly gave the game away about whole swathes of what the Bill is about when he expanded further and remarked—I think that this is an accurate quote, but I am sure that *Hansard* will check—that the intention was to "sweep away…intermediary steps." What that actually means is to wipe out locally and democratically elected voices and institutions from the whole process. That is not because there is any systematic evidence of obstructionism in the process by those locally and democratically elected institution because, despite the Minister's allegations, he could not provide us with a single example of that happening, let alone any systematic evidence.

10.15 am

Mr Gibb: Clause 2 also enables local authorities to issue warning notices more efficiently and quickly, so it does not sweep away the involvement of local authorities in dealing with underperforming schools. It helps local authorities to act more swiftly, and it also enables the Secretary of State to do that more swiftly, through the regional schools commissioners.

Kevin Brennan: I am grateful to the Minister for that intervention, but "sweep away intermediary steps" were his words, not mine. It was he who made the allegation that local authorities—to which he now says he is keen to give more power—were actually an obstruction in this process, and that that was why the Secretary of State needed to take further powers. The picture becomes even more confused as a result of what the Minister says.

Mr Gibb: Let me help the hon. Gentleman. Section 60(1)(c) of the 2006 Act assumes that, in relation to the powers of local authorities, the governing body could make representations to the chief inspector of Ofsted

"against the warning notice during the initial period".

That is an intermediate step, and we are sweeping it away for local authorities just as much as for the Secretary of State.

Kevin Brennan: I have a feeling that we will return to that, perhaps when we discuss the next group of amendments or others down the line, but the Minister's

[Kevin Brennan]

statement about the reason why the Government are taking these powers for the Secretary of State to be able to issue warning notices directly, albeit by using regional schools commissioners, still stands on the record. Incidentally, regional schools commissioners are individuals or bodies that have no description in statute, as far as I am aware. They were invented without the then Secretary of State feeling a need to put the proposal in legislation and to bring it before Parliament. Nevertheless, the power to issue these warning notices, as envisaged in the clause, will be devolved on behalf of the Secretary of State.

Bill Esterson: My hon. Friend mentions regional schools commissioners. During our evidence sessions, a regional schools commissioner said that he had a very small number of staff and that commissioners oversee an average of 500 schools. That number is growing and, if the Minister gets his way, I suspect that it will grow rapidly. Does my hon. Friend agree that that commissioner's very small number of staff raises interesting questions about how the provisions of this clause will be fulfilled, if that is to be done by the commissioners?

Kevin Brennan: I agree with my hon. Friend—I think that I alluded to that point earlier. I asked the Minister to indicate his view of regional schools commissioners' current capacity to cope with directly issuing these warning notices, in addition to all the other responsibilities being placed on them by the Bill and other Government actions. The Minister did not say anything about that, but perhaps he will be able to give us more information when we get to the clause stand part debate. How does he envisage regional schools commissioners coping with the extra responsibilities that are given to them through the clause, albeit indirectly through the Secretary of State? Does the Minister think that a significant resource issue will need to be dealt with as a result of the changes in the Bill? My hon. Friend makes a valid point that could be dealt with in more detail during the clause stand part debate.

The Minister did not deal satisfactorily with my observation about the power taken in the 2011 Act to allow the Secretary of State to direct local authorities to issue warning notices. The Minister said that the power was not being used because of obstructionism by local authorities and because the current process is too cumbersome. Perhaps that is why only four such notices have been issued—it is so cumbersome that Ministers have only managed one a year since 2011.

My hon. Friend the Member for Birmingham, Selly Oak asked the Minister for examples of how the process is too cumbersome to be carried out by Ministers, but I did not hear an adequate response to that point. The fact that Ministers have not used the power does not mean that it is unusable. It is up to the Minister to demonstrate why they have met this alleged roadblock in exercising powers that they themselves took in 2011. That point is relevant to some of our later groups of amendments, so I might come back to it.

It was perfectly reasonable for us to table the amendments. At this point, I do not intend to press them to a Division, but they raise issues that we need to explore further, perhaps in the clause stand part debate, so I beg to ask leave to withdraw the amendment.

Mr Gibb: We have had quite an instructive debate. It is clear from the tone and nature of the hon. Gentleman's amendments, and how he introduced them, that there is not the same determination among Opposition Members to tackle underperformance in our schools as there is among Government Members. What drives this Government—indeed, what drove the previous coalition Government—is a determination to raise education standards in every school, so that every local school is a good school, which means taking powers to tackle underperformance wherever it exists. When we talk about social justice, we mean ensuring that every young person has the best education that they deserve. That is what the powers are about; that was what the whole of the previous Government's reform programme was about; and it is what this Government's reform programme is about.

This is also about one nation. There are pockets around the country where some local authorities are presiding over schools that are letting young people down year after year. We want to ensure that we tackle schools in those local authority areas, which is why the Secretary of State is taking the powers through the Bill.

Kevin Brennan: It really does not do the Minister any credit to characterise the proper scrutiny of the powers that he and the Secretary of State have taken as in some way suggesting that the Opposition have any less concern than him about raising standards or, indeed, social justice. It would probably make a lot more sense and save us a lot of time if he were to acknowledge that we are all sincerely trying to raise standards and to promote social justice, and that it is perfectly legitimate to ask probing and detailed questions about whether Ministers' powers will be effective in that mission.

Mr Gibb: I am pleased to have elicited that response. We do need to work together to ensure that there are high standards for all our young people in our schools.

In his careful scrutiny of the clause, the hon. Gentleman raised the question of cases in which there has been obstruction by local authorities. There have been very few cases, as we have issued only four notices. In the case of Henry Green school in Coventry, we directed the local authority to give a warning notice. Not only did it refuse, but it launched a judicial review against the direction from the Secretary of State. Over time, the school's results improved, so we agreed not to continue with that direction. However, we maintain that the action was lawful and justified at the time. It is a relief that the school's standards improved as a consequence of what happened.

The process has been cumbersome. We have first to direct a local authority to consider issuing a warning notice. We can direct the local authority only when it refuses, so that is a step that delays matters. The local authority is then responsible for judging whether the school has complied with the warning notice, even when it has been directed to do so by the Secretary of State.

Steve McCabe: I recall the Minister's colleague last week extolling the virtues of judicial review. Is the Minister seriously saying that if an authority decides to seek a judicial review, that is evidence of the authority being obstructive?

Mr Gibb: It does seem odd that a local authority would refuse to issue a warning notice to a school that has been ineffective.

Steve McCabe: That was not what I asked.

Mr Gibb: Of course judicial review is a perfectly valid and reasonable system to check the actions of the Executive, but it seems odd to use that power when action is being taken to try to improve standards in a primary school.

I want to address the issue about capacity. In the previous Parliament, 1,100 schools became sponsored academies, which is one of the reasons why 1 million more pupils are in good and outstanding schools today than was the case were in 2010. The fact that we have already issued 107 warning notices to academies demonstrates that regional schools commissioners have the capacity to tackle underperformance. They are advised by bodies made up of heads from their areas. Advisory bodies are attached to all the regional schools commissioners. The commissioners have the discretion to decide whether a warning notice is required and they draw on the knowledge of their headteacher board.

John Pugh: I listened carefully to the Minister's exchange with the hon. Member for Cardiff West about the redistribution of powers that the Bill facilitates, especially the powers of local authorities and the Secretary of State. I think he said—he will correct me if I am wrong—that the powers of local authorities à propos governing bodies to deal with representations are implicitly increased by the Bill. Will he clarify that point?

Mr Gibb: I am grateful for that intervention. Clause 2 changes the reference to "local authority" in the 2006 Act to "relevant authority", which covers the local authority and the Secretary of State. The other changes that we are making to section 60 therefore apply to the local authority and to the Secretary of State. I cited earlier that the original section 60(1)(c) of the 2006 Act states that a maintained school was eligible for intervention if

"either the governing body made no representations under subsection (7) to the Chief Inspector against the warning notice during the initial period or the Chief Inspector has confirmed the warning notice".

Subsection (7) of the Act is deleted by clause 2. That provision was introducing delay in tackling underperforming schools, and we are removing it, not just for the Secretary of State, but for local authorities.

10.30 am

John Pugh: Post this legislation, would a governing body that has serious issues either with the approach of the Secretary of State or the local authority, and genuinely has a case to defend, be in a weaker position than before?

Mr Gibb: I am not sure that I have understood the hon. Gentleman correctly. I wonder whether he would reiterate that. I do not think that anybody is in a weaker position than before. Section 60 is about issuing a warning notice to a school. It is not the same provision as clauses 1, or clause 7, under which an academy order is issued automatically for schools in Ofsted's category 4. This is about schools that are not in category 4, but about which there is concern on the part of the local authority or the Secretary of State, or the regional schools commissioners. The provision enables them to take action that may lead to discussions with the school. We hope that everyone will work together with local authorities and the regional schools commissioners, and with the school's governing body, to try to bring about rapid improvement of the problems causing underperformance.

If there are no further interventions, I hope that the hon. Member for Cardiff West asks leave to withdraw the amendment.

Kevin Brennan: As I mentioned, we do not intend to press the amendments to a Division. At some point, I suppose that we should explore a little bit further the single example that the Minister has given of obstructionism by a local authority. Although I understand that the school in question improved without the warning notice coming into effect, it will be interesting to find out more details about that case. I am sure that, during the Committee's proceedings, the Minister will provide all the other examples that have led him to think it necessary to legislate in this way, rather than providing just one example of a local authority's thinking that a warning notice was not necessary. Perhaps it had already taken action or thought that the Secretary of State was exercising their power incorrectly. Judicial review exists so that individuals and corporate bodies may challenge the Executive if they think powers are being used inappropriately, and it is then for the law to decide whether they are correct.

We are not, thank goodness, in a country where Ministers can simply direct people on any matter in a way that they see fit, with no legal challenge available for people if they think that the Executive's power is being used inappropriately. I should hope that, in this anniversary year of Magna Carta, all Committee members from all parties subscribe to that principle; otherwise, we are all in trouble.

The Minister made a rather political point—I do not object to his making political points: we all do—claiming that Labour Committee members do not have the same objectives and do not want social justice and school improvement. I spent 10 years teaching and was privileged to work with young people, trying to do exactly that. That remark is unworthy of the Schools Minister. I hope that he accepts that, even if we disagree sometimes about how that should be achieved, all of us are trying to enable young people and children to fulfil their potential and play a full part in our society.

The objectives may be the same, but it is up to the Government to justify their solution and to argue for and prove to the Committee and Parliament, and the country, that their proposed solution is best. That is why we are here and why the Minister is here. He must continue to do that throughout our proceedings.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Before we debate the next group of amendments, I remind Members that we had a full and frank debate earlier when amendments were presented

[The Chair]

and we had the ministerial response, with comments from both sides. We then had an indication that the amendment was to be withdrawn. We spent considerable time discussing other matters connected to other clauses. I remind Members that at the end of this series of amendments, there will be an opportunity in the stand part debate to raise and discuss matters, and not to spend time on amendments that have clearly been indicated for withdrawal. That would save the Committee an immense amount of time and make progress to the end of the Bill.

Kevin Brennan: I beg to move amendment 16, in clause 2, page 2, line 28, after "warning notice" insert

", except a warning notice give under s.60A,"

This amendment clarifies that a local authority may give a warning notice under section 60A (teachers' pay and conditions warning notice), to be inserted by this Bill, even though the Secretary of State has given one.

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

Amendment 17, in clause 2, page 2, line 31, after "warning notice" insert

", except a warning notice give under s.60A,"

This amendment would enable a local authority warning notice under section 60A to remain in force even though the Secretary of State has given one.

Amendment 18, in clause 2, page 2, leave out lines 30 to 34 and insert—

'(4B) If the local authority informs the Secretary of State that the local authority has given a warning notice to the governing body of a maintained school, then the Secretary of State may not give a warning notice to the governing body."

This amendment would ensure that a governing body could not have two different warning notices in quick succession.

Amendment 20, in clause 2, page 3, leave out lines 8 and 9

This amendment restores section 69A of the Education and Inspections Act 2006 which allows the Secretary of State to require a local authority to issue a warning notice.

Amendment 22, in clause 2, page 3, line 10, at end insert—

'(7A) In section 62 of the School Standards and Framework Act 1998, for subsection (2) substitute—

(2) The circumstances are that—

(a) in the opinion of the authority—

(i) the standards of performance or progress of pupils at the school are unacceptably low, and are likely to remain so; or

(ii) there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance; or

(iii) the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

(b) for the purpose of subsection (2)(a)(i), the standards of performance or progress of pupils at a school are low if they are low by reference to any one or more of the following—

(i) the standards that the pupils might in all the circumstances reasonably be expected to attain,

(ii) where relevant, the standards previously attained by them, or

(iii) the standards attained by pupils at comparable schools,

(c) the governing body have been informed in writing of the authority's opinion.""

Section 62 under the School Standards and Framework Act gives a local authority power to take immediate action against a maintained school when there was a serious risk to pupils at the school. This amendment is aimed at probing the likely use of section 62 powers in the light of Clause 2.

Amendment 23, in clause 3, page 3, leave out lines 33 and 34

This amendment removes the requirement that the Secretary of State be informed about a local authority use of a section 60A warning notice.

Kevin Brennan: Thank you for your guidance, Sir Alan. You have just indicated the amendments we are to consider. Amendment 16 would clarify that a local authority may give a warning notice under section 60A (teachers' pay and conditions warning notice), even if the Secretary of State has given one. Amendment 18 would ensure that a governing body could not have two different warning notices in quick succession. Amendment 17 would enable a local authority warning notice under section 60A to remain in force, even though the Secretary of State had given one.

Amendment 20 would restore section 69A of the Education and Inspections Act 2006, which allows the Secretary of State to require a local authority to issue a warning notice. Amendment 22 refers to section 62 of the School Standards and Framework Act 1998, which gives a local authority power to take immediate action against a maintained school when there is a serious risk to pupils at the school. The amendment is aimed at probing the likely use of section 62 powers in the light of clause 2.

The amendments are designed to bring a degree of sense and order to the warning notice process or, if that is an over-ambitious aim, at least to understand how the Government intend to do that. We would like clarity on that from Ministers. It is clearly unreasonable for a school to receive two different—or indeed two similar—warning notices in quick succession. As ever, in drawing up policies, Ministers seem to have great problems in seeing matters from the viewpoint of a school and the impact of Government policies on schools. That is especially the case when we are presumably talking of schools that are in some way already short of capacity. The possibility that the school might be asked to begin to deal with requirements under a warning notice and then have them replaced by something different is clearly unsatisfactory, if that is what is envisaged in the clause.

Amendment 16 probes whether the term "warning notice" in new subsection (4A) refers to both types of warning notices: the section 60 performance standards and safety warning notices and the 60A teacher pay and conditions warning notices. In other words, a local authority can issue a section 60A warning notice if the Secretary of State has issued a section 60 one, and so on. Amendment 17 also relates to that.

Amendment 18 further explores whether the legislation is in danger of making matters even more complex. It will be highly confusing for a school, if it is trying to make rapid progress, to work to a local authority section 60 warning notice only to find that work on that must come to an abrupt end when the Secretary of State

imposes a section 60 notice and stops the local authority notice that the school was already working on. Where is the evidence that, when imposing a warning notice, a local authority asks for the wrong kind of action?

Presumably, when a local authority has imposed a warning notice on a school it has done so for a reason and has not done so lightly, imposing actions that it believes will help to turn that school around or will improve the situation that triggered the warning notice. Where is the evidence that a local authority notice is likely to include the wrong actions and that a regional schools commissioner—who will have to keep an eye on a much greater number of schools than any local authority and with very limited resources, as we heard in the oral evidence before the line-by-line scrutiny of the Bill commenced—will have greater local knowledge or capacity to understand what needs to be done in relation to those warning notices?

Why does the Minister think that a regional schools commissioner, with a small number of support staff, will have better capacity to pick the right kinds of action in a warning notice than a local authority, which has, potentially, greater capacity and deals with a smaller number of schools about which it, presumably, and historically, already has more intimate knowledge?

Louise Haigh (Sheffield, Heeley) (Lab): I believe that we heard from Ministers last Tuesday that they would be providing extra resources to regional schools commissioners. Does my hon. Friend agree that it would be helpful if they confirmed exactly what resources they will provide, and does he further agree that it would also be helpful for them to confirm how regional schools commissioners will work with local authorities? At present, as I understand it, they only work with headteachers of academy schools.

Kevin Brennan: Yes, I think that would be extremely helpful. I remember the days when Ministers were concerned about the growth of quangos, as they used to be called—bodies appointed by Ministers but without any direct accountability to the public. It seems to me that we need to understand whether the Minister is growing a whole new series of quangos around the country in creating—by stealth, in effect, and without use of legislation—the office of regional schools commissioners. Currently, as we found out from the oral evidence sessions, the commissioners have relatively small operations, namely half a dozen or so staff, but are now being given all these extra responsibilities. Who knows what other responsibilities are to be placed upon them in the future? It is inevitable that questions about accountability will grow as these institutions become more and more significant in the educational landscape and, potentially, as more and more Government resources are given to them to carry out the additional duties that the Government place upon them in this legislation and elsewhere.

The second point that my hon. Friend the Member for Sheffield, Heeley made in relation to headteacher boards—which is what I think she was referring to—was a question that I raised with Lord Nash during the oral evidence session. I asked him whether it was time for headteachers of maintained schools to be treated as equal to headteachers of academy schools by allowing their participation in headteacher panels, not least because of the expansion of the regional schools commissioners' duties to have more and more responsibility for maintained schools.

How can the regional schools commissioners be properly advised by a headteacher panel that does not contain any maintained school headteachers, especially if they are dispassionately, properly and neutrally to deal with the problems faced by maintained schools? We have not yet even got to the question of key performance indicators of the regional schools commissioners in relation to targets for academisation. All sorts of problems are contained in my hon. Friend's intervention, which I am sure the Minister will refer to.

10.45 am

By restoring section 69A of the 2006 Act, amendment 20 would enable the Secretary of State to require the local authority to take further action if she thinks that its actions are not adequate. This should only happen if what the local authority is doing is clearly not appropriate. We mentioned this when discussing the previous clause. As far as we can make out, the Secretary of State has deemed it necessary to use this power only four times since 2011, as revealed in the parliamentary question to which I referred by my hon. Friend the Member for Edmonton.

One of the problems with education legislation is that each Act that the Government bring in just adds to the total and it is not necessarily clear how consistent it is with everything that has gone before. There are not dissimilar powers for local authorities in section 88 of the School Standards and Framework Act 1998 although, admittedly, those powers were originally designed for the case of a school almost literally falling apart. Amendment 22 raises two questions. First, what is the interaction between the section 88 power and the new powers that the Secretary of State is taking? Secondly, should the section 88 powers be extended to curriculum areas in view of the need to take quick and decisive action? For example, those powers could be used in cases where extremism was found to have entered the school curriculum.

We are all familiar with the so-called Trojan horse affair and the concerns about the potential to enter the curriculum of our schools. It seems wrong that the local community potentially has to wait until Ofsted has done an inspection and found the school to be inadequate. We will all recall the example of the Sir John Cass School in Tower Hamlets, where allegations of extremism came to light through inspections.

Amendment 22 would extend the power given to local authorities in the 1998 Act to take action in the event of a breakdown of order and a risk to public safety, and to cover standards, progress, curriculum and management issues. It would allow local authorities to act outside the framework of the 2006 Act when they think it is necessary. In the light of the Minister's professed desire to give local authorities the power to act more quickly and flexibly when there is a need for them to do so, I suggest that the Minister looks more seriously at the amendment.

As the Local Government Association argues, local authorities need at times to be able to act "quickly and decisively", for example, if there are reports that a school is behaving inappropriately in relation to radicalisation; or accusations of financial mismanagement,

although it could be argued that other powers are available for that. Waiting for the warning notice procedure to run its course might not be appropriate in such instances. The local authority needs to be assured that it is empowered to take the necessary action and will not be second-guessed in some way, shape or form by the Secretary of State.

Current arrangements seem to send the clear message that a local authority's powers to ensure pupils' needs are met are potentially hugely restricted, and that the Department for Education is always looking over the authority's shoulder, ready to interfere even when it is acting in the interests of local schools and their pupils.

The Local Government Association has commented on amendment 22:

"Councils' powers of intervention in schools must also be freed from the restrictions placed on them by successive Governments. These stop them from acting quickly and decisively when issues arise in the interest of local children and parents. For example, even if Ofsted has rated a school as Inadequate, councils have to apply to the Department for Education to remove the governing body and replace it with an Interim Executive Board (IEB). The LGA therefore supports amendment 22 which would allow the local authority to take steps in relation to schools where, for example, standards and progress are unacceptably low. The steps which may be taken by a local education authority include the giving of a direction to the governing body or head teacher."

Mrs Flick Drummond (Portsmouth South) (Con): If a school has been failing so badly, does it not suggest that the local authority is failing because it should have kept an eye on the school in the first place?

Kevin Brennan: I am making the point that local authorities are complaining that the current system restricts them from taking that action even more quickly. Through the amendments, we envisage that local authorities could act more swiftly. I will be interested to hear what the Minister has to say.

Bill Esterson: Did my hon. Friend think that the previous intervention was odd as a criticism of local authorities? If the criticism applies to local authorities, could it not also apply to chains and, ultimately, to regional schools commissioners if we have stand-alone academies in serious difficulty? It struck me as a rather strange comment.

Kevin Brennan: I would not accuse the hon. Member for Portsmouth South of making a strange comment, but my hon. Friend is right; we could ponder whether a double standard is applied to local authorities and academy chains. There is certainly a double standard with regard to inspection, but we will come back to that. Alternatively, it might be an illogicality in the observation.

Mrs Drummond: We have already discussed the fact that 131 academies have been put into special measures. If we have managed to do that, local authorities have surely been failing if they have not been looking after their failing schools.

Kevin Brennan: We should all be concerned to ensure that any school, whatever its character, delivers on behalf of its pupils, and that these interventions take place. We support academisation as one means of school improvement, but we simply say that it should not be used exclusively as the only way to bring about school improvement.

I would welcome a much more level playing field in the debate on this. Now that 60% of secondary schools are academies—the Minister has pointed that out several times—the whole issue of school improvement in academies will become bigger and bigger. If the answer to a failing school is to academise it, we need to know in much greater detail what the answer ultimately is to a failing academy. That is going to be a live debate during the passage of the Bill and in this Parliament.

Amendment 23 relates to clause 3. New Members may be surprised to know that the way we do things in this place means that from time to time we debate amendments to other clauses if they relate to the amendments contained within a previous clause, but we may decide upon them at a later stage. At this point we are debating clause 3; although, technically speaking, it occurred slightly later in the Bill, it has been grouped here. It removes the requirement that the Secretary of State must be informed about a section 60A warning notice in order to probe why the Government think it necessary to legislate that the Secretary of State should be informed.

The National Audit Office report of 30 October 2014, "Academies and maintained schools: Oversight and intervention", made it clear that the Department for Education does not know in any detail what is happening in schools. Perhaps there are times when it needs to get out of the way a bit and allow others who do know what is going on in local schools to do a proper job—that was the view expressed in the NAO report. That view is shared not only by Labour Members but by Conservative representatives at a local level, so it would be extremely useful to hear the Minister's response to that and to our amendments.

Mr Gibb: One aim of the Bill is to simplify the complex process of warning notices. The current process for performance standards and safety warning notices is set out in section 60 of the 2006 Act, which is the section that clause 2 of the Bill amends. The current process for teachers' pay and conditions warning notices, to which some of the hon. Gentleman's amendments apply, is set out in section 60A of the 2006 Act. That is the section that clause 3 seeks to amend. The Bill seeks to improve the effectiveness of both types of warning notices by freeing up the time scale for compliance, as we discussed when we debated the previous group of amendments. It enables the Secretary of State to give performance standards and safety warning notices and it removes the process by which governing bodies could make representations against the warning notice, which had drawn out the process in the past.

The changes to the time scale for compliance are being made both to performance standards and safety notices and to teachers' pay and conditions notices. The Bill sets out in clause 2(2)(e) that where the Secretary of State has issued a performance standards and safety warning notice, the local authority cannot then issue one of its own to the school in question. That change is not about preventing local authorities from issuing warning notices. In fact, this legislation deliberately retains the power for local authorities to issue warning notices. As I said when we debated the previous group

of amendments, it improves the flexibility and efficiency of the process for local authorities as well as for regional schools commissioners. We know that 51 local authorities have never issued a warning notice. Where local authorities have been inactive or less effective than we would wish, we want regional schools commissioners to be able to step in quickly. In cases where that is necessary, it is right for a local authority's power to issue a warning notice to that school to be frozen, preventing the school from being subject to potentially conflicting requests from two different statutory bodies.

11 am

Bill Esterson: I am curious about something that the Minister just said. He said that this improves the ability of local authorities to issue a warning notice. Yet clause 2(2)(e) says:

"after subsection (4) insert—

"(4A) If a local authority are notified that the Secretary of State has given a warning notice to the governing body of a maintained school the local authority may not give a warning notice unless or until the Secretary of State informs them that they may."

I do not understand how that makes it easier for a local authority to issue a warning notice.

Mr Gibb: Because clause 2(2) is all about how the conflict of two different bodies issuing warning notices is resolved. Where a local authority has issued a warning notice and there is no conflict, it is now more flexible and easier for it to do so. Clause 2 is about regional schools commissioners intervening in cases where they are unhappy that the local authority has not taken sufficient action to deal with an underperforming school, or where a local authority has intervened but has done so in such a way that the regional schools commissioners, as advised by the headteacher boards, are unhappy that sufficient progress is being made or the right action is being demanded by the local authority. The purpose of that paragraph is to remove the conflict of powers.

Bill Esterson *rose—*

Kevin Brennan *rose—*

Mr Gibb: I am spoilt for choice. I give way first to the hon. Member for Cardiff West.

Kevin Brennan: I apologise to my hon. Friend the Member for Sefton Central. I did not realise that he was seeking to intervene again. I am sure he will do so in a moment.

I wanted to clarify what the Minister just said. Exactly what happens to a local authority warning notice when the Secretary of State, through the regional schools commissioner, issues one as well?

Mr Gibb: Clause 2(2)(e) is very clear. It says:

"(4A) If a local authority are notified that the Secretary of State has given a warning notice to the governing body of a maintained school the local authority may not give a warning notice unless or until the Secretary of State informs them that they may."

It goes on to say:

"(4B) If the Secretary of State gives a warning notice to the governing body of a maintained school, any earlier warning notice given to the maintained school by the local authority ceases to have effect from that time."

It is very clear in the Bill, which should please the hon. Gentleman. He is keen for these things to be in the Bill and those provisions are explicitly stated with admirable clarity.

Bill Esterson: The Minister still has not dealt with the point I raised. The Bill clearly states that the local authority is depending on the decision of the Secretary of State, as he said. I do not see how that makes it easier for a local authority. It seems to me that that is giving the local authority a massive hoop to jump through by having to rely on the Secretary of State first.

Mr Gibb: Well, no. In normal circumstances, if a local authority is concerned about the standards in a particular school in its area, it can issue a warning notice under section 60. If this Bill goes through, we will have made that easier because there will be no appeal to the chief inspector. The regional schools commissioners will only intervene in those circumstances if they are unhappy about the quality of the warning notice and the action that has been recommended and demanded by the local authority. In most cases where a local authority is issuing a warning notice—and unfortunately there are 51 local authorities that have never done so since the power to issue warning notices was introduced—if the regional schools commissioner is unhappy, then they will intervene. If they are happy with what is happening, they will not intervene: they will be happy that the local authority is taking the necessary action to deal with an underperforming school.

Steve McCabe: I notice that this is the third or fourth time that the Minister has cited the example of 51 local authorities not issuing warning notices, in order to persuade the Committee that there is a problem here. Would he concede that in those 51 authorities there have been many negotiated action plans which have resulted in satisfactory outcomes, and therefore there has been no need for warning notices?

Mr Gibb: I do not know whether that is the case or not—

Steve McCabe: It certainly is the case.

Mr Gibb: That is an assertion that the hon. Gentleman is making. What I do know is that in a number of local authorities, the overall level of educational attainment and progress is significantly lower in those local authorities than it is in others. That is the problem that we are seeking to address.

I return to the amendments tabled by the hon. Member for Cardiff West. The changes to clause 2 would mean that regional schools commissioners could begin to tackle underperformance or serious concerns about the issue of management or tackle issues that relate to safety swiftly, without having to rely on the local authority to act. That also means that regional schools commissioners would be able to act without having to go through the complex process of directing the local authority to consider and then to issue a notice. These processes have such uncertain outcomes that they have been used on just four occasions, as we have debated in the last group, with little success in driving improvements or bringing schools into eligibility for intervention where necessary.

[Mr Gibb]

Amendments 16 and 17 seek to ensure that teachers' pay and conditions warning notices are unaffected by the changes we wish to make to the performance standards and safety warning notices. The amendments proposed say expressly that a pay and conditions warning notice already in force would remain in force despite the regional schools commissioner having issued a performance standards and safety warning notice.

The amendments also propose that a local authority that is prevented from giving a performance standards and safety warning notice by virtue of the RSC having issued one, could still give a pay and conditions warning notice. I hope that I can reassure Opposition Members that it is not necessary to make such changes, because the Bill already does what the amendments purport to do. The type of warning notice that clause 2 applies to is clearly identified in the first sentence of clause 2, which says:

"The Education and Inspections Act 2006 is amended as follows".

It talks about the performance standards and safety warning notice in the next subsection. Nothing in the Bill therefore removes the effect of a previously issued teachers' pay and conditions warning notice, nor does it stop a local authority from subsequently issuing one, even where the regional schools commissioner goes on to give a performance standards and safety warning notice to the school. They are separate issues under separate sections of the 2006 Act.

Turning to amendment 18, I believe that the hon. Members for Cardiff West and for Birmingham, Selly Oak, are seeking to ensure that a school is not subject to simultaneous warning notices, which may be conflicting and will certainly be confusing. I understand that intention, which is why the Bill already proposes to suspend a local authority's power to give a school a warning notice where the RSC, the regional schools commissioner, has notified the local authority that it has given such a notice. However, the Bill does not propose to provide for a corresponding suspension of the regional schools commissioner's new powers, as drafted in the Bill, to give a warning notice where a local authority has already given one, as amendment 18 proposes. That is because the new power for the regional schools commissioners to act and give warning themselves is intended for where local authorities have failed to act, or there are delays putting at risk plans for swift school improvements.

We want local authorities to be able to continue to give their own warning notices and to do so effectively. If they did so effectively, there would be no reason for the regional schools commissioners to take action themselves and no need to prevent them from doing so. But recent experience shows that there are too many examples where local authorities have been too reticent to issue warning notices. I cited the 51 local authorities, but there are 28 local authorities that have never issued a warning notice or installed an interim executive board.

Kevin Brennan: Rather than local authorities failing to issue warning notices, which we have already discussed, surely what the Minister is saying is that the regional schools commissioner's warning notice would trump the local authority's warning notice, because it was deemed to be inadequate. Can he give us some examples of local authority warning notices that are deemed to be inadequate where the power for the regional schools commissioner to trump those warning notices would be appropriate?

Mr Gibb: If the hon. Gentleman got out a little more, he would know that there are local authorities around the country that have standards that are clearly lower than those of other local authorities serving the same demographics as those local authorities. That is what we are trying to tackle in this Bill—giving the regional schools commissioner power to deal with local authorities that have over a period of years failed to provide the quality of education that we want for our young people.

Kevin Brennan: I shall have to give up my hermit's lifestyle and get out a little bit more often than I do.

The Minister avoided my point by having his little dig at me. My point was about the examples he will cite. Where are the examples of where local authorities have issued warning notices, where it would be necessary for the regional schools commissioner to step in and trump them with their own warning notices? I do not dispute that there might be examples of where that is necessary; I simply ask the Minister to provide some for the benefit of the Committee, some of whom may not get out as much as he does.

Mr Gibb: I will endeavour to do so during the debates. From looking at the performance tables and the performance of various local authorities, it is clear that some are not issuing warning notices, and many local authorities are not providing the same quality of education that we see in the best-performing local authorities serving similar demographics.

Amendment 20 seeks to retain the power of the Secretary of State to direct a local authority to issue a performance standards and safety warning notice, a power that we propose to remove. If, as the clause is currently drafted, the regional schools commissioners are able to give the performance standards and safety warning notice themselves, the need for them to direct the local authority to act is no longer needed, so the new arrangements will be a more streamlined and efficient way of securing improvements. The Bill takes away a power that the Secretary of State had and no longer needs.

Amendment 22 seeks to change specific provisions in section 62 of the School Standards and Framework Act 1998, which enables a local authority to take immediate action to prevent or end a breakdown of discipline in a school. The amendment expands the grounds on which local authorities can take action to include educational performance, leadership and governance and wider safety concerns: the same grounds on which they can already use their powers to give warning notices. Those are two separate pieces of legislation. The first, in the 1998 Act, is a long-standing provision that enables local authorities to respond immediately where there are serious issues of safety and discipline that demand urgent attention. That should not be diluted.

The second, which is in the spirit of the Bill and improves the warning notice regime, is about ensuring that schools can be required to demonstrate robust action to improve performance in a school where there

are wider concerns. It surely cannot be right to blur the lines between the two pieces of legislation with different aims, as the amendment would appear to do. We want to ensure that the powers available to both local authorities and regional schools commissioners are clear and proportionate to bring about improvement. I therefore urge the hon. Gentleman not to conflate two distinct but equally important issues.

Amendment 23 proposes to remove the requirement in the Bill that the Secretary of State be informed about a local authority's use of a teachers' pay and conditions warning notice. We propose to amend the process for issuing performance standards and safety warning notices to schools as part of a wider package of improvements to the intervention system for underperforming schools. We are also making amendments to teachers' pay and conditions warning notices to maintain some consistency between the two processes and to make improvements where they are appropriate. We consider that requiring a local authority to inform the Secretary of State about the issue of teachers' pay and conditions warning notices ensures that any action that the regional schools commissioners might wish to take in an underperforming school—to issue a warning notice to tackle serious concerns about governance—is consistent with any action that the local authority was already taking on pay and conditions. In view of those comments, I urge the hon. Members for Cardiff West and for Birmingham, Selly Oak not to press their amendments.

Kevin Brennan: We have had an interesting and informative discussion on the amendments. Again, it raises interesting questions. On the academisation issue, we are interested to find out how many schools fail only after they become academies. We may explore that later. The Minister has made it clear that the regional schools commissioner is being given the power effectively to trump any warning notice issued by a local authority. Again, we are not given a tremendous amount of compelling detailed evidence of the need for this power.

11.15 am

We are told to get out a bit more. Presumably, when the Minister is out and about he collects examples that he brings back to the Department and berates his civil servants, saying, "Look, I have got an example here. I have 48 different examples of obstructionism by local authorities, or local authorities that are refusing to issue warning notices. We as a Department should be using our powers under the 2011 Act, which amended the 2006 Act, to force warning notices upon these local authorities."

Again we have not had the compelling evidence that that is the case. Nor have we been presented, as we might have expected, with a series of examples. Earlier, I read out an example of a warning notice that Lord Nash had issued to an academy. Although it contained perfectly reasonable prescriptions, some people might have said it was expecting a lot in one month. Some might say—I would not—that the school was almost set up to fail, to ensure that it was unable to meet the terms of the warning notice.

At least we provided a practical example for the Committee to debate and consider. We got out a bit and found a practical example, but the Minister has not given us a single practical example of what he is seeking to deal with by this clause. I notice he has a certain look on his face, which suggests he might have had a moment of inspiration, so I will give way.

Mr Gibb: No inspiration from this Minister at this moment. However, the hon. Gentleman might like to visit Blackpool or Suffolk. Those are two of 12 local authorities that have been judged ineffective by Ofsted. Those two local authorities were criticised for the lack of pace in securing Ofsted's required improvements. Those are two places he could visit.

I would say to the hon. Gentleman that in most cases we do expect local authorities to work well with regional schools commissioners to agree the action needed. It is only sometimes that some local authorities will be too slow and it is those examples that we want to use these powers to tackle.

Kevin Brennan: I am grateful to the Minister, though disappointed as we were hoping for a moment of inspiration and an example of the sort of warning notice issued by a local authority that would be so inadequate that it would be necessary for a regional schools commissioner to come in and trump it. There are no doubt examples of this; the Minister would not be legislating unless there were. I am not saying that there are no examples. I am just saying that the Committee is entitled to have one or two laid before it in order to consider whether this is the right way to deal with a problem the Minister has identified but for which he has not provided the practical evidence. That is rather disappointing because we would like to see the evidence.

The Minister once again cited the fact that 51 local authorities have never issued a warning notice. That is a perfectly valid observation, but the Minister ought to be able to demonstrate to the Committee that, in taking that approach, those are the local authorities that have a far worse record than those that have issued many warning notices. I do not know the reason; the Minister has the full panoply of the civil service to advise him. It may be that those local authorities that have not issued warning notices have very good schools and have not had to do so, or they may have taken a different approach to school improvement which has borne fruit in a way as productive as the route of issuing a warning notice.

Simply saying that there are 51 local authorities that have not issued warning notices does not demonstrate anything, unless the Minister can tell us that when the numbers have been crunched, the statistics show that those 51 local authorities are clearly performing more poorly than the average of all the other local authorities that issue warning notices or, indeed, than the 51 top local authorities that issue warning notices.

Bill Esterson: As my hon. Friend is talking about the use or lack of use of warning notices by local authorities, it strikes me that we have not actually heard from the Minister a justification of why warning notices are such an effective tool of school improvement. I would have expected to have already heard that during this debate. I wonder whether my hon. Friend would agree that perhaps we should expect to hear a justification of that from the Minister, alongside an analysis of the 51 local authorities and whether they are right or otherwise not to have used these notices.

Kevin Brennan: Yes, I agree that that is exactly the sort of thing that we should be able to expect from the Minister, to justify the actions that he is taking. As I said, where is the evidence that not issuing warning notices is the problem? Has he calculated the performance of those local authorities that do not issue warning notices against those that issue lots of them? Where is the evidence that not issuing warning notices is a sure sign of underperformance? That is a legitimate question to ask, and the Minister ought to be able to answer it.

Notwithstanding that, I recognise that the debate we have had on this group of amendments raises a number of interesting questions. I also acknowledge that some of the amendments within the grouping were intended to probe the Government's intentions, and the Minister sought to answer on those in his response. I note the points that he made about not wanting to conflate two different pieces of legislation. I simply observe that the way in which the Government go about education legislation these days—not writing new Bills but effectively only amending existing legislation—makes confusion between different pieces of education legislation more and more likely. Indeed, that also makes it more and more difficult for those charged with doing so to understand exactly where education law stands in relation to many of these matters.

It is difficult for the Minister legitimately to criticise us for seeking to table an amendment to change an earlier piece of legislation, which appears to provide the potential to make a lot of the improvements that we might want to make to the Bill. It is difficult for the Minister to criticise us for doing so, given that that is the method which the Government use to make education legislation these days. Notwithstanding that, and notwithstanding the fact that the Minister has not provided all the evidence that we would like to see, we will not seek to press our amendments to a vote in Committee.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Colleagues, it is very rapidly approaching the hour when we have to leave. There is less than a minute to go. I suspect that we should suspend now, and then return to this place at 2 o'clock when we will proceed. I remind Members that at 11.30 today the House will observe a minute's silence in memory of 7/7. Perhaps they could try their utmost to fulfil that obligation.

Ordered, That further consideration be now adjourned. —*(Margot James.)*

11.24 am

Adjourned till this day at Two o'clock.