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/dfe

Baroness Meacher
House of Lords
London
SW1A 0PW

5 July 2022

Dear Molly,

Thank you for meeting me on Tuesday 21 June, and for your contributions to Day 5 of Lord Committee on the Schools Bill on Wednesday 22 June. I undertook to write to you regarding your concerns over clauses 56 and 63 of the Schools Bill.

You suggested that clause 56 contains “a significant loophole” in that it would allow proprietors to “get together and split their provision into separate morning and afternoon settings, or some other configuration such as one teacher taking kids in the morning, another in the afternoon” (Hansard, column 306, 22 June 2022).

In response, I would note that split provision is an arrangement which may already take place, rather than one created by the Bill. Separate settings may already arrange themselves to provide, in each case, part-time education to the same cohort of children obviating the need for any of them to register.

As we discussed when we met, clause 63 of the Bill gives Her Majesty’s Chief Inspector (HMCI) stronger powers of investigation, which will make it easier to gather evidence of cases where a single institution is seeking to avoid registration through splitting its full-time provision over different sites.

I have considered your proposed solution of reducing the registration requirement to any setting which supplies a quarter of a child’s education but believe that it would have negative consequences without necessarily solving the problem you have identified. It would bring into the regulatory regime which applies to independent schools, a wide range of part-time providers which it would be inappropriate to regulate in this way, including part-time settings which are legitimately working in concert to provide education. I also think that any clear threshold based solely on the amount of time children attend a setting will be open to abuse by those determined to avoid registration.

I agree with you that there may be an issue with how the government regulates settings which, since they do not provide a full-time education, will not be required to register with the Secretary of State. The planned Call for Evidence, to be issued before the summer, will examine options for improved oversight of this sector.

In day 5 of Lords Committee you suggested that Clause 63 of the Bill could be strengthened because the meaning of the word “dwelling” is unclear and as such it is not clear when HMCI will be required to seek a warrant before entering and

searching a setting without the consent of the occupiers. You expressed concern that this will lead to a loss of the element of surprise. As a solution you proposed that a definition of “a dwelling” be included on the face of the Bill (Hansard, column 307, 22 June 2022).

It is the government’s view that defining a “dwelling” beyond its ordinary meaning could introduce further loopholes and ambiguities and not necessarily make the powers easier to operate. I also note that other legislation which references “dwellings” does so without further elaboration. For example, section 249 and Schedule 17 of the Marine and Coastal Access Act 2009 and section 22 of the London Olympic Games and Paralympic Games Act 2006.

My view is that the ordinary meaning of the word “dwelling” would not capture settings where a mattress was placed in an otherwise non-residential building but I concur that a situation whereby proprietors gave their unregistered independent school the appearance of a dwelling to frustrate an inspection could be a hindrance. I suggest that in practice, however, this situation ought to be rare.

The proposed legislation permits premises used as a dwelling to be entered and searched without a warrant if consent is given. There are many other non-police actors, such as pensions regulators or animal welfare inspectors, that possess a power to search dwellings. However, they have this power only with consent or a warrant. It is also the case that the police generally need to obtain a warrant to search a dwelling. These are sensible, proportionate safeguards limiting the use of warrants and the ability to enter, and search, dwellings without consent.

The Bill as drafted, makes provision to allow Ofsted to apply pre-emptively for a warrant to enter a dwelling if certain conditions are met. One of these conditions – that seeking consent to enter may frustrate or seriously prejudice the purpose of entering – could address the situation you described where there is concern a person could use the time taken to obtain a warrant to “conceal, dispose of or fabricate false evidence about whether a school was in operation within the dwelling” (Hansard, column 307, 22 June 2022).

I am therefore confident that persons who deliberately set out to ignore and game the regulatory regime may still have their premises subject to effective inspections under the powers proposed in clause 63 of the Bill.

My officials continue to work with Ofsted to gain their views and will consider any comments they make. This includes discussing how Ofsted’s processes will need to change to use these new powers effectively.

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,

Diana Barran

BARONESS BARRAN
PARLIAMENTARY UNDER-SECRETARY OF STATE