



Baroness Barran

Parliamentary Under-Secretary of State for the School System
Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/contactus/dfc

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The Rt Hon. The Lord McLoughlin

Dear Patrick,

Today, the Government has tabled amendments to the Schools Bill in advance of Report Stage scheduled for 12 July. I wanted to write to you following the report of the Delegated Powers and Regulatory Reform Committee on the Schools Bill and your letter to the Secretary of State for Education, to provide further information on how these amendments affect the delegated powers proposed in the Bill.

The letter follows on from my letter to noble Lords on 30 June, which confirmed the Government's approach to the Clauses in the Bill relating to Academy Standards and Academy Trust Intervention (Clauses 1-18 and Schedule 1 and 2). The Government has tabled further consequential amendments necessary to remove the Academy Standards and Trust Intervention from the Bill.

I would like to thank you again for your careful and detailed scrutiny of the powers proposed in the Bill, which informed a productive debate in Committee. I wish to pay particular tribute to Baroness Meacher for her valuable contributions, particularly on the powers in clauses 1 to 4, which we have carefully considered and acted upon. I would also like to thank Lord Judge for his continuing challenge to the Government on this Bill and for his amendments tabled in support of the Committee's recommendation.

The Government will support the removal of Clause 3 and will not bring back a further Henry VIII power as part of its proposals to revise C1-4. It expects to bring back a much narrower power to set academy standards and the aim will be to meet the tests set out by Baroness Meacher on the expectations of your Committee in how Government should use delegated powers. The Government has listened directly to your Committee and I would like to put on record that our approach to removing or amending delegated powers in this Bill is intended to demonstrate our respect for the Committee's recommendations.

The Government has committed to undertake the first phase of the regulatory review to develop revised clauses for Academy Standards. Our intention is to table these amendments during the first amending stage in the House of Commons. The House of Lords will then be able to consider all revised clauses during Lords Consideration of Commons Amendment and a whole day will be allowed to consider the amendments brought forward on clauses 1 - 18 in a 'Committee of the Whole House' before the House returns to 'normal' ping-pong to consider amendments to the rest

of the Bill.

There are government amendments to the delegated powers in the Bill in relation to the following matters which I wish to make you aware of:

- Schools with a religious character (Clause(s) 20, 29 and a new schedule (2A))
- Children not in School registration (Clauses 49-52)
- Independent Education Institutions (Clause 60)

Schools with a religious character

The government has tabled an amendment which changes clause 20 from being a *power* to make regulations to a *duty* to make regulations in relation to the governance of an Academy school with a religious character. The context, purpose and justifications for the regulations made under this clause set out in the Department's Delegated Powers Memorandum remain relevant to the clause as amended. We are making this amendment because the historic organisational structure of some schools with a religious character means they are more likely to fall outside of the scope of clause 19, under which the Secretary of State *must* make regulations. With this amendment, regulations for these schools *must* be made under clause 20 instead.

The government is proposing two amendments in relation to powers to apply for an Academy order. One amendment inserts a new clause, and the other amends clause 29 of the bill. For these two amendments, the phrase "appropriate religious body" is used. For both of these amendments, it is proposed that the identity of some of the "appropriate religious bodies" will be prescribed in regulations. The clause explicitly defines the religious body for a Church of England or Catholic school. For schools of any other religion, the clause states that the body is as prescribed under section 88F(3)(e) of the School Standards and Framework Act 1998, which is a power to prescribe in regulations the religious body for certain admissions purposes. The religious bodies are currently set out in regulations (schedules 3 and 4 of the School Admissions (Admission Arrangements and Coordination of Admission Arrangements) (England) Regulations 2012). This means that references to 'appropriate religious body' for certain faiths will mean as already set out in existing regulations.

The government's amendments also amend section 7(1)(b) of the Academies Act 2010, which currently applies where an Academy order is made in a certain circumstance. The amendment is to ensure that section 7 also applies following an application in the two new circumstances set out in the Bill (i.e. by a local authority, or by a certain body for schools with a religious character). Section 7 includes a regulation making power regarding the determination and payment of a surplus. These regulations already exist (the Academy Conversions (Transfer of School Surpluses) Regulations 2013). Therefore, this is not a new regulation making power. Instead, by extending the application of the clause to the two new categories of bodies that can apply for an Academy order, there is an extension of the existing regulation making power.

Children not in School (CNIS) registers

The government has tabled amendments aimed at providing reassurance to the families of children not in school over the information to be prescribed and its intended use.

We seek to make clearer the types of additional information that can be prescribed for inclusion in the CNIS registers by local authorities, by setting out in section 436(1)(d) the types of information that can be prescribed, which will be focused on categories of information aimed at supporting the education, welfare and safety of the child. As we are aware that some of this information may be of a sensitive nature for families, and will not always be essential for the operation of the registers, we will ensure that parents are only asked to provide this information voluntarily and have the option to not disclose this to local authorities, should they not wish to do so.

We are seeking to amend the following delegated powers to the affirmative procedure for the first time they are used, and negative thereafter:

- section 436C(1)(c) prescribing details of the means by which the child is being educated for inclusion in the registers
- section 436(1)(d) prescribing other information for inclusion in the registers
- section 436C(3) concerning the maintenance and upkeep of the registers by local authorities
- section 436F(1) prescribing the information to be provided to the Secretary of State.

We anticipate that with the first time they are made will be the point where they are most likely to have an impact on, and be of highest interest to families. Any subsequent changes would most likely be for operational purposes only.

Furthermore, section 436F(2) – which allows the Secretary of State to prescribe those persons with whom local authorities can share information, where they consider appropriate, for the purpose of promoting the education, welfare or safety of a child – will be amended so the delegated power is the affirmative procedure every time. Given some of the concerns we heard from Peers and home educating families around the need for transparency of the individuals and organisations that information may be shared with, we feel it is appropriate that the use of this power be affirmative every time. I hope your Committee welcomes this increased role for Parliament in scrutinising and voting on relevant statutory instruments.

Independent Education Institutions

Amendments have also been tabled to the regulation-making power in clause 60. The first amendment is an amendment to ensure consistency in language between clause 60 and the Bill and the Education and Skills Act 2008 (“the 2008 Act”) – which substitutes “provision” for “enactment” in new section 137A(1).. The second amendment would have principally two effects. First, it corrects an error in new section 137A(2) of the 2008 Act. As currently worded, it would only permit enactments, to be applied under the regulation-making power in new section 137A(1), which had been made before, or in, the session in which the 2008 Act was passed. Section 137A(2)

would be amended to allow for later enactments to be amended – i.e. provision in any Act passed before, or in, the session in which the Schools Bill is enacted or provision in any subordinate legislation made before, or in, that same session. This is consistent with how we described the regulation-making power in our original delegated powers memorandum. Secondly, the amendment ensures that Part 3 of the Schools Bill (and any subordinate legislation under that Part) is covered by the regulation-making power in section 137A. Other Parts of the Bill are not covered by the amendments.

The amendment in this second respect would enable regulations under section 137A to be a single piece of legislation containing provisions applying pre-existing primary legislation in relation to independent educational institutions that are not independent schools, including the Education Act 1996 (“the 1996 Act”) as amended by Part 3 of the Bill. The 1996 Act in places is changed by Part 3 of the Schools Bill by, for example, substituting new England-only provisions on school attendance orders. Indeed, policy on how the pre-existing (but unchanged) sections 444 to 447 of the 1996 Act should be applied in relation to independent educational institutions that are not independent schools is likely to be closely linked to the policy about how new provisions in the 1996 Act as inserted by the Bill (sections 443A and 443B) should be so applied.

I hope this has provided helpful detail as to how the Government’s amendments for Report stage take account of the report from your Committee, and sets out the instances in which the Government’s amendments affect the delegated powers within the Bill.

I am providing a copy of this letter to Lord Judge and intend to place a copy in the House Library.

Yours sincerely,



BARONESS BARRAN
PARLIAMENTARY UNDER-SECRETARY OF STATE