



Baroness Barran

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To: Interested Peers

1 June 2022

My Lords,

The Schools Bill: Second Reading

I am writing to you as a speaker in the Second Reading debate for the Schools Bill, or as a Peer who has expressed a keen interest in this Bill. I will be using this letter to address some of the issues I did not have time to cover in my closing speech.

I would like to thank all speakers for their contributions during the debate. As I said in my closing speech, I am grateful for this House's knowledge and expertise, which I know will continue to be brought to bear throughout the upcoming stages of Bill scrutiny.

On Teachers:

Baroness Chapman reflected that the quality of teaching is the single most important in-school factor in improving outcomes for children. The Government agrees with this wholeheartedly. That is why we are undertaking ambitious reforms to transform the way we train teachers and school leaders.

By 2024, a reformed Initial Teacher Training provider market will deliver quality assured training leading to Qualified Teacher Status. This will place greater emphasis on embedding structured practice into courses and ensure trainees are ready to thrive in the classroom.

Many schools are academies and can employ teachers without Qualified Teacher Status. However, most schools, including academies, understand the importance of well-trained teachers and therefore choose to employ those who have Qualified Teacher Status and have undertaken initial teacher training. 96.5% of teachers (full-time equivalent) in academy schools held Qualified Teacher Status in November 2020.

Baroness Watkins of Tavistock asked for clarity on the definition of a teacher. For teacher misconduct purposes, current legislation defines a teacher by the activities they undertake and the setting they undertake them in, rather than the role in which they are employed or the qualifications they hold.

A person is a teacher, whether or not they hold qualified teacher status, if they are employed or engaged to undertake teaching work in England in a school, a sixth form college, a 16-19 academy, a children's home or some youth accommodation. Teaching work is planning, preparing or delivering lessons, or assessing or reporting on the development, progress and attainment of pupils, without supervision.

On Funding:

Concerns were raised by your lordships, including Lord Storey and Lord Shipley, over resources for small, rural schools. The government recognises the essential role that small schools play in their communities, many of which are in rural areas. The national funding formula (NFF) accounts for the particular challenges faced by small schools in rural areas through a "sparsity" factor.

We have increased the amount of funding that small, rural schools attract through this factor from £26 million in 2020-21 to £95 million in 2022-23.

Our NFF provisions will ensure all small rural schools get the funding they need.

On Academies:

The Bishop of Oxford asked how the Government would stop local authorities using powers in this Bill to put maintained schools into their own multi-academy trusts rather than the right trust for them, which may be an alternative multi-academy trust.

We would expect Regional Directors, local authorities and schools to have open discussions around which trust schools will join as part of the consultation required between local authorities and their schools. The final decision as to which trust a school will join will be made based on what is likely to drive the best outcomes for pupils.

The Bishop of Oxford also requested clarity on the intention of clauses 19 and 20; the requirement of academy schools with a religious character to make regulations about governance and the power to make regulation about governance. The Department is liaising with religious bodies of state-funded schools to ensure that the Government's intent is clear in relation to clauses 19 and 20. The Secretary of State will make regulations under both clauses which will place on a statutory footing the elements which academy trusts must include in their articles of association and, where relevant, in their schemes of delegation.

The regulations will ensure that the governance arrangements for all types of academy schools with a religious character, including those which were previously voluntary aided or voluntary controlled, are handled appropriately and reflect the level of control which the religious body had when they were maintained schools. As requested during the debate, I will confirm this during Committee stage.

Baroness Bakewell suggested that the provisions for children who are humanist and attend faith schools are not satisfactory. It is the Government's view that the framework for the delivery of religious education in academy schools with a religious character, including the existing right of withdrawal from religious education and/or collective worship, is appropriate. The Bill does not make a substantive change to these current rights and requirements. Anecdotally, for various reasons, the right of withdrawal is exercised by families both with and without specific religious beliefs.

On selective schooling:

Baroness Berridge raised concerns that it was parents at a grammar school, rather than a wider electorate, who could ensure that a school remains selective. The Bill puts the ballot process for removing selection from academy grammar schools onto the same legal footing as the process for maintained schools, which has been in place since 1998.

I can assure your Lordships that a wider electorate can petition for a ballot and vote in ballots. In highly selective areas, all parents of children attending schools in the area or who live in the area are eligible to vote. In less selective areas, all parents of children attending feeder schools of the grammar school, or grammar schools, are eligible to vote.

Baroness Watkins of Tavistock asked whether these selective schools would get the same pupil allocation as other academies, even though they take fewer students from poorer wards. The NFF distributes funding fairly, based on the needs of schools and their pupil cohorts. The NFF allocates 17% (£6.7 billion) of all funding in 2022-23 through additional needs factors based on deprivation, low prior attainment, English as an additional language and mobility. This means that schools with larger proportions of pupils from disadvantaged backgrounds and other additional needs attract more funding per pupil than schools with lower proportions.

On attendance in schools:

Baroness Brinton brought up the important issue of protecting immunocompromised pupils and those with long Covid and ensuring that they and their families are not being penalised for not attending school. Baroness McIntosh of Hudnall suggested that the attendance clauses would penalise pupils with SEND and those with autism.

This Bill will allow us to make our recently published attendance guidance '[Working together to improve school attendance](#)' statutory. This will help ensure families, schools and local authorities work together to support pupils who, compared with their peers, face greater barriers to attendance. This includes pupils with long-term medical conditions.

We are clear that schools should authorise absence due to both physical and mental illness. Schools should only request parents to provide medical evidence to support absence where they have genuine and reasonable doubt about the authenticity of the illness. We are also clear that schools pressuring a parent to remove their child from the school is a form of off-rolling, which is never acceptable.

Individuals with a weakened immune system should follow Department of Health and Social Care and UK Health Security Agency advice for people whose immune system means they are at higher risk from Covid-19. This guidance is clear that children and young people can continue to attend education settings, unless their clinician has advised otherwise.

Most adults, children and young people who have had Covid-19 recover within a few weeks. However, we are all different and recovery time can vary. Long Covid should be treated in line with other medium to long-term health conditions. Parents should not be penalised if their child is genuinely ill and unable to attend school.

If there is concern about a child's ability to take part in their usual activities because of long Covid symptoms, their school should arrange a meeting to discuss what adjustments can be put in place to ensure the child can continue to participate in their usual activities as far as possible.

The package of attendance measures in the Bill will improve, at a national level, the consistency of attendance support offered to pupils and parents through an earlier and more targeted approach. This means all pupils, including those with special educational needs and disabilities, should be offered support to attend their educational settings with punitive approaches used as a last resort. This should help reduce the need for legal intervention overall and therefore benefit the parents of pupils with characteristics associated with lower attendance.

The proposals set out for consultation in the SEND and Alternative Provision Green Paper, include a clear focus on improving support in mainstream schools for all children and young people with SEND, including those with autism.

On Independent Educational Institutions:

Baroness Meacher asked about registration requirements and how they will apply to settings which offer a split provision – a “morning school” and an “afternoon school” and whether an independent educational institution would cover this scenario.

The proposed new registration requirement will capture settings which offer education to children on a full-time basis, that is if the children could be expected to receive all or a majority of their education there.

We intend to extend the existing regime which applies to independent schools to these settings. We do not think it is appropriate for this regulatory regime to extend to capture part-time educational settings, where children are receiving a majority of their education elsewhere. This would risk placing undue burdens on the staff and volunteers that run settings, such as supplementary schools and other extra-curricular clubs, which often provide enriching activities and education to children in addition to the provision they receive in school.

In response to the question asked about whether a school could avoid registration if it offered a “morning” and “afternoon” service. A single setting which did this but in practice taught sufficient numbers of the same pupils throughout the morning and afternoon would be required to register.

Lord Lexdon asked for clarification on the introduction of a new test under which the Secretary of State will determine whether the proprietors of independent schools are “fit and proper persons”. In reaching a judgement as to whether an individual is a fit and proper person, the Secretary of State would be able to take into account whether the person is of good character; has the competence, skills and experience necessary for the role; has ever contributed to, been involved with, or facilitated, serious mismanagement of the provision of education or other services to children; or has any convictions, or findings against them by a professional body of misconduct, that either directly relate to work in a school or a similar institution or may otherwise undermine confidence in their ability to properly operate an independent school.

Baroness Brinton argued that if any school has safeguarding issues that are severe enough that a stop boarding requirement is necessary, then school closure should be the key consideration. A stop boarding requirement, under the new powers, cannot be imposed independently of registration being suspended. The Bill would confer the powers to impose a stop boarding requirement and it only permits this where registration is also suspended. New section 118D(1) of the Education and Skills Act 2008 states:

“Where the Secretary of State suspends the registration of a boarding institution, the Secretary of State may impose on the proprietor of the institution a requirement to stop providing boarding accommodation to its students...”

Under sections 115 and 116 of the Education and Skills Act 2008, the Secretary of State may impose a relevant restriction upon the proprietor of an independent educational institution. That could be a requirement to cease providing boarding at the institution. However, the power to impose a relevant restriction differs from the power to impose a stop boarding requirement. In the case of the latter, there is no need to have first required an action plan (giving the opportunity to rectify failings). In addition, a stop boarding requirement can take effect immediately unlike in the case of a relevant restriction, which can only take effect after the 28-day period for a proprietor to bring an appeal has expired or, if an appeal is brought, after the appeal has been determined or withdrawn.

On the children not in school registers:

I welcome the suggestion from Baroness Jones of Moulsecoomb that the Government should engage with home educators to discuss the proposals that affect them. The legislative proposals were outlined in the 2019 Children Not in School Consultation, which received almost 5000 responses (mostly from parents). Since responding to the consultation, officials in my department have continued to engage regularly with home educators on the Bill. I will ensure my office arrange a meeting between myself and home educators at the earliest opportunity.

Baroness Fox of Buckley also suggested that the Government regards EHE as a problem, particularly in relation to safeguarding.

The Government is clear that home education is not an inherent safeguarding risk. However, a child being home-educated is not necessarily being seen on a regular basis by professionals, such as teachers, and this logically increases the chances that a child at risk of harm would be missed. Where the suitability of home education is in doubt and a child's development is likely to be impaired, local authorities should be ready to fully exercise their safeguarding powers and duties to protect the child's well-being, including their education.

Lord Blackwell and Lord Lucas argued that the government were bringing forward extensive powers to make a child attend school and that School Attendance Order timelines are too short for families to meet.

The Government maintains that there is no change to be made to the assessment of how a child should be educated. The education needs to be suitable according to age, ability, aptitude and special educational needs. Where a local authority assess that the education is not suitable on those criteria, it must initiate the process for a School Attendance Order. This can be a lengthy process that the Government aims to shorten to help a child to receive a suitable education as soon as possible.

Lord Blackwell, Baroness Fox of Buckley and Lord Lucas also raised concerns over the data being collected by Local Authorities. I assure your Lordships that the information held in registers will be prescribed in regulations by the department and data protection processes will be followed.

Local authorities cannot demand parents provide any information that is not prescribed; however, they could record other information they deem appropriate.

The Bill provides for data to be shared with prescribed persons, when the local authority considers it appropriate to do so for the purposes of promoting or safeguarding the education, safety or welfare of a child. There is no intention to use registration as a step towards monitoring families nor to prescribe the methods parents elect to use in their education.

Concerns were also raised that the Bill creates an implication of consent required from a school before a child can be removed to be home educated. This is not the case; home education continues to be a choice for parents. The measures require parents to notify the local authority when their child is being home educated. These clauses do not require a school or local authority to consent before a parent can home educate, unless a school attendance order is in force.

Baroness Jones of Moulsecoomb and Lord Blackwell raised concerns about there being a lack of system oversight of local authorities in regard to the children not in school registers. Currently, parents are able to contact Local Government and Social Care Ombudsman if they believe a local authority has not acted in line with current legislation and guidance.

Furthermore, the Education Act 1996 gives the Secretary of State powers to intervene when a local authority exercise their functions under that Act unreasonably or fail to comply with duties under that Act. As the Children Not in School measures are to be included in the 1996 Act, those intervention powers will apply to local authority actions under the new measures as well, and so the department can offer oversight in this way.

I once again thank all peers who contributed to the debate, and look forward to moving to committee stage, which I expect will be equally constructive.

I will be placing this letter in the House library to allow all peers to access this information. Should you have any further questions regarding the Schools Bill, please do not hesitate to contact my office via barran.ps@education.gov.uk. I would be happy to meet interested peers to discuss further issues that have or have not been referenced in this letter.

As I expressed in my letter to all Peers upon the introduction of the Bill, I wish to work closely with all members of the House to fulfil our mission that every child in every part of the country will receive a great education and the right support, in the right place, and at the right time. I look forward to your support in this endeavour.

Yours sincerely,



BARONESS BARRAN
PARLIAMENTARY UNDER-SECRETARY OF STATE