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Baroness Brinton
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7 July 2022

Dear Sal,

Firstly, I would like to thank you for your contributions during the debate. As I have said previously, I am grateful for the knowledge and expertise you bring to the House, which I know you will continue to bring throughout the upcoming stages of Bill scrutiny.

I promised to write to you during Day 5 of Lords Committee on the Schools Bill in response to questions you raised during the debate about the penalties for a parent failing to comply with a School Attendance Order, and the increase of this to 51 weeks, and the impact of this on parents and the prison system (Hansard, column 291, 22 June 2022)..

Regarding Schools Attendance Orders, it may be helpful for me to clarify the process, where there may have been some misunderstanding on the question of criminal sanctions raised during both Days 4 and 5 of Committee.

The process is only triggered in one of two cases. First, where the parent appears to have failed to provide information for maintenance of the registers. Second, where following informal enquiries it appears to the local authority that a child is not receiving a suitable education.

However, this is not intended to criminalise the parent but to check whether the child is receiving a suitable education. The consequence of failing to provide information is not criminal – a point which I made in the debate – rather it simply starts the process for a School Attendance Order. It is important to recognise that, as is the position in current law, the process only leads to a School Attendance Order if the parent fails to show the local authority that the child is suitably educated.

Where a School Attendance Order is served, a parent only commits an offence in two situations: if they do not enrol their child at the named school, or if the child is enrolled at the named school but the parent de-registers the child without following the relevant procedure. The parent can, however, prevent an Order being served, or have an Order revoked, at any time by showing that their child is being suitably educated. The key point being that if the provision is suitable, then the local authority will not serve the Order, and if there is no Order, there can be no offence.

In addition, even if a parent breaches a School Attendance Order, they are still not guilty of an offence if they can prove in court that the child is being suitably educated.

If, in those rare cases, having gone through all of the above steps, the parent still cannot prove they are providing a suitable education, only then may a parent by found guilty of committing an offence, and be subject to a fine or prison sentence imposed by the Magistrates' Court at their discretion.

We would therefore expect there to be no impact on parents who are already providing a good education for their child, as they should have ample opportunities to be able to demonstrate, during any of the stages above, that they are providing a suitable education.

Turning to the level of criminal penalty, this is being increased to a maximum fine of £2,500 or up to three months imprisonment. This will bring the offence into alignment with the offence of knowingly failing to cause a child to attend the school at which they are registered.

This is to remove the current perverse incentive for parents to remove a child from school without providing a suitable education. At the moment, if a child is registered at a school but their parent keeps them home without valid reason, the parent commits an offence and can potentially receive a heavier penalty than if they simply withdraw the child from school completely, without providing any education at all and ignoring a School Attendance Order. This cannot be right, and I believe for this reason it is important that the two offences are brought into alignment.

Regarding your query on the penalty timeframes for the offence of breaching a School Attendance Order, the offence of breaching a School Attendance Order carries a maximum penalty of 51 weeks to be read as 3 months' imprisonment until the commencement of section 281 of the Criminal Justice Act 2003. The government have no present plans to commence section 281. However, it is standard drafting practice to include provision in the event of section 281 coming into force.

Our intention, through new section 436Q(9), is for this offence to carry a maximum penalty of 3 months in order to create a consistent framework with other similar offences, such the penalty for the offence of knowingly allowing a school pupil to fail to attend school. It is important to align the penalties for these offences for the reasons I set out above.

My department is also working closely with the Ministry of Justice on a Justice impact assessment to ensure there is no adverse impact to the criminal justice system.

You also asked what was delaying the Secretary of State taking action against Ampleforth College and whether clause 60 was needed for action to happen or if there were other remedies (Hansard, column 321, 22 June 2022).

Under the Education and Skills Act 2008, the Secretary of State is the regulator of all independent schools in England. Any regulatory action for an independent school is always considered in line with the department's published policy on regulatory and enforcement action against independent schools. The policy is based on the principles of proportionality, targeting, consistency and transparency. The Secretary of State will continue to make decisions on regulatory and enforcement action in line with these principles.

You raised the point that last year, Ampleforth College was told it could take no new pupils, but boarding was not stopped (Hansard, column 321, 22 June 2022).

Under sections 115 and 116 of the Education and Skills Act 2008 ("the 2008 Act"), the Secretary of State may impose a relevant restriction upon the proprietor of an independent educational institution. This could be a requirement to cease providing boarding at the institution or a restriction on new admissions, as was the case with Ampleforth College. As set out above, the Secretary of State will continue to make decisions on the use of his existing powers in line with the department's published policy.

You then asked how the Secretary of State can be satisfied that children will be safe during a period leading up to the suspension of boarding, if only boarding is suspended but day teaching continues (Hansard, column 321, 22 June 2022).

The intention behind the new power to suspend is that suspension (and indeed, a stop boarding requirement) will be able to take effect very quickly. This contrasts with the position of using enforcement powers in sections 115 and 116 of the 2008 Act. Under the new powers, the Secretary of State will be able to act within days of receiving evidence of failures sufficient to motivate action, and if he considered it urgent to protect students, he can suspend registration without first consulting the school's proprietor. In any case where exercising of the powers has been considered, the department would intend to work very closely with the local authority and other agencies to ensure pupils are kept safe and are able to safely leave the school to travel home or to alternative safe accommodation as the decisions come into effect.

Moreover, the proposed legislation empowers the Secretary of State to impose stop boarding requirements. Only with that legislation could the Secretary of State impose a stop boarding requirement and, therefore, he would only be able to impose that requirement in accordance with the legislation. New section 118A(1) confers the basic power and starts with the qualification: "Where the Secretary of State suspends the registration of a boarding institution". This means that suspending the registration of

the setting (which has the effect of stopping educational provision for both day and boarding pupils) is a condition of also imposing a stop boarding requirement. There are no other provisions in the proposed legislation that depart from this and so no provisions allow for a stop boarding requirement to be imposed without a suspension of registration. Therefore, where a stop boarding requirement has been imposed, the education of day pupils will continue.

The current power to impose a relevant restriction differs from the new 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. This is unlike a relevant restriction, which can only take effect after the 28-day period for a proprietor to bring an appeal has expired. If an appeal is brought the relevant restriction will not take effect until after the appeal has been determined or withdrawn.

You asked if the department believed that it will now have the tools needed to ensure independent schools are judged by the same standards as publicly funded ones (Hansard, column 322, 22 June 2022).

Independent schools are required to meet the independent school standards at all times. All registered independent schools are subject to regular inspection by either Ofsted or the Independent Schools Inspectorate and these inspections report on whether the school is meeting the independent school standards. Where independent schools fail to meet the standards, the department may take action, taking into account its published regulatory and enforcement action policy. The new power to suspend registration will help the government ensure that registered independent schools meet safeguarding standards. The power is intended to protect students where they are exposed to a risk of harm at the independent school where they are educated or may board.

I hope this letter provides you with reassurance on these matters. I intend to place a copy of this letter in the House library.

Yours sincerely,

BARONESS BARRAN
PARLIAMENTARY UNDER-SECRETARY OF STATE