

Localism Bill Committee
Tuesday 1 February 2011 (Morning)
[Mr David Amess in the Chair]
Localism Bill

Written evidence to be reported to the House

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10.30 am

The Chair: Before we start our line-by-line consideration, I wish to make a few points. I recognise that although I have been a Member for a long time, many colleagues on the Committee have not. Indeed, there are some for whom this is their first Bill Committee. I will take all such matters into consideration, but if we set out a few rules at the start, it will mean that things are less embarrassing.

If researchers or others in one's office come to the Committee Room to deliver messages or papers to be signed, could you please tell them that they should not just walk into the room and plonk the bits of paper in front of you? Everything has to be done through the attendants. Likewise, only members of the Committee may enter the main body of the Committee.

It will take a little while to get used to our proceedings, but if any colleague is puzzled by the order of voting or the selection of amendments, it would be much more sensible if, rather than coming up here, whispering things and distracting me, they would wait until the end of our proceedings to have a word with our learned Clerk and me. I am sure that we can then sort things out quite amicably.

Although it is frustrating for colleagues, I am afraid that, although Lent has not started, it is just water in the room—no tea or coffee. Again, will colleagues please switch off their mobile phones? I am sure that Ministers will also keep their civil servants in order so that the passing of messages to give Ministers inspiration will be done via their Parliamentary Private Secretaries, not directly. Those are the rules and, as such, I have to work with them.

The Minister of State, Department for Communities and Local Government (Greg Clark): On a point of order, Mr Amess. I wish to make a declaration of interest. I draw the Committee's attention to two particular aspects of my entry in the register of Ministers' interests: first, I am patron of a number of charities in my constituency; and, secondly, my father is an employee of Middlesbrough council.

The Chair: If any other colleague would also like to make a declaration that they have not already made during the evidence sessions, now is the opportunity to do so.

Nic Dakin (Scunthorpe) (Lab): I draw attention to the fact that I am a member of two trade unions involved in local government—the National Union of Teachers and GMB—while my wife works in local government.

The Chair: That is fine. I am not sure that the declaration was necessary, but it has been heard.

Ian Mearns (Gateshead) (Lab): My partner, Anne, is employed by Gateshead council, which I should have declared in the previous session—I apologise for that.

The Chair: The apology is accepted, but I am not sure that any one would have realised that.

Henry Smith (Crawley) (Con): My wife is a member of Crawley borough council.

The Chair: If this goes on any further, everyone might as well declare a common interest in something.

Clause 1

Local authority's general power of competence

Barbara Keeley (Worsley and Eccles South) (Lab): I beg to move amendment 26, in clause 1, page 1, line 6, at end insert

‘(“the power of general competence”).’

It is a pleasure to serve under your chairmanship, Mr Amess, and to speak in the Committee's new home. I understand that we will probably be in this room for all our sittings over the next five weeks, so we need to get used to it.

Hon. Members will be glad to hear that the purpose of amendment 26 is to strengthen clause 1. In our four evidence sessions, we heard again and again doubt about whether the Government's intention to devolve power could be trusted. Opinion has it that the term "power of general competence" is stronger than the other term, which means a generic power of competence. When the Local Government Association published its draft Local Government (Power of General Competence) Bill in March 2010, the idea of such a power was supported by the Communities and Local Government Committee.

It has been argued that local government will never have all the freedom it needs until the ultra vires principle is abolished. Others argue that members of the community will always need the ability to challenge the actions of a local authority as ultra vires through a judicial review in the courts. However, there seems to be a consensus that the Government need to be much clearer in their intention if they are to deliver the power of general competence to local authorities.

In his written evidence to the Committee, Colin Crawford states:

"I am not sure why the phrase 'general power of competence' is used rather than the well understood 'power of general competence'. This may seem to be semantics but in my opinion it could provide support for some judges to adopt a narrower interpretation because 'the widely accepted formulation was not used so it must have been intended to be different'—

that is an important point. He also says:

"That leads into one main criticism which is that Part 1 Chapter 1 is couched in terms of providing just another power of uncertain width, rather than making it clear that this represents a major change in the way statutory powers of local authorities should be viewed. That is important because as we have seen in the *LAML* case, the judges ignored the clear intention that the well-being power was to be a move away from the restrictive and problematic interpretations of s.111 of the 1972 Act, and it was held explicitly that these interpretations applied to s.2 of the 2000 Act. What is needed to eliminate this possibility is a clear statement of principle as to how all powers should be interpreted, or that they must be interpreted to support a wide purpose of local government rather be construed as simply technical powers."

I understand that Colin Crawford advised the Government on the enactment of well-being powers and has also reviewed their use.

There was also a great deal of concern among witnesses last week about the 126 powers for the Secretary of State that are proposed in the Bill. I am sure we will come back to that issue many times in Committee. A witness at our first session, Andy Sawford of the Local Government Information Unit, said that the Bill should have

"stopped at the first line of the first clause"—[*Official Report, Localism Public Bill Committee*, 25 January 2011; c. 5, Q1.]

That point was also made by my right hon. Friend the shadow Secretary of State on Second Reading.

The amendment does not make that happen, however. Some Members might not be aware that about half the Committee was here at 10 o'clock this morning, so people are obviously very keen to last through our five weeks in Committee. We would get through our proceedings

pretty quickly if we made an amendment that deleted everything in the Bill after the first line. However, we aim to strengthen clause 1 by adding to it the term “power of general competence”, because that is judged by many to be a stronger term for the power that we all, I hope, want to see devolved. I hope that the Committee will support the amendment.

The Chair: Several colleagues have indicated that they cannot hear everything that is being said. I do not know whether the acoustics are bad in here, but if everyone could bear that in mind and try to project their voices, it would help the *Hansard* reporters.

The Parliamentary Under-Secretary of State for Communities and Local Government (Andrew Stunell): May I say what a pleasure it is to serve under your chairmanship, Mr Amess, and to be a member of the Committee that is considering this important Bill? With such an important Bill, there is a good case for saying that clause 1 is the most important clause. It sets out very clearly the Government’s intention to take power out of Whitehall and Westminster and to take it back to town halls and communities.

In moving the amendment, the hon. Member for Worsley and Eccles South seemed a little self-doubting and questioned whether this was just a semantic change. Indeed, one struggles to see the difference between the “general power of competence” in the Bill and the “power of general competence” proposed in the amendment. It is quite difficult to build a substantial philosophical case on those two sets of words. A general power of competence is exactly what it says in clause 1—exactly what it says on the tin.

In subsection (1), we have provided that local authorities have the power to do anything that an individual may do. Subsection (5) makes it clear that the generality of the power is not limited by the existence of overlapping powers. The definition is there to clarify that the power is precisely what we have claimed it to be—a general power of competence. We are giving every local authority a general power. It is not vague but it is limitless, which means that those limits are not defined. During our debates on subsequent clauses, we will discuss some of the practical implications of that and where the natural boundaries should be. Every local authority should be treated as though it were an individual, and it should have the general power to do all that such an individual can do, with the limitations detailed in subsequent clauses.

It is right and proper that we discuss the Government’s intentions, and I am happy to provide the hon. Lady with any reassurance that she requires about our good faith and the legal precision of the Bill’s measures. The use of the phrase “general power of competence” instead of “power of general competence”, as she would prefer, is not some deep Government conspiracy to subvert the intention of all of us who have been concerned about local government, and about the relationship between central and local government, for not just a year or two, but decades. None of us wants anything to dilute the transfer of power and authority so that local councils can do exactly what clause 1 intends.

I reassure the hon. Lady that her amendment is not necessary. Indeed, inserting such a definition into subsection (1) might be counter-productive. I urge her to accept the Government’s good faith—she may quiz and question us by all means—and to accept that the ministerial team, members of the Committee and the whole Government are clear about the need to give every local authority in the country a general power of competence with only those qualifications that appear in subsequent clauses. I hope that, following that reassurance, the hon. Lady will withdraw the amendment.

Mr Nick Raynsford (Greenwich and Woolwich) (Lab): It is a pleasure to serve under your chairmanship, Mr Amess.

The Minister's answer has left me more confused than I was originally. I accept his assurance that there is no conspiracy on the part of the Government. Unfortunately, however, as we go through the Bill, we will see many loose ends in the form of ideas with implications that have not been thought through. I fear that the "power of general competence" or the "general power of competence"—whichever phraseology we adopt—is an example of that. The Minister said that the power was limitless, but he then qualified that by saying that limits would be introduced in subsequent clauses. Without going beyond the boundaries of the amendment, that is a straightforward contradiction, as one cannot have a limitless power that is subject to subsequent limitation. That is the first indication of a lack of clarity.

Subsection (1) states:

"A local authority has power to do anything that individuals generally may do."

We all know, however, that local authorities are not the same as individuals. Individuals can do a whole series of things that corporate bodies cannot do, because of other statute. Procurement rules for corporate bodies mean that they are subject to a whole raft of European obligations that would not apply to me, as an individual, if I bought a product. I do not have to publish an OJEU—Official Journal of the European Union—notice, for example, if I want to buy particular household goods. Therefore, there are obviously differences that make the concept of a local authority having the power to do anything that individuals generally may do open to question. Until the Government can give much clearer indications about the basis of the thinking that led to the formulation they adopted, I will remain somewhat sceptical.

10.45 am

I am not expressing scepticism in an unfriendly way. In preparing for today's session, I looked at the Local Government Act 2003, which I was responsible for taking through the House as Minister, and in which similar issues occurred. The opening section has a clear enunciation of a general principle. The Act could have been presented as major legislation devolving power and giving greater freedom to local government, but the then Opposition—now the Government—did not want to see it in that light.

Section 1 sounds pretty good:

"A local authority may borrow money—

(a) for any purpose relevant to its functions under any enactment, or

(b) for the purposes of the prudent management of its financial affairs."

That is pretty wide and devolutionary. It gives enormous power to local government, but there are limitations in subsequent sections. As a Government, we had exactly the same challenge as the current Government in setting parameters that are workable in practice and conform with wider obligations—I referred to EU obligations. The argument that the provisions are a wonderful extension of local government freedom remains open to a great deal of questioning

while we are unclear as to how the Government intend to frame the restrictions and limitations on the power of general competence in clause 1.

I remain sceptical. I accept the Government statement that there is not a conspiracy, but they have been unconvincing in saying that the idea has been rationally and well thought through. We should not take what they say about the extensive devolution of power in the clause on trust. I hope that they can offer us a better explanation before a decision on the clause is made.

Barbara Keeley: Like my right hon. Friend, I found the Minister's response disappointing. I hope it does not represent the stance the Government will take on the whole Bill. The Bill has not been properly scrutinised. It has not been the subject of consultation. It is rushed, and, as has been said, it is ragged. Work needs to be done on it. The amendment does not, in any sense, represent a conspiracy theory.

The Minister says he wants to give me every reassurance, but the reassurance is not just for me. Signals need to be sent from the Committee in two ways. A signal needs to be sent to local government, so that it starts to believe that this is a localist Bill. The main difficulty with that, to which we will return, is that whether there are 126 or 142 powers taken by the Secretary of State in the Bill—whichever count you take—it sends the wrong message. That was absolutely apparent in the evidence last week. As I said, with regard to the evidence before us, we need to send the right messages for later interpretation in the courts.

I did not say that the point was about semantics; that was a quote from our witness, who was an adviser to the Government on the power of well-being and has reviewed its use. We should listen to the people who struggled to send the right signals to local government and to the courts, such as my right hon. Friend the Member for Greenwich and Woolwich and other former Ministers. That way, we will not get into situations like that of the London Authorities Mutual Limited case, and all the work we do here and that which needs to follow will not flounder on an interpretation. Colin Crawford worries that if we do not get the wording and the intention right in the Bill, it will cause

“judges to adopt a narrower interpretation because ‘the widely accepted formulation was not used so it must have been intended to be different’.”

That is somebody who helped the Government to craft a power and has reviewed its use. There have been issues with that, and I do not understand why the Government cannot accept the simple addition of a few words to the first clause. It is disappointing, and I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 14.

Division No. 1]

AYES

Dakin, Nic

Dromey, Jack

Elliott, Julie

Keeley, Barbara

Mearns, Ian

Raynsford, rh Mr Nick

Reynolds, Jonathan

Seabeck, Alison

NOES

Barwell, Gavin

Bruce, Fiona

Cairns, Alun

Clark, rh Greg

Gilbert, Stephen

Howell, John

Lewis, Brandon

Neill, Robert

Ollerenshaw, Eric

Smith, Henry

Stewart, Iain

Stunell, Andrew

Ward, Mr David

Wiggin, Bill

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Barbara Keeley: Our first debate touched on the general power of competence, which is far-reaching and broad, and it was nice for Members to get to vote in the first half-hour, so that we can see how that works.

I have a number of questions on clause 1. Earlier, I talked about the need for a clear statement of principle on the powers and how they are meant to be interpreted. Will the Minister issue such a statement? Will there be clarity about what councils are expected to do, and what they are not? That debate should have been had during pre-legislative scrutiny, or in a White Paper consultation before the Bill was introduced, and the Bill would have been better for it.

The Local Government Information Unit said that there should be a constitutional statement about local government's role. Otherwise, the courts will interpret that role in a fairly minimalist way, in relation to how permissive they are of what local government can do, which is surely not the Bill's intention. We must bear in mind that if the desire really is for councils to start to innovate and use these powers—and I believe that that is the desire—people out there will want to challenge them. Councils that begin to innovate will be challenged, so the surer we can make them in their new powers, the better.

Another witness asked for clarity about the new role of representative democracy, alongside the Bill's measures on direct democracy, which is a theme we might return to. In some cases, councils are starting to feel that the powers might bypass them. The Political and Constitutional Reform Committee is currently undertaking an inquiry into the prospect of codifying the relationship between central and local government. On 20 January, my hon. Friend the Member for Sheffield South East (Mr Betts), who is Chair of the Communities and Local Government Committee, gave evidence, stating:

“I think there is a need for some sort of long-term settlement as to the responsibilities and relationships between central and local government, particularly in what is still and will remain a parliamentary democracy. What are the rights of local government within that parliamentary democracy where Parliament is sovereign?”

He also talked about the European charter of local self-government, to which we signed up as a country, saying:

“if you put that into a legislative format so it was something we had to have regard to, and it was something there and something that both Houses of Parliament had agreed, that would be a basis for a long-term good relationship where local government would have a greater standing.”

That is important, because I received messages before we started on the Bill, suggesting that some councils thought that they were being bypassed, and that direct democracy for communities meant that their role was being undervalued. Many of us understand the role of local government and the local councillor, and we value it. It is important that we send out the right message to those who do that valuable job.

As we heard last week, Professors Jones and Stewart suggested a code, which clarified relations between central and local government, to the Select Committee on Political and Constitutional Reform. Can members of the Committee be supplied with that code, so that we can review it? I must say that I looked for it in vain. I found all kinds of other things related to it, but I could not find the code itself. Will the Minister say whether such a code could be issued alongside the Bill? It would add clarity to all the issues around the roles and responsibilities of local and central Government that were raised by many of the witnesses who are stakeholders in local government.

I understand that the Chairs of the Communities and Local Government Committee and the Political and Constitutional Reform Committee have agreed to keep talking about having a code. My hon. Friend the Member for Sheffield South East said that he would be talking to his Select Committee about creating a code that would be suitable for the UK, based on elements of the European charter. The work of those two Select Committees is relevant to the Bill. If there had been pre-legislative scrutiny, or at least a consultation on a White Paper, we might have settled on something that could have been ready at the same time as the Bill.

The purpose of the Bill and the general power of competence is to give greater powers to use flexibilities, as appropriate, in the local area. The Law Society is concerned that, where a different approach is taken in different areas, comparisons and challenges are likely to arise regarding the inconsistent use of those flexibilities. It feels that that could potentially lead to human rights or judicial review actions. Thinking about the context of local government, with 28% cuts over the next four years, that litigation could be difficult and costly, with lengthy appeals, and it would be difficult for local government to fight. The Law Society sees the setting of minimum standards nationally as being the way to overcome that, but there is no mention of that in the Bill, nor has the matter been raised in debate in the House. Will the Minister look at that issue? It is important for areas of service provision such as social care. We already see a substantial divergence in the levels of service and support that different local authorities deliver.

My final question is one that was raised by retailers. Does the general power of competence undermine the primary authority scheme, which ensures consistency of trading standards enforcement for companies operating in multiple local authority areas?

Nic Dakin: It is a pleasure to serve under your chairmanship, Mr Amess. I agree with all that my hon. Friend said. In last week's evidence, we heard a lot that emphasised the need for the general power of competence to be something that is understood and clear, and not something that leads to problems in the courts. Professor Jones made that clear when he said to the Communities and Local Government Committee:

“We want to keep the judges out. You need to get them to explain why they made the change.”

In other words, before the Bill is passed, we need to be clear on what the general power will allow councils to do.

This point is along the same lines as that made by my right hon. Friend the Member for Greenwich and Woolwich earlier: I would be interested to learn what advice the Government have had on what legal challenges there might be from people who are not comfortable with local authorities going about the business that we want them to undertake, and that the Bill will empower them to undertake. We need to know where that advice is and how the Bill can better position local authorities, because there was no pre-legislative scrutiny and it is our responsibility to improve the Bill. I welcome the Minister's comments of last week, in which he recognised that this is an opportunity to improve the Bill.

We need to be clear about where there might be legal concerns. As my right hon. Friend the Member for Greenwich and Woolwich said earlier, the power of well-being was supposed to move councils forward. That proved to be problematic, and we now have legal precedents for those problems. How can we ensure that we do not have a minefield of legal problems with this legislation, and how can we ensure that this legislation genuinely enables and empowers

local councils, in the way that witnesses told us last week they want to be empowered and enabled, so that localism can drive things forward, rather than causing gridlock in the courts?

11 am

Andrew Stunell: I welcome the opportunity to put on record some of the assurances for which the hon. Members for Worsley and Eccles South, and for Scunthorpe, have quite reasonably asked. The first point that the hon. Member for Worsley and Eccles South put to the Committee was that we need more clarity on the content of the powers. I refer her to clause 1(4), which says that subsection (1)

“confers power on the authority to do something...in any way whatever, including—

(a) power to do it anywhere in the United Kingdom...,

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and

(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.”

Subsections (5) and (6) go on to set out just how broad that power is. The courts will find it difficult—we have been advised that they will find it impossible—to unpick that. Subsequent clauses, as the right hon. Member for Greenwich and Woolwich has pointed out, include necessary limitations, which, when we come to debate them, may be examined to see whether they might have any inadvertent consequences.

Barbara Keeley: The Committee will run into difficulties if the Minister is just going to read to us from the Bill and say, “It’s all right, because here it is.” We have read the Bill, and we do not think it is all right. We have had advice on it, and already this morning I have quoted Colin Crawford, who worked on the power of well-being, and the Law Society.

I would be uncomfortable if Ministers adopted a head-in-the-sand approach to the Bill and said that there would be no difficulties with it. I was a councillor in Trafford when the well-being power came in, and we were enthusiastic about it. We particularly wanted to do all kinds of things bringing together health and social care, which was my responsibility, and straight away we had lawyers coming in and saying, “You can’t do this and you can’t do that.” We will not be content if the Minister just repeats and reads out bits of the Bill.

Andrew Stunell: I hope to be a little more sophisticated than that. I was suggesting to the hon. Lady and the Committee that in so far as the clause defines the width of the basic power, and subsequent clauses abstract from it or confine it, I do not think it is open to challenge. There may be some legitimate areas for debate in subsequent clauses; it might be said that they confine the power too closely, and the Minister of State, Department for Communities and Local Government, the right hon. Member for Tunbridge Wells (Greg Clark) has said that he is open to hearing the Committee’s advice.

Barbara Keeley *rose—*

Andrew Stunell: When I say that I do not think that the power is open to challenge, I mean that the advice given to the Department and the Government is that clause 1 achieves what it sets out to do.

Barbara Keeley *rose*—

Andrew Stunell: Of course I give way; I am sorry.

Barbara Keeley: We are at the start of our five weeks, not at the end. There is plenty of time. It would help the Committee, and it would certainly help me, if the Minister could say why he does not agree with the concerns expressed by people such as Colin Crawford. People, and councils in particular, felt that the well-being power would do all the things that we are talking about, so the advice that “Everything in the power is fine; it will all be great” does not convince the people outside who have tried it. Could he comment on that, and not just keep referring back to the point that he thinks it is okay? We do not think it is okay, and people outside do not think it is okay.

Andrew Stunell: Some of us advised the right hon. Member for Greenwich and Woolwich, when he proposed the power of well-being—probably in this very room—that it would not achieve what a general power of competence would. We received plenty of assurances during those debates that it would achieve that, but some of us understood from the beginning that there would be a problem, because council officials and, to a lesser extent, lawyers would be very cautious. They would back away from anything that looked challenging or difficult, and, with one or two exceptions, that proved to be the case. A driving force for moving forward with this legislation is that the well-being power has all the problems that the hon. Member for Worsley and Eccles South described. As a result, it is much less effective than its proponents expected, but not less than its critics expected it to be.

Nic Dakin: The Minister makes a good point about the reticence and caution of council legal officers. It is a moot point that needs to be addressed as the legislation is put in place, to ensure that it changes the culture with which those of us who have worked in local government are familiar. One thing I would like clarification on is whether the Secretary of State’s retaining a power to curtail the general power of competence will, in itself, put an element of risk-aversion back into those legal minds. Is that not a contradiction and a hurdle in the legislation that there is an opportunity at this point to put right?

Andrew Stunell: I certainly agree with the hon. Gentleman’s point that many local authority officers are risk-averse. That is not a bad thing to be, but it sometimes leads them into situations that stifle innovation and opportunity. However, I do not want to blame everything on the officers. Clearly, it is right for councils collectively and councillors to have confidence in the powers in the Bill—and, for that matter, for the courts to be clear about the intention of the legislation. I hope that my words now and later will give that confidence. The Secretary of State’s power is not in the clause, so perhaps we can debate it in more detail further on in the day.

The hon. Member for Worsley and Eccles South asked whether we could give examples of what a general power might encompass. The danger with that is precisely the problem that the hon. Member for Scunthorpe raised: as soon as we start to make a list, somebody will say, “You’ve done something that wasn’t on the list.” If we try to make a very comprehensive list, we will get into a complete mess.

Barbara Keeley: I do not know whether the acoustics are bad, but I did not say that. The first thing I asked was for Committee members to be supplied with the code to which Professors Jones and Stewart referred. That is a way of providing clarity to those outside. I did not ask for examples.

Andrew Stunell: I am sure that the hon. Lady and I can both read the report of the Committee tomorrow and decide.

The point I am making is that the Government will not go down that track, and if Labour Members are tempting me to do so, I tell them that we shall not. The hon. Lady made an important point about the need to value councillors. Plenty of the evidence we took showed that they feel undervalued at the moment and that the regime they have been required to operate under—I was going to say “oppressed by”, but perhaps that goes a little too far—means that they have lost their sense of self-worth. In many cases, it has led to worse rather than better local government because councillors have been so constrained and hampered by the framework in which they are required to operate. I welcome the work the Select Committees are undertaking to look at how to take forward and implement the ideas in the Bill, and I look forward to the outcome of their work in due course.

The hon. Lady went on, a little paradoxically, to say that she was concerned that local authorities might provide different provision in different areas and that therefore we needed something to override clause 1 and impose minimum standards on service delivery, but that is exactly the opposite direction of travel from that of the Bill. Local communities and local councils are the right people to decide how services should be delivered, by whom they should be delivered, and how much they should pay for them.

Barbara Keeley: Again—I do not want to be misquoted—I did not say that. I repeated the Law Society’s concern that there will be legal challenges if no minimum standard is set. Do we want to open up a situation where there will be legal challenges up and down the country about the levels of social care provided? There has already been a case in which the mother of a disabled child has tried to raise such an issue with the Prime Minister. That will be repeated throughout the length and breadth of the country if some of these things are not sorted.

Andrew Stunell: The hon. Lady has provided the answer to her own question. The problem she describes has occurred in circumstances in which the local democratic system is extremely closely regulated by Parliament at every turn. It is clear that a general power of competence does not absolve any local authority from fulfilling its other statutory functions. Nothing in the provisions says that no law will apply to local authorities and that they can do whatever they want. It will be open for local authorities to account to the courts about whether they are complying with statutory requirements. It is mistaken to impose additional and, by implication, statutory requirements on local authorities to safeguard people from the impact of a general power of competence which, as she quite rightly said, was not her suggestion but the Law Society’s.

I do not want to be unduly cynical about this, but when the Law Society gives us evidence that a certain course of action might lead to more rather than less work for its members, one should take careful stock of the quality of that piece of advice. I reassure the hon. Lady that nothing in the general power of competence would undermine trading standards, and I must admit to having some difficulty understanding her point. Every local authority will retain duties

enshrined in other legislation to provide services and not to charge for them, if charging is not allowed at present. The Committee will see that all that is covered in subsequent provisions.

In essence, the hon. Member for Scunthorpe suggested that because the power of well-being did not turn out to be as fireproof as Ministers thought when it was introduced, that will also be true of the power of general competence. We believe that we have learned from the experience of the power of well-being. Indeed, the then Government and the right hon. Member for Greenwich and Woolwich proposed it in very good faith. They had high expectations and hopes, but it did not deliver. We have looked at what the problems were. We have picked up the idea of having a general power, which he discarded—no doubt for what looked like good reasons at the time—and we are putting it right at the beginning of the Bill.

We believe, and are advised, that we have produced a fireproof Bill. I assure the right hon. Gentleman that that is our intention. If the courts have any qualifications about what we have put in clause 1, I hope that my words today can be prayed in aid to confirm that it is intended to do exactly what it says: to give every council a general power of competence on behalf of the residents who elected it.

11.15 am

Mr Raynsford: I have to say that I am disappointed, because the Minister began by saying that more clarity was needed, but by the end of the debate we have more questions than clarity.

I remind the Minister that the power of well-being was introduced not in the Bill that I took through Parliament as local government Minister, but in the previous one. It was not, therefore, my personal responsibility, although I was a member of the Government and I was well aware of their objectives and intentions. I have no doubt that the legal advice that that Government received was similar to the legal advice that the Minister and his colleagues are receiving to assure them that the power is framed in such a way as to resist judicial review. Life does not work out like that, however.

I draw the Minister back to some of the questions that I raised during the debate on amendment 26 that have not been answered. It is simply wrong to say that a local authority is in the same position as an individual. A local authority is a corporate body and it is bound by certain regulations. I have given an example of European Union procurement regulations, and there are many others. We have no clarity about the limitations on local authorities under that heading, quite apart from the others.

The Minister is only too aware of the extraordinarily wide Henry VIII power in clause 5(3), which states:

“The Secretary of State may by order make provision preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.”

In other words, the Secretary of State can say to local authorities, “You may have a power of general competence, but I am telling you that you simply cannot do this.” Why do we not have the draft regulations? Why do we not know, when we are debating this in Committee, exactly what the Secretary of State intends to do under that hugely extensive power? The provision allows him to undermine completely all the Minister’s good intentions of devolving greater

power to local government. Without sight of the draft regulations, we would be foolish indeed as a Parliament—and certainly as an Opposition—to accept the Minister’s blandishments about the Government’s good intentions when we simply do not know clearly how the Secretary of State intends to use those wide-ranging powers.

The Minister said that the general power of competence was limitless, but I have pointed out that that is not the case. We do not have a clear statement from the Government about where they think there are limits, where there should be restrictions, and in what areas limitations are to be placed on the powers of local government to do what it wants under the power of general competence. We have a second area, therefore, where there is no statement of Government policy, and that is quite apart from the absence of draft regulations indicating how the Secretary of State intends to use the draconian powers that the Bill confers.

We come to the question of commercial purposes. The Minister himself said that clause 1 gave power to local government to do anything “for a commercial purpose” or “without charge”. Unfortunately, there are limitations on what local government can do for a commercial purpose. I have referred to the 2003 Act, which introduced the power for local government to charge and to trade. Those extensive devolutionary powers, which were given by the previous Government, were inevitably subject to some limitations, partly because of competition law coming into play.

I have no doubt that Ministers and their officials have received representations from commercial interests who are concerned about a limitless power for local government to trade or to carry out activities for a commercial purpose. What representations have been received from businesses? Let us remember that the most important piece of litigation that has circumscribed the power of well-being, which was relating to the wish of London boroughs to form a mutual insurance association, was brought by commercial interests that saw it as competitive. That is going to happen. I am sorry but the Minister is not living in the real world if he thinks that the Law Society’s comments can be brushed aside, that everything is for the best in the best of all possible worlds and that there will be no problems with the powers contained in the Bill. There will be problems. Some outside interests will be uncomfortable with local government exercising a number of the powers that the Minister would like to give it, because they will see that as a competitive threat. If they are unsatisfied with the answers and regulations that they get from Government, they will almost certainly use the courts as a means of trying to restrict the power of general competence.

I would be interested to know whether the Minister and his officials have met representatives of business—possibly even the insurance business—to ascertain whether they are comfortable with an open-ended power for local government to compete in that area, or whether they would still see difficulties, as they saw with the power of well-being in relation to London Authorities Mutual Ltd. I must say to the Minister that this is full of uncertainty.

Andrew Stunell: The right hon. Gentleman has erected a house of cards and he is now about to try to blow it down—that is fine. Local government already has wide powers to charge and to trade, and we are not changing the substance of those powers. I hope that he will accept that as the reality. The rules that apply to procurement for local authorities are there because they are public bodies, not corporate bodies.

Mr Raynsford: I am grateful to the Minister for that intervention, but he has only reinforced my point that while the powers to trade and to charge were introduced by the previous

Government as a devolutionary power, they were subject to certain limitations. The powers in this Bill are also subject to limitations, although he seems rather reluctant to admit it. If local authorities are going to trade, why is it required that they must do so through a company? That is provided for in the Bill in exactly the same way that the power was subject to limitation in the 2003 Act. Clearly there have to be limitations, and if he looks in the Bill, he will see that those limitations are there.

Returning to the issue that I was highlighting, the power of well-being was interpreted by London local authorities as giving them the ability to run a mutual insurance scheme. That, however, set up competitive tension with others from the insurance industry, who made a successful challenge in the courts. What representations have the Government received from representatives of business? If those powers raise competitive challenges similar to those explored by the courts in the case of the London mutual insurance scheme, they may feel uncomfortable about the extent of the powers now being offered to local government.

I must tell the Minister that we are far from convinced. I am certainly far from convinced, and I am pretty sure that my hon. Friend the Member for Worsley and Eccles South is unconvinced. We are hearing blandishments from Ministers who might well have good intentions, but who have not done the detailed work, published the detailed draft regulations nor set out the policy intentions, and who have certainly not submitted them to pre-legislative scrutiny, as they should have. They are now asking us to believe, on only their say-so, that everything will be alright in the best of all possible worlds. I am sorry, but that Panglossian approach to life is not one that normally commends itself in Committee, and I hope that the Minister will do better in future.

Mr David Ward (Bradford East) (LD): Without a doubt, we are all on the localism train and want to move in that direction, but the powers that the Secretary of State may hold will be dependent on that the Secretary of State is. I would trust certain Secretaries of State more than others, and I am not sure that we can allow a situation in which we are dependent on a Secretary of State who may or may not be friendly towards localism or local authorities. At present, although I have no doubts whatsoever about the Minister, I have some about the Secretary of State, particularly after looking at the local government settlement.

I want to return to the issue of trust. At face value, the general power of competence looks impressive and like a move in the right direction, but there are inconsistencies, because we have to allow local authorities to let go. At the same time as we are, at face value, putting forward a revolutionary, radical change in local authorities' freedoms, we are still prescribing that a great city such as Bradford can have only 10 people on its executive. We are actually pretty good at making decisions about things like that, so we do not need the Government or Secretary of State to tell us how to carry out scrutiny or how to organise our management arrangements. Such inconsistencies do not give us as much confidence in the GPC as we would like, but perhaps the Minister can give me a helpful response.

Barbara Keeley: The Minister did not respond to my question about whether he could supply members of the Committee with the code that was suggested by the professors in our evidence session last week so that we could review it. A code for local government is key, and two Select Committees are working on that issue. Such work should have gone alongside the Bill, and we should not complete our Committee proceedings without considering it.

My right hon. Friend the Member for Greenwich and Woolwich asked the Minister to tell us what consultation had been carried out with business. There was a short evidence session with senior representatives of business organisations last week, but we did not address specific sectors, such as insurance. Will the Minister say what consultation there has been with business—and particularly with insurance—about the new powers for local government? We keep returning to the fact that we suffer because the Bill has not been subject to enough scrutiny. There was no pre-legislative scrutiny, and there has not been any consultation—effectively, our Committee proceedings are the first scrutiny of the Bill.

I want to touch on what I said about minimum standards. We will have difficulties if Ministers shrug off everything that has been said about the necessary standards that people have come to expect in certain areas, and there is an interaction between that and the powers. As the Minister will see, certain outside organisations are concerned about having some kind of free-for-all in which councils can outsource—as the Secretary of State and his Ministers are encouraging—and devolve all kinds of powers and services. At the same time, however, Ministers cause confusion by constantly telling local government what to do. Whenever Labour Members meet representatives of local government, we hear that they are groaning under the weight of letters from the Secretary of State. The Minister says that we cannot discuss minimum standards or what is necessary to protect vulnerable people, but I remind him that Ministers are telling local councils to keep libraries open, not to change their eligibility criteria for social care, and not to issue redundancy notices—there are many, many letters. At a local government conference last week, the Secretary of State spent 20 minutes of his speech talking about bin collection. He is obsessed with bins and that local councils should do exactly what he thinks they should do about them.

Mr Raynsford: My hon. Friend makes an extremely good point, but she is not focusing on the Under-Secretary of State for Communities and Local Government, the hon. Member for Bromley and Chislehurst, who has also lectured local government about bin collections recently. It would be interesting to hear his explanation of how he reconciles that with localism.

Barbara Keeley: My right hon. Friend made the good point on Second Reading that if Ministers want to prove their localist credentials, they will have to learn to stop flinging out guidance about everything. Surely councils such as Bradford should be allowed to decide what to do about bins for themselves. They are answerable to the electorate at the ballot box, so they should decide.

Fiona Bruce (Congleton) (Con): I find it staggering that such comments are being made by members of a party that, when in government, sent members of the Audit Commission to examine local government. From memory, the authorities had to complete 300 tick boxes on such issues as how many theatre visits a local resident had undertaken during a year.

11.30 am

Barbara Keeley: I take that point, but we understand—

The Parliamentary Under-Secretary of State for Communities and Local Government (Robert Neill): There is no answer.

Barbara Keeley: There is an answer, which my right hon. Friend the shadow Secretary of State has given in speeches. I can provide the hon. Member for Congleton with those speeches, if she is interested. We believe in certain statutory minimum standards. I believe that we can protect vulnerable people only if, for instance, we protect social care funding. As I have said in the Chamber, and certainly in Westminster Hall, the Government will come unstuck with their laissez-faire attitude.

The Government are moving towards what they think of as open guidance, with Ministers sending letter after letter to councils telling them what to do on every little detail. On the important matters that people really value and believe in, however—on the things that vulnerable people need, such as social care, child protection and safeguarding of adults—they seem to draw back. The Minister did not address the question of what Ministers will do, when the Bill has become law, if a council decides that it will not offer much social care, for example. Overlapping powers and overlapping guidance are key parts of the clause. What will happen if the real fears of people outside this place are realised, and councils stop protecting children, protecting adults and offering social care?

Andrew Stunell: I will do my best to respond to the latest points made. The right hon. Member for Greenwich and Woolwich asked why local authorities are required to trade through companies, and why the Bill does nothing about that. There are a number of reasons for that, but the most significant, underlying reason is that local authorities should trade on an equal footing with the commercial sector; there should be a level playing field, and that is what we are ensuring in requiring them to trade as companies. It is also important from the point of view of taxation; I think that he is well aware of that.

This point relates to something that several hon. Members have taken—or perhaps mistaken—from what we are proposing: the legislation that applies to the provision of statutory services is not repealed by the Bill, which aims to widen the scope of local authority competence, not narrow it. If a statutory duty is in place, therefore, it remains in place. For the hon. Member for Worsley and Eccles South to say, as she did, that we do not care about matters such as child protection is not acceptable. I understand her point of view, but I hope that she will accept and understand that that is a somewhat offensive way to put it on the record.

Barbara Keeley: I hope that the Minister will not keep up this combative turn. I did not say that; I have been misquoted a couple of times in this debate. I asked the Minister—he tried to brush it aside—about having some guidance on minimum levels and minimum standards. He dismissed that as telling councils what to do, but it is not. In the innovative new world into which we want to take local government, it is important to be clear—as I said in my opening speech—about what councils will, and will not, be expected to do. As the Minister knows, some councils think that they can outsource everything. I am not saying that the Minister does not care about these issues—I am sure that he does—but how will adult safeguarding, child protection and social care for vulnerable people be protected if there is a free-for-all and everything can be outsourced? Such questions about local authorities' powers are important. That is my question; I did not in any sense say that the Minister did not care about those issues. I would be grateful if he was a bit more careful not to misquote.

Andrew Stunell: Let us both start again. I apologise to the hon. Lady if I have misquoted her, and I hope that we can conduct the debate in a helpful way. If I misunderstand anything, I am sure that she will correct me, and I hope that she appreciates that I will do my best to correct any misunderstanding of hers.

I will return to her substantive point in a moment, but first I will respond to my hon. Friend the Member for Bradford East. He made some points about the powers of the Secretary of State, which we will discuss under clause 5, and some points about the governance of local authorities, which we will discuss under clause 10. I do not dismiss those points, but let us discuss them when we reach those parts of the Bill.

Returning to the point that the hon. Member for Worsley and Eccles South made about Ministers writing letters, the ministerial team want to move to a much more equal relationship between central and local government. That does not mean that we do not talk to each other and say what we think should happen. As she will know well, the Local Government Association has given the ministerial team some pretty vigorous and robust advice about what it thinks we should do. There is nothing inappropriate about that dialogue going in both directions. The difference between the letters that Ministers have sent to local authorities since the election and the equally profuse streams of letters sent before the election is that ours do not statutorily compel authorities to do things. The whole point of the new dialogue is that local authorities will be equal partners with central Government in local service delivery and performance. It is absolutely right for us to tell local authorities what we think, and it is absolutely right that they should tell us what they think. Perhaps, as the hon. Lady and I just demonstrated, there may be a question of tone that we can get right, but talking is good.

Mr Raynsford: What is equal in a relationship where one of the parties decides how much the other can spend, and imposes the most draconian cuts in local government expenditure to be seen in the last 13 years?

Andrew Stunell: The right hon. Gentleman could have said 30 years, never mind 13 years. I hope you will not rule me out of order, Mr Amess, but for the first time in my knowledge, local authorities have a minus sign in front of the money that they are getting. I do not discount the fact that that creates difficulties for them. We have been perfectly open and frank about that, but when the country is borrowing £400 million a day, we must make sure that spending is brought under control.

The hon. Lady asked me whether we would publish codes. I think that I dealt with that. We certainly—

Barbara Keeley: Will the Minister give way?

Andrew Stunell: Let me finish my sentence. I made the point earlier that we will look with interest at the work that the Select Committees are doing on codes. We are certainly open to seeing whether there is work that needs to be done. We believe that we have the right framework, and that it would not be consistent with what we are trying to achieve through the power that we are introducing to talk about codes and frameworks, to give examples, and generally to hedge it about with practical restrictions. Those restrictions would inevitably be the focus when matters got drawn back into the courts, because somebody would claim that section 32 on page 19 had not been complied with.

Barbara Keeley: Just to be clear, I did not ask about codes generally. I asked whether the Committee could be given the code suggested by the professors so that we could consider it, because it is important. The Minister talks about a relationship with local government; the work being done by two important Select Committees will help to produce a code and a framework for that. That is important. It is not right to bring forward a Bill that changes the

powers of local government and the Secretary of State without that work; it should have been done at the same time. As that work is going on right now, could members of the Committee be supplied with the code? I also hope that the Minister will answer the question asked by my right hon. Friend the Member for Greenwich and Woolwich about consultation with business, and particularly the insurance sector, on the new powers of local government.

Andrew Stunell: Just to catch up on the last point—if any points drop through, I am sure the hon. Lady will draw it to my attention—the power to engage in mutual insurance was included in the Local Democracy, Economic Development and Construction Act 2009, and there have been discussions with industry on the implementation of those provisions. I am unsure of the ownership of the code to which she refers, but I would be content for it to be circulated to the Committee, if it is within my compass to say that it should be. Professor Stewart gave evidence that many of us on the Government side of the Committee feel rather undermined the intention of the Bill, and what he is putting in front of us might not meet our favour, but by all means let it be circulated.

I am not sure whether I am speaking or intervening, but if there are other points that hon. Members feel I have not covered, I hope that they will either intervene on me or give me a chance to intervene on them, as the case may be. It is quite right that we should be tested and probed on this; and it is quite right that we should be challenged on whether our intentions are honest and deliverable, which is perhaps the point that the right hon. Member for Greenwich and Woolwich was making. I suppose that one should be most worried when politicians say that they are honest, but our intentions are very clear and straightforward. We mean this clause to deliver what it appears to say.

Nic Dakin: On the issue of direction and delivery, I remind the Minister of the question that my hon. Friend the Member for Lewisham East asked Councillor Porter:

“Do you believe that the general power of competence gives you that legal certainty you require?”

Local authorities and people such as Councillor Porter need legal certainty from the drafting, which is what we are trying to improve. Councillor Porter’s answer was very helpful:

“Well, the original intention would have done; some of the words in the Bill as it stands at the moment do not.”—[*Official Report, Localism Public Bill Committee, 25 January 2011; c. 10, Q7.*]

Like all of us, therefore, he supports the intention and the direction, but he has genuine concerns. These are not concerns for the sake of it; they are genuine concerns from people at the sharp end, such as Councillor Porter. We saw Councillor Porter, and he is the sort of local government member that we would all applaud. He is innovative and he wants to crack on with things, but at the moment the Bill does not give him the legal certainty to crack on in the way that we would all wish him to.

Andrew Stunell: I heard that evidence, too. I suspect that Councillor Porter’s concerns are not about clause 1, but about some of the subsequent qualifications of it, which we will come on to shortly. I am trying to reassure the Committee of the effectiveness and appropriateness of clause 1, and in a few minutes I expect I will have an opportunity to address some of the other concerns that people have expressed.

It is helpful to be challenged, because it means that we have put on record exactly how thorough and how thoroughgoing our view is of the meaning and intention of this legislation. Should the fears of the right hon. Member for Greenwich and Woolwich be justified or his wish be granted, whichever way round it is, and things finish up in the courts, I hope that this discussion can be prayed in aid of any local authority that finds itself in that position.

Mr Ward: I invite the Minister to conclude to the strains of “Chariots of Fire” with an expression of intent, because we all want to get to the same place. The example that I gave earlier was that if someone gets on an aeroplane and finds that the lock on the toilet door is not working, they would worry because if the company cannot sort out the lock on the toilet door, what are they doing to the engines? I know that my concern will be covered in detail later on, but if we cannot allow a local authority to decide whether it wants 10 or 11 people on an executive, are we really of the mind to give it the radical and revolutionary freedoms that the general power of competence could potentially allow?

11.45 am

Andrew Stunell: I can answer my hon. Friend by saying that the provision relating to executive numbers is simply a reprint of the previous legislation. It was included in the schedule for what we thought at the time was clarity’s sake. Perhaps, on this occasion, it has misled my hon. Friend. We are not changing anything about the executive, and it would be open to any Member—I do not want to provoke this—to move an amendment to change that should they wish to do so.

Ian Mearns: At the outset, the Minister’s opening gambit was to say that the Bill would give a limitless general power of competence to local authorities. In answer to the hon. Member for Bradford East, the Minister talked about previous legislation. I thought that the whole idea behind the Localism Bill was to free up local authorities to determine their own future in any way they see fit—I am talking about in a reasonable world, with reasonable people behaving reasonably. The limitlessness of the Bill as the Minister describes it only goes to clause 2. Further restrictions are then put on it in clauses 3 and 4 and so on. I am struggling to see where any limitlessness to the powers of local authorities under this Bill can stretch. I really am struggling with that whole concept.

Andrew Stunell: Put that down to me learning the job. Perhaps there is a better word than “limitless”. The fact that we are not defining every boundary of this power in clause 1 is deliberate. In the past, local authorities could only do things that were permitted to them by legislation. We are now inverting that and saying, “You can do anything that isn’t forbidden by legislation.” That does not mean that we are taking away the current forbidden territory and saying to authorities that they can go into the forbidden territory. It is not saying that they can abandon their statutory and legal duties that are imposed by existing legislation. Perhaps it is that concept that I failed to convey in my previous contributions. I apologise if that is the case. That is the real point of clause 1. Instead of having a regime in which everything has to be authorised by Parliament, as my hon. Friend the Member for Bradford East pointed out that often means the Secretary of State of the day, and instead of having a regime that can proceed only under permission and under legislation, we are changing it round and saying, “You can do anything an individual can do unless it is forbidden.”

Barbara Keeley: Perhaps, this will help the Minister who is struggling to find a form of words. To answer the question from the hon. Member for Bradford East, or Mr Bradford as

you were calling him, Mr Amess, the issue with the Bill—as the Minister has just said—is that things have been repeated in the schedule from earlier Bills. That is the problem. A person will be sitting in local government looking at this Bill with its horrendous schedules. Why was time not taken to rethink those things? I am sure that we will come on to this again, but if we are talking about localist, limitless powers for local government, why are we telling them what to do, how many members they need and how to record their minutes? We will come back to that when we discuss governance arrangements, but that is the question the Committee has to sort out.

Andrew Stunell: The hon. Lady asks a good question, and I guess if we had a 10-year rather than a five-year Parliament we could set about rewriting every one of the local government Acts the previous Administration put in place. We thought we would start with the big one, which is the Localism Bill, which changes the power relationship. When we get to the relevant provisions, one of the Secretary of State’s powers, which the Committee seems to want to ask questions about, is the power to make further changes to governance arrangements subsequently. A local authority, such as Bradford, might want to put to a future Secretary of State that it would like that to happen, but perhaps I am trespassing on a different debate.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3

Limits on charging in exercise of general power

Question proposed, That the clause stand part of the Bill.

Mr Raynsford: I rise to speak because in the debates on clause 1 I highlighted limits on charging in exercise of the general power and cast some doubt on the Government’s claim to be making far-reaching, revolutionary changes to the powers of local government. Clause 3 accepts that there must be limits on charging in exercise of general power, and they broadly follow the limitations introduced by the previous Government in the 2003 Act. I pointed out that, like this legislation, that Act started with a magnificent statement of general principle, perhaps because those who drafted it are people similar to those who put together this Bill. It is a very devolutionary principle that states that a local authority would have power to borrow for

“any purpose relevant to its functions under any enactment, or...for the purposes of the prudent management of its financial affairs”.

That is a splendid declaration of devolution, which was the Government’s intention, but it was accompanied, as in this Bill, by certain restrictions.

Inevitably, there have to be limitations to ensure compatibility with other statutory obligations—I referred to competition issues and obligations on procurement and so on imposed by our membership of the EU. I would be grateful if we did not rush to agree on the clause without

further explanation from the Government about what led them to their view on the right balance between freedom to charge and to trade, which I hope the Minister will give. As I said, the previous Government introduced those freedoms, and we are delighted that the current Government have continued with that thinking. Do they have any intention to change the framework? If so, what is the thinking behind the Government's policy? Is it simply a matter of carrying forward the existing arrangements without significant change?

One problem we have with the Bill is a lack of detailed information on the Government's intentions. The hon. Member for Bradford East rightly highlighted the nonsense of having a general statement of freedom accompanied by an incredibly detailed prescription of how many members should serve on an executive. Frankly, they do not sit comfortably together. I understand the Minister's answer on the previous clause; the Government have simply carried forward existing provisions. That may be the case, but what thought have they given to the need for those restrictions? What thought have they given to the need for specific restrictions and limitations on the power to charge, particularly in clause 3? Is there scope for greater freedom? Will competition, which is why I highlighted the representations that may have been received from business interests, create difficulties? We are owed a rather greater explanation from the Minister about the Government's thinking on clause 3 and what the limitations should be on the power to charge under the general power of competence.

Andrew Stunell: I just draw the right hon. Gentleman's attention to clause 3(1)(a), which makes it clear that the clause is about non-commercial and non-charging services. Clause 4 deals with services for which a charge might be made. I want to reassure him, therefore, that there is no intention to make a fundamental change in clause 3 to the existing arrangements for non-commercial services.

On clause 4—it might be expedient for me to reply to that—again, there is no intention to make any fundamental change to the way that commercial services will be dealt with. It is essentially the same provisions carried forward, as the right hon. Gentleman has suggested.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Limits on doing things for commercial purpose in exercise of general power

Question proposed, That the clause stand part of the Bill.

Barbara Keeley: Briefly, it would be helpful to the Committee, and certainly to me, if the Minister explained clause 4 by answering questions, as he has just done with my right hon. Friend the Member for Greenwich and Woolwich on clause 3. In particular, I want to ask about clause 4(2), which states:

“Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.”

There is a budding and important development in councils—certainly Labour councils—of mutuals or co-operatives. In sending out the right signals, we want to be sure that we recognise

and support the idea of a co-operative council, that we recognise the value of mutuals and that clause 4(2) in no way undermines that. It is rather alarming that the subsection does not include “or a mutual or a co-operative”, because that is valid. If there are points that relate to questions asked about clause 3, it would be helpful if the Minister made those clear.

Andrew Stunell: I certainly share the hon. Lady’s interest in seeing a diverse range of providers, including, as she quite rightly says, mutuals and co-operatives. I remind her that they can, of course, be set up as companies. The underlying point here is that local authorities and their trading arms have to be on a level playing field with the private and commercial sector in both a positive and negative way. They should not be at a disadvantage, but they should not have an outstanding advantage. Taxation is a particular issue. It is right to carry forward the requirement that such bodies should be companies and trading as such. A mutual can trade as a company and, if appropriate, it pays tax and so on.

I hope that that is reassuring. If the hon. Lady wants me to spend a little longer discussing it, I will, but I assure her that nothing in the clause undermines the Government’s intention, which I know that she shares, to see mutual enterprises and co-operatives play a bigger part in the delivery of public services.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

Powers to make supplemental provision

12 noon

Barbara Keeley: I beg to move amendment 27, in clause 5, page 4, line 4, leave out ‘may by order’ and insert

‘must report to Parliament on how that provision impacts on the exercise of the general power and how the Secretary of State proposes to address this by presenting a Bill to Parliament to’.

The Chair: With this it will be convenient to discuss the following: amendment 28, in clause 5, page 4, line 7, leave out from ‘then’ to ‘amend’ and insert

‘the Secretary of State must report to Parliament on how that power overlaps with the general power and how he or she proposes to address this by presenting a Bill to Parliament to’.

Amendment 29, in clause 5, page 4, line 10, leave out subsections (3) to (7).

Barbara Keeley: This group of amendments would change the Secretary of State’s powers to make supplemental provision to the general power of competence. We have already touched on that power this morning, and we now turn to the big difficulty that many of our witnesses talked about last week.

When we debated a Labour amendment on Second Reading, we made several points. The first was that we would welcome a Bill that genuinely devolved powers to local authorities. That is

what the Localism Bill was meant to do, but as we have heard this morning, and as a number of our witnesses said, including Councillor Gary Porter of the Local Government Association, it does not do that.

Secondly, the promise of a radical redistribution of power from central Government to local people is undermined due to the extent to which the Bill hands powers to the Secretary of State to override those devolved powers. I should also add that the Bill copies, instead of reworking provisions from earlier Acts, and takes a non-localist, centralising approach, rather than a localist one. Schedules 2 and 3 are full of that, and make very difficult reading for anyone outside this place.

We received evidence from 14 witnesses on the local government proposals under discussion, and the concern that the Bill hands too much power to the Secretary of State was expressed by the LGA, the Local Government Information Unit, the Centre for Local Economic Strategies, the leader of Cheshire West and Chester council, the leader of Shropshire council, Professor Jones, Professor Stewart, the New Local Government Network, the Society of Local Authority Chief Executives, Unison and London Councils. That is the majority of the organisations that gave us evidence on local government issues.

Let us look at why those organisations are concerned. Andy Sawford of the LGIU told us that

“a constitutional statement would be much better—something that says, ‘This is our meaning around the scope of local government in relation to the general power of competence,’ rather than a whole set of reserve powers and limitations on local government.”

Neil McInroy of the Centre for Local Economic Strategies said:

“The Bill wants to be radical but it prescribes, and it needs to be as radical but prescribe less.”

We have already heard one of Councillor Porter’s quotes this morning, but he also said in relation to powers:

“There are 142 places where that has been reserved in the Bill. If the most needed ones are retained, and the Secretary of State is asked to speak about them in the House to give a flavour of the circumstances in which they might be used, it would give the sector more confidence”.

We have asked about those powers many times and will continue to do so, but the Secretary of State does not seem to be willing to say why he wants to take so much power.

Councillor Jones, leader of Cheshire West and Chester council, said:

“It will be a bit of a long-winded job to go through the 142 now, but if we are really going to be innovative and enable local government to solve problems and develop civic pride, you have to let go of the strings. The fewer powers, the better.”

Derek Myers of SOLACE said:

“We think this is too cautious as drafted. We think that this ought to be an opportunity to encourage more entrepreneurial councils, so that the tax relationship becomes only one way in which money is raised for local purposes. We think that the powers to charge and to trade

ought to be supervised by external auditors, rather than circumscribed in the way that they are in the Bill.”

Dr Keohane of the NLGN said:

“The issues, as they stand at the moment, are that the restrictions, in terms of the Secretary of State retaining the power to impose an order on an authority or authorities, actually undermine, in our view, the philosophy underpinning the change.”

He added that

“what this will do is introduce a slight nagging doubt that the Secretary of State might think that a certain action is a bad idea. My suggestion would simply be to delete subsections (3) to (5) of clause 5.”—[*Official Report, Localism Public Bill Committee*, 25 January 2011; c. 12-38, Q8, Q9, Q36, Q41 and Q 55.]

Our amendments would not delete subsections (3) to (5), but we propose to delete subsections (4) and (5), because we do not believe that the Secretary of State should be taking powers to make orders preventing local councils from doing anything under the general power of competence. There is no point in having the limitless power to which the Minister has referred

Gavin Barwell (Croydon Central) (Con): I am confused by the hon. Lady’s argument. I think that she has just said that the amendments would not delete subsections (3) to (5). According to the amendment paper, amendment 29 would delete subsections (3) to (7), so subsections (3) to (5) would certainly be deleted. Amendments 27 and 28 would make the Bill less radical because they would make it harder for the Secretary of State to amend or revoke provisions that limited a local authority’s general power of competence by requiring a Bill to be brought before Parliament.

Barbara Keeley: I will come to that. We are here to discuss whether the Bill is localist or centralising. There must also be safeguards, however. If the Bill had received better work, more consultation and pre-legislative scrutiny, it could have contained a simple statement of the general power of competence. It should not contain all the details that are in schedule 2, and it should not give 142 or 126 powers to the Secretary of State. A code could have clarified the relationship between central Government and local government, but as we do not have such a code we must limp on with a Bill that does not do the job very well. Many of our witnesses last week said the same.

Brandon Lewis (Great Yarmouth) (Con): I want to follow up on the comments of my hon. Friend the Member for Croydon Central. Subsections (1) and (2) allow local government to work more quickly, and allow the Secretary of State to free up local government to do things that it might otherwise not be able to do. That seems to be a positive step forward. The hon. Lady has said that the Opposition do not suggest leaving out subsections (3) to (5), but amendment 29 would leave out subsections (3) to (7). Will she clarify the Opposition’s position, because they seem to be confused?

Barbara Keeley: I am not at all confused as to my own position, and I will come to that in a moment. I was quoting the suggestions of Dr Keohane from the New Local Government Network.

Brandon Lewis: Will the hon. Lady give way regarding that point?

Barbara Keeley: No, I am going to carry on. Dr Keohane said that those subsections should be deleted. We want to do a little more than that; we want to be clear and we think that there should be safeguards.

I do not think that the Secretary of State should take powers to make orders preventing local councils from doing anything under the general power, nor should the Secretary of State impose conditions on what councils want to do under that power. Regarding subsections (1) and (2), which the hon. Member for Great Yarmouth has just mentioned, there will be a different view on each side of the Committee. Subsections (1) and (2) cause concern for different reasons, and amendments 27 and 28 would amend them.

As I said on Second Reading, taking the power to

“amend, repeal, revoke or disapply”

any statutory provision

“(whenever passed or made)”

is chilling and inappropriate. Doing so may have unintended negative or perverse consequences, and a number of our witnesses spoke about that. In addition, it leaves local government at the mercy of the ideology of this Government and this Secretary of State. For those who do not agree with the Secretary of State, that is indeed uncomfortable.

The Department for Communities and Local Government memorandum to the Delegated Powers and Regulatory Reform Committee described a similar power as a Henry VIII power, and expressed the fond hope that procedures such as laying a draft order and an explanatory document represent adequate safeguards against the unnecessary use of the power. I am not convinced. I am surprised that Local Government Ministers are convinced, because in a similar debate on the Local Government and Public Involvement in Health Bill Committee three years ago, the Minister, the hon. Member for Hazel Grove, said that he could see a problem in that

“in building in a power that can be exercised long after the Minister has... moved on to some yet higher sphere, his successor will be able to exercise the power as they see fit and not necessarily with the same motives in mind as the current Minister.”

That is the difficulty. Even more categorically, the hon. Gentleman said:

“We should be very careful in giving Ministers an enduring power to meddle in these matters. It would be far better to have a provision whereby, if subsequent change is needed, there is a requirement to come back to Parliament.”—[*Official Report, Local Government and Public Involvement in Health Public Bill Committee*, 6 February 2007; c. 124.]

Three years ago, the Minister believed that that was the right thing to do. We agree with that sentiment, which is why we have proposed the amendment. If local authorities find that a statutory provision either prevents them from exercising the general power or overlaps with that power, the Secretary of State can and should report to Parliament, and bring a Bill before it to

“amend, repeal, revoke or disapply”

that provision.

Stephen Gilbert (St Austell and Newquay) (LD): Is it really the Opposition’s contention that the new localist world requires local authorities to make representations to the Secretary of State about existing legislation that prevents them from doing what they want to do, and that that has to come to Parliament, and that Parliament has to make time to repeal provisions? Does that not put obstacles in the way of enabling local councils and authorities to serve their communities well? The hon. Lady’s amendment would have that effect.

Barbara Keeley: I think that is just a different way of looking at what I am talking about. [*Interruption.*] I have said that there will be a difference between the Opposition and the Government on this. We are not in a position where we trust this Secretary of State with these powers. [*Interruption.*] That really is not the case—I do not know what you think about the comments we are hearing, Mr Amess.

I made the point, which seems to have been ignored, that the Minister, who will respond to my comments shortly, did not trust Ministers and Secretaries of State with such powers. Three years ago, he said that it was not good enough that a Minister took a power, because when a Minister moved on to another job, another Minister might come in with a different ideology or ideas on how to exercise that power, and we should not be left with such matters at the whim of a particular Secretary of State. In this case, they would be. I repeat what the Minister said:

“We should be very careful in giving Ministers an enduring power to meddle in these matters.”—[*Official Report, Local Government and Public Involvement in Health Public Bill Committee, 6 February 2007; c. 124.*]

During consideration of a previous Bill, he thought that that was the right approach. Labour Members support the amendment and I hope that other members of the Committee will, too.

Mr Raynsford: I rise to give my very strong support to my hon. Friend and to express surprise that, among those on the Government Benches, the provisions of subsections (1) and (2) of clause 3 seem to be treated with such equanimity. I ask Members to think about the implications of the drafting of those subsections:

“If the Secretary of State thinks that a statutory provision (whenever passed or made) prevents or restricts local authorities from exercising the general power, the Secretary of State may by order amend, repeal, revoke or disapply that provision.”

A similar wording applies in subsection (2). There will be no check and no parliamentary scrutiny, other than the relatively short examination given to a statutory instrument—even if that applies, which it may not. Simply, that is an inadequate safeguard for a very far-reaching power. It does not say, “After the Secretary of State has consulted representatives of local government and agreed measures that would remedy this particular problem, the Secretary of State may then come forward with proposals.” There is no requirement to consult or check.

Gavin Barwell: The right hon. Gentleman is much more experienced than me, but does subsection (7) not provide a duty to consult

“such local authorities... such representatives of local government”

and so on? There is a duty to consult, and the amendment moved by the hon. Member for Worsley and Eccles South would delete that from the Bill.

Mr Raynsford: There is absolutely no requirement to use what local government regards as the appropriate mechanism for dealing with the problem. Subsection (1) simply states:

“If the Secretary of State thinks that a statutory provision”

is unsatisfactory, the Secretary of State may act. That is a very far-reaching power, which is what we object to. We are not trying to stop this happening; we are saying that it should be subject to parliamentary scrutiny, because it involves a change of statute. It is not a minor amendment. The concept that statute can be changed by order from the Secretary of State, even if he does not have agreement from other parties involved in local government, strikes us as going too far.

12.15 pm

Barbara Keeley: I am sorry to interrupt my right hon. Friend, but to return to the point that the hon. Member for Croydon Central made about consultation, several members of the Local Government Association told me that they were promised much more consultation on the Bill. They feel unhappy that they now face a Bill that is a mishmash of different proposals going in different directions when they were not consulted on a great deal of it. The promise of consultation does not mean a lot.

Mr Raynsford: My hon. Friend makes a very good point. When we come to amendment 29—

Stephen Gilbert: I thank the right hon. Gentleman for giving way. I want to reiterate what my hon. Friend the Member for Croydon Central said. Amendment 29 deletes the right and the obligation of the Secretary of State to consult. The only thing that the Opposition would have us replace it with is not an obligation to consult local authorities or local authority leaders, which may be very worthy, but an obligation to consult Parliament.

Mr Raynsford: I will happily come back to that point. I first want to clarify the whole point about subsections (1) and (2). These powers are extremely far reaching. To give the Secretary of State the power to set aside statute by order without parliamentary consideration goes too far. I believe that people in this House and certainly in the other place will look askance at a proposal to give that degree of power to a Secretary of State.

Henry Smith: Earlier on Labour Members were complaining that there was no codification of the relationship between central and local government. Yet here we see a very strong protection of the rights of local government. I am therefore perplexed about why Labour Members object.

Mr Raynsford: I fail to see how there is a very strong protection of local government in a power that allows the Secretary of State to do what the Secretary of State decides. There is no obligation to agree with local government a mechanism to resolve the problem. If there were such a provision we would feel more comfortable although we would still feel nervous about giving such extensive powers to set aside statute by order. That is a point of principle. The real

problem arises in subsection (3) and those that follow from it. By any account subsection (3) is draconian. It allows the Secretary of State by order to

“make provision preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.”

That is an extreme Henry VIII power. For this Parliament to allow a Secretary of State to set aside anything on his say-so after consulting, but not necessarily having to agree with the people he has consulted, strikes me as a very dangerous precedent. I should have thought Government Members who think about this would regard it with some alarm. The point has already been made that one may believe that the present Secretary of State will act benignly. I am not sure that everyone does but some people may. But we have to take account of whoever may be in that position in future if we propose to give them those powers. This is an extremely wide-ranging power.

The second objection—I am astonished that Government Members have not made more fuss about this—is that we are being asked to do this on say-so. Where are the draft regulations? Where is an indication of Government policy and how the Secretary of State intends to use these powers? Why do we, the Committee that is supposed to be scrutinising these provisions, not have sight of the draft regulations? It is a normal constitutional politeness that the Government publish regulations in draft form before a Committee comes to the relevant stage of its proceedings where the implications of order-making powers are considered.

Being asked to give the go-ahead to provisions that give such extensive powers to the Secretary of State with no sight whatever of what the Government intend to do with those powers is, frankly, a constitutional outrage. The Government should be deeply ashamed of what they are doing. If they use their majority to railroad the Bill through this House, I hope that the other place will make certain that the power does not carry through, because it is utterly wrong for powers of such extent to be given to the Secretary of State without this House having the opportunity to scrutinise in detail the Government’s intentions, their policy and how they intend to use those powers. If we are anything other than a totally supine House of Commons, we should be crying from the rooftops that this is wrong and that it is a constitutional outrage.

Brandon Lewis: I appreciate the clear strength of the right hon. Gentleman’s feelings. I am struggling with the concept of his argument, because it seems to me to be missing the whole point of the Bill, particularly subsections (1) and (2) of clause 5, which is to allow local government to go to the Secretary of State to explain that somebody is getting in their way. It gives the Secretary of State the power to free up local government to get on with doing what it needs to do without the rigmarole of a Bill going through Parliament. So this is freeing up local government. Having central Government decide what it is going to be before local government has told central Government what it needs them to do seems to be getting it the wrong way round and possibly goes back to the top-down control that the Labour party has always enjoyed.

Mr Raynsford: The hon. Gentleman must have lost his sense of irony, if he is saying that clause 5(3) is entirely in keeping with the localist principles of the Bill. I remind him of what it says:

“The Secretary of State may by order make provision preventing”—

preventing is not my word, but the Government's word—

“local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.”

There is no qualification whatsoever. There is no statement saying that this is simply to allow the Secretary of State to remove powers that limit local government's functions.

Fiona Bruce: It says so.

Mr Raynsford: No, it does not say that at all. It says that the Secretary of State may do anything that the Secretary of State believes appropriate. That is anything of a description “specified, in the order.” I am sorry if the hon. Gentleman is shaking his head, but it says that the Secretary of State may “by order” make provision “preventing local authorities” from doing anything. That is what it says. That is not localist. The idea that that is localist is a complete travesty of the English language, which makes it an even greater mockery of our proceedings.

This is a dangerous clause, and it is even more dangerous because we are being asked to rubber-stamp it without seeing the draft regulations that would give effect to it. Being asked to vote blind on a provision of this scale is a constitutional outrage, and I sincerely hope that the Government will have the decency to withdraw this provision and come back with an amendment at a later stage.

Mr Ward: I was going to start by saying that I am in two minds on this, but, having listened to the comments, I am now into my third, and possibly my fourth, phase. I was originally concerned about this, but my localism gene kicked in with subsections (1) and (2). I found it attractive if the purpose is to fast-track the removal of barriers to a localist agenda where a local authority wants to do something but cannot because something stands in its way. I then began to think about things, particularly where there is an elected mayor—with power residing in one person—who approaches a friendly Secretary of State to remove some legislation, such as employment legislation or health and safety legislation, that could have ramifications beyond that local authority. So the powers given to the Secretary of State by subsections (1) and (2) need to be considered.

Nic Dakin: The hon. Gentleman brings his great local government experience to bear by drawing attention to the concerns about how this is written and how the ramifications of its use may be in line with the great concerns that my right hon. Friend the Member for Greenwich and Woolwich has expressed in such clear and thorough terms.

The Ministers are asking us to believe that these powers would only ever be used benignly. The thrust of the argument is that these are benign powers that allow the Secretary of State to always be helpful. We need to agree legislation that is always safe, whoever the Secretary of State might be in the future. That is why such great concern has been expressed, as my hon. Friend the Member for Worsley and Eccles South did in her contribution, by the many people who gave evidence to us. Those were people who are active in local affairs. The biggest irony to me is that if we drive these clauses forward without amending them, what we are saying is, “We have heard the voices of concern from you local people, you people who crack on with the job day in, day out, as the hon. Member for Bradford East has done over many years. We hear your voices of concern, but you know what? You're wrong. You do not need to worry—

these will only ever be used in a benign way, because we know best. The centre knows best how to empower you.”

That will be the greatest irony of the lot, if we start from a point of patronising arrogance and telling local people not to worry about their fears, because it will only ever be benign, to trust us and to not take on board their thorough and very real concerns, which give heart and evidence to the clear concerns outlined by my right hon. Friend the Member for Greenwich and Woolwich. If we get that wrong right at the start, we will be doing exactly what Professor Jones and Professor Stewart said: creating a centralist Bill, not a localist Bill.

That goes to the very heart of whether we are genuine about our localism. If we are genuine, we have to listen to what the local voices on the ground have told us. We have to listen and engage with those voices, not just brush them aside and say, “There, there, it will be all right, we are only ever going to be benign.” We have to engage and build trust with local people. That is the biggest challenge at the hub of the Bill, and I hope that the Government will respond to the challenge in an engaged and proper way.

Gavin Barwell: I do not want to detain the Committee for long; I just want to say a few words on this group of amendments. Although they are grouped together because they relate to the same clause, it seems to me that amendments 27 and 28 point in a different direction to amendment 29. The first two seek to amend the Bill in a way that makes it less radical. We heard a lot from the hon. Member for Worsley and Eccles South about how the Bill was not radical enough, how many limits were prescribed over the general power of competence that the Bill provides to local authorities. As a number of my hon. Friends have tried to say in interventions, if the Secretary of State thinks there is a provision in place or one that will be introduced in future legislation, which prevents or restricts local authorities from exercising the general power of competence, these clauses make it easier for the Secretary of State to do something about that.

Amendments 27 and 28 would make the Bill less radical and make it harder for a future Government to give local authorities full reign in terms of the general power of competence. Amendment 29 would delete subsection (6) and (7), which are both relevant to how subsections (1) and (2) would be exercised. Subsection (6) is sensible, because it gives the Secretary of State the power to disapply a particular provision on a temporary basis for a particular period of time. Taking on board the point made by the right hon. Member for Greenwich and Woolwich, one can imagine a situation where there was some concern about whether it was right to revoke a particular provision. Under subsection (6), the Secretary of State has the power to do that temporarily, so that we could see how the provision worked in practice. I strongly oppose amendments 27 and 28, because they make the Bill less radical and, in tone, they go completely against the points that Opposition Members have been making on clause 1.

Amendment 29 would make the Bill more radical, because it removes the power of the Secretary of State to constrain the general power of competence. Personally—I speak as someone who served as a councillor for 12 years in my home town—I can see a case for the Secretary of State to have the general power of competence under certain circumstances. We can all envisage that local authorities may use that power in a way that we cannot foresee but that all hon. Members would deem inappropriate. The Government may wish to take quick action to deal with such an event, so I can see the case for such a power. Having said that, the right hon. Member for Greenwich and Woolwich makes the fair point that this is a catch-all

clause that gives a wide power to the Secretary of State. I hope that when the Minister responds to that point, the Committee will receive some reassurance about the way the Government will use the measures in the clause. For me, such powers should be used only as a last resort.

12.30 pm

Barbara Keeley: I want to clarify a couple of points about the amendment. The difference between the Labour party and the Government lies in how much trust or confidence we have in the Secretary of State to exercise powers—I hope it is clear that our trust is not very substantial. It is also about whether we have confidence in consultation. However, consultation can just be ignored—it frequently is. Next Wednesday in the local government finance settlement, we will see how much notice the Secretary of State has taken of his consultations with local governments. We will look at whether anything has been done about front-loading or to make the context easier, and that will inform the debate in Committee. This is about confidence in consultation, but at this point my confidence is not very high. However, I remain to be convinced and if the local government finance settlement changes next week, perhaps we will see that the Secretary of State has been listening.

Let me return to my earlier point. I recommend hon. Members who are interested in such matters to look at the work done by Select Committees on codifying the relationship between central and local government. Our difficulties were caused because we tried to act through a concordat, and it is recognised and accepted—particularly in the work done by the Select Committees—that that did not work. We have tried the well-being powers and the concordat, but those did not work.

I will repeat what I said earlier and the question of my hon. Friend the Member for Sheffield South East (Mr Betts): what are the rights of local government within a parliamentary democracy where Parliament is sovereign? That is what we are tussling with. The Labour party has one view of how that should work. That view depends on whether we have confidence in Ministers and the Secretary of State, and we do not. Government Members have confidence in consultation, although I do not. Codifying that relationship is important.

I have read round the work of the Committees. It is about a code although the Minister did not seem very keen to let hon. Members see a suggested code. We have colleagues in two Committees, including those on the Government side who are working on this issue, who are trying to set out the rights of local government within a parliamentary system. As I understand, the idea is to build on the European charter of local self-government, and to suggest a Joint Committee—like the Joint Committee on Human Rights; a Joint Committee of the Commons and the Lords—that will look at legislation as it goes through and see what the impact will be on local government.

For many hon. Members, this may be their first Committee. I do not know how many hon. Members have debated a statutory instrument, but when considering regulations there are far fewer contributions from hon. Members on the Government side who just turn up and do their casework. If any Government Members think that laying an order and debating a statutory instrument represents parliamentary scrutiny, they will soon come to see that it does not. They will not be encouraged to speak by their own party, and such regulations tend to go through within five, 10 or 15 minutes. Real parliamentary scrutiny and accountability comes through a Bill.

The answer received by the Minister from Dr Keohane of the New Local Government Network about why he favoured the use of Bills in Parliament over changes through regulation stated:

“The difference is that it is more difficult to pass a Bill. That, in our view, is very important, because what we have had in the past is the creep of centralisation. We want a sustainable localism.”—[*Official Report, Localism Public Bill Committee*, 26 January 2011; c. 45, Q76.]

That is what we want too.

Andrew Stunell: We have had some interesting contributions and I will do my best to respond to them. The provisions in clause 5 are implemented via procedure set out in clause 6, and therefore a few of the comments made on clause 5 could perhaps be moderated if people look carefully at clause 6. However, I underline the point made by several of my hon. Friends—subsections (1) and (2) are wholly benign in their intention and phraseology, because they concern barrier-busting. We are currently working with four local authorities, the so-called vanguard authorities. We have said to them, “Imagine there weren’t any barriers. What would you want to do?” They have come back to the Department and provided us with a list of things that they think are standing in the way of what they want to deliver. We are working hard with those authorities to identify the barriers blocking their delivery of services for their communities. Can we get rid of them?

Barbara Keeley: The first thing that springs to mind is that one person’s barrier is another’s protection. I know that this Government do not like health and safety, but the legislation contains an awful lot of protections. The Minister has not said which four authorities are involved; he might like to inform the Committee. If those councils specify barriers that constitute important protections to other people, will he meet their request to bust those barriers or say, “No, we can’t do that”?

Andrew Stunell: One of those authorities is the city of Liverpool, so if the hon. Lady had it in mind that we only went to radical right-wing authorities, that is not the case. The others are Windsor and Maidenhead, the London borough of Sutton and a project in Eden district council in Cumbria.

The hon. Lady has delivered my argument for me. Let us suppose that one of those authorities came to us with a proposal to get rid of health and safety regulations. That has not happened, but let us suppose that it did. Would she not want a moderator to exist so that the authority could not simply say, “From now on, health and safety rules are over in the London borough of Sutton”, or in Liverpool? There must be a moderating mechanism, and subsections (1) and (2) provide it and put it in the hands of the Secretary of State.

Nic Dakin *rose*—

Andrew Stunell: I will give way to the hon. Member for Scunthorpe, now that I have learned what his constituency is.

Nic Dakin: I thank the Minister. The example that he gave is surely a bad one. The power of general competence allows a council to do things that a person could do, which is obviously constrained by national and other legislation, so the health and safety example that he gave would not happen.

Andrew Stunell: I was picking up an example given to the Committee. I agree that an authority would not be able to act so without changes in primary legislation, which would come through the route triggered in every such case.

Barbara Keeley: Will the Minister give way?

Andrew Stunell: At the end of the paragraph. The difference is that there will be some occasions when moving a barrier does require primary legislation. In such cases, such as the abolition of a health and safety rule, that will be a matter for statute, and it is right that the House should go through a formal procedure. However, many barriers that the authorities are drawing to our attention are administrative and are posed by the interpretation of regulations. In such cases, clarification by the Secretary of State is appropriate, and it would be tremendously heavy-handed for that to require primary legislation, with all the associated delay and consequences. If we must return to primary legislation every time we want to do any barrier-busting that goes beyond the purely cosmetic—changing regulations or eligibility criteria, for instance—barrier-busting will become a joke. It will become treacle-walking, and it will not deliver what we want to achieve. It would be a grave mistake for the Committee to eliminate clause 5(1) and (2).

That brings us to what should be the mechanism for moderating and breaking down the barriers. Should it be a decision that is taken solely by the Secretary of State? No, it should not be. Clause 6 sets out the procedure, which is that the Secretary of State is the safeguard against arbitrary action by a local authority in exercising its barrier-busting. Clause 6 is the safeguard against the Secretary of State taking arbitrary action in barrier-busting. That requires the issue to be brought to the House and there is a consultation process in relation to that. Of course, if there is a belief in the House that the Secretary of State has mishandled or not undertaken the consultation, they can be challenged at

It is perhaps worth saying that the power is drafted in almost identical terms as those of the one relating to well-being. The Secretary of State's capacity—the reserved power—to intervene is not something that will be used lightly. It is equivalent to the power that was attached to the well-being power. The interesting thing is that despite there being a variety of Secretary of States since that measure was introduced, no Secretary of State has intervened and used that power so far. This is not a power that will be particularly attractive or likely to be open to abuse.

My hon. Friend the Member for Bradford East makes a good point, because let us suppose that a mayor comes forward with what he and I might judge to be a barmy idea and the Secretary of State, on a whim, approves it. The proposal would come to the House—in a room like this—and there would be the opportunity for Members to challenge that barmy idea, if it had somehow got through.

Let us consider the alternative case, because that is also built into clause 5. Let us suppose that the mayor comes up with an idea that is so barmy that the Secretary of State and my hon. Friend both think he should be stopped. In a way we have not yet imagined, that idea might breach common sense, propriety and so on. Surely it is right that Parliament, via the Secretary of State, has the capacity to say, “Actually, you’ve just found something that we realise we don’t want.” It would be right for the Secretary of State to bring that to the House.

What kind of things might that be? I have imagined an entirely hypothetical situation but local authorities started experimenting a few years ago with various financial measures, as a consequence of which some of them got into hot water. There has to be a reserve power so that if something is clearly going horribly wrong, something can be done about it. That is what clauses 5 and 6 are about.

The hon. Member for Scunthorpe said that the measure is fine if there is a benign Secretary of State. This is the safeguard mechanism in respect of totally inappropriate behaviour by local authorities; the safeguard in the case of totally inappropriate behaviour by the referee—the Secretary of State—is the fact that the matter comes before Parliament. We are certainly not dismissing the voices of concern but, just as we have been encouraged to think about what happens if things go wrong, the voices of concern need to be challenged with the arguments I have just put. Let us suppose it all goes wrong. If that were to occur, the ultimate stop mechanism is in clauses 5 and 6.

The hon. Member for Worsley and Eccles South is absolutely right in what she identified as being at the heart of the problem: what level of trust can we presume of the system? How far can central Government and Parliament trust absolutely everything local authorities do; how far can any of us trust what a future Secretary of State might do; and how far ultimately can we trust Parliament to get it right anyway if one party has a majority? Trust is an important issue.

On the negative side, we have a power that will be used rarely and in exceptional circumstances but, on the positive side, we have a power that we hope will be used frequently to break down barriers. I can say in all honesty to the Committee that we have a mechanism that safeguards civic society from the predations of a local authority that is out of control, that safeguards it from a Secretary of State going native, and that provides the right level of opportunity for Parliament to intervene in the process, if it is not content. If we are going to bust any barriers, going through primary legislation really is not the way to do it.

12.45 pm

I ask the hon. Member for Worsley and Eccles South to reconsider amendments 27 and 28, which I hope that she will not press to a Division. If she wishes to press amendment 29 to a Division, I will encourage members of the Committee to respond with a very loud no.

Barbara Keeley: As with everything else that we are discussing, Labour Members, and perhaps the Committee generally, would have been helped by examples. The Minister did not seem to want to tell us which local authorities he was talking about. If barrier busting is so important—

Andrew Stunell: I am sorry, but I thought I had named the four local authorities. I apologise if that was not the case.

The Chair: Order. We cannot have two hon. Members standing at the same time.

Barbara Keeley: If I may clarify, the Minister did not volunteer the information—he had to be pushed. If there had been more previous scrutiny of the Bill, we could have looked at all these things before this Committee. We are struggling, without reassurance, to deal with some chilling powers for the Secretary of State. I understand that the Minister feels differently about this because he is doing the work—he knows what he means—but we have only his words, so

some examples would have helped us. He did not, without questioning, volunteer the names of the authorities. We could have been given case studies of the kind of things that people are coming up with. That would have really helped our deliberations today, but that kind of consideration does not seem to come into it.

If more work had been done on the codification, which I keep coming back to—it is important—we could have worked out where Parliament will be sovereign. Labour Members keep coming back to this point again and again: we do not trust the Secretary of State with the powers. I remind the Minister that he talked in a similar debate four years ago about

“building in a power that can be exercised long after the Minister has...moved on”—[*Official Report, Local Government and Public Involvement in Health Public Bill Committee*, 6 February 2007; c. 124.]

He saw that as a problem, but that is what we are doing here. We are handing over powers. I have read all the documentation about regulations and laying orders, and an SI would be no protection. The witnesses saw regulations and orders from the Secretary of State as no protection whatsoever.

Alun Cairns (Vale of Glamorgan) (Con): Will the hon. Lady give way?

Barbara Keeley: No, I shall not give way anymore.

We should be careful about giving Ministers an enduring power to meddle, but we are giving the Secretary of State much more than that. We are giving him a power to remove, revoke and disapply legislation and all the important protections that come with it. We have not got very far on working out what the relationship between central and local government should be, but it should not involve handing such powers to the Secretary of State, who will be no moderator in this matter.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 14.

Division No. 2]

AYES

Dakin, Nic

Dromey, Jack

Elliott, Julie

Keeley, Barbara

Mearns, Ian

Raynsford, rh Mr Nick

Reynolds, Jonathan

Seabeck, Alison

NOES

Barwell, Gavin

Bruce, Fiona

Cairns, Alun

Clark, rh Greg

Gilbert, Stephen

Howell, John

Lewis, Brandon

Neill, Robert

Ollerenshaw, Eric

Smith, Henry

Stewart, Iain

Stunell, Andrew

Ward, Mr David

Wiggin, Bill

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Mr Raynsford: I would not like us to pass this clause before hearing a clearer statement of intention than the one we received from the Minister about the Government's intentions in respect of subsection (3). The inference of the Minister's speech was that this provision would be used only in extreme circumstances when a local authority was behaving in a wholly irrational and unacceptable way. Before we agree to the clause, we should have a clear indication from the Government that they have no intentions at the current time of making any provisions under subsection (3). Secondly, we deserve from them an indication of what they would regard as appropriate safeguards before they use that particular power at a future date.

When we come on to clause 6, we will, I think, be probing the Government about the different procedures for consultation that apply to provisions in clause 5. Clause 6(1) sets out certain provisions that will apply in the case of clause 5(1), but does not apparently extend to others. It

will be useful to hear why the Government have differential procedures for consultation. Given the draconian nature of the provisions of clause 5(3), it would be helpful to know what safeguards they regard as appropriate both in terms of local government and of this House before they bring forward any order giving effect to the powers in that subsection, so I hope that the Minister will do that.

Barbara Keeley: Serious concerns were expressed during our evidence sessions about the proposals for the Secretary of State's powers. Let me spend a moment building on the questions raised by my right hon. Friend the Member for Greenwich and Woolwich.

The Equality and Human Rights Commission is concerned that as the private sector or community bodies take on public service provision, there is a risk that those services might not be subject to the fundamental protections contained in the Human Rights Act 1998 or the new public sector equality duty under the Equality Act 2010. Obviously we can return to that question when the Committee considers part 4 of the Bill, but at the moment we are discussing the overlap between the provisions in clause 5. This is an appropriate point to ask the Minister to reassure the Committee about the protections that will be in place if non-public bodies start providing local services, because, clearly, that is the intention behind the Bill.

A group of organisations involved in social care, including Aid UK, the Royal National Institute for the Blind, the National Autistic Society, Sense, Scope and Mencap also has concerns. The group reminds us that there are statutory requirements on local authorities to assess the needs of people asking for social care support, to have due regard to public equality duties, and to safeguard vulnerable adults. Those six organisations are concerned that the power granted to the Secretary of State is subject to less parliamentary constraint, so we have a difference of opinion. We think that there should be more parliamentary constraint on the exercise of those powers, as do those six organisations. Will the Minister further reassure me, members of the Committee and those six important service-providing organisations?

Andrew Stunell: I think that I can give the right hon. Member for Greenwich and Woolwich the assurances that he was seeking. The power for the Secretary of State to remove restrictions involves rigorous procedure, including scrutiny by the House and consultation. It will be for Parliament and not the Secretary of State to decide which procedure—super-affirmative, affirmative or negative—should apply to any order proposed under the power. We certainly do not have anything in mind in the near future that would bring this abruptly into use. I hope he will see that we have no intention of exploiting this—as he might see it—at the drop of a hat.

The hon. Member for Worsley and Eccles South asked a question about the extent to which existing legislative requirements could be set aside. We have discussed that before because she raised it in the context of non-public bodies delivering public services—we might have mutuals, co-operatives, the voluntary sector or the private sector. As I am sure we will discuss later in our proceedings, any duty that applies to the provision of public services will apply whoever the provider is. The duty is transferred with the function. Nobody gets out of conforming with statutory requirements on delivery simply by changing their status. I saw the concerns expressed by the charities and non-governmental organisations that the hon. Lady named, and I want to assure her and them that there is nothing in the clause or the Bill that would give reasonable grounds for their concerns in real life.

Barbara Keeley: Given the concerns expressed by those outside organisations, will the Minister give us more information? I cited the Equality and Human Rights Commission. It is

not a small forum or body, so if it is concerned, it behoves the Minister to do more than he has done all morning—I am not denigrating what he has done—by saying, “Trust me. It’s going to be okay.” I do not think that that is acceptable, and I am sure other Committee members feel the same.

The commission relates to Parliament, and it has come to us to say that it has concerns about the Bill. Given the different culture in the private sector’s various forms, the commission is concerned that bodies that take on provision that had been publically provided might not see themselves as subject to the Human Rights Act 1998 or the public sector equality duty. The Minister should remember that the public sector equality duty comes from the Equality Act 2010 and is brought into force only this year. Public service providers are only just understanding what the duties are. In view of the changes the Bill brings about—we talked about services passing to a couple of employees who currently run a service, a new organisation or the private sector—we need a little more than the Minister saying, “Trust me. It’s going to be okay,” if we are to be reassured.

Andrew Stunell: The hon. Lady is asking for reassurance, and I want to assure her that I intend that she has it. I am sure she will let me know if I have failed.

The equality duty will pass to the service providers. The private sector already provides lots of public services. There is plenty of evidence that it is capable of retaining its human rights and equality duties, and, in many cases, flourishing while delivering them. I assure the hon. Lady that what is in the Bill is intended to provide—and does provide—those safeguards.

Mr Raynsford: The Minister gave me an assurance that the Government do not intend to bring forward provisions under subsection (3). Clause 6(1) refers to the Secretary of State doing something

“whether before or after the passing of this Act”.

Will he clarify that that is entirely compatible with what he has just said? It might imply that the Secretary of State intends to move very quickly. This is complicated but, as I read the Bill, that might not cover clause 5(3). In that case, my earlier point about the rather different consultation requirements, which I find confusing, might be his get out, but I would welcome clarification.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Four o’clock .