PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE BILL [*LORDS*]

Sixth Sitting

Tuesday 23 February 2016

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

PBC (Bill 112) 2015 - 2016

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 27 February 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Sir David Amess, † Ms Karen Buck

† Argar, Edward *(Charnwood)* (Con)
† Barclay, Stephen *(North East Cambridgeshire)* (Con)
† Bardell, Hannah *(Livingston)* (SNP)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
† Churchill, Jo *(Bury St Edmunds)* (Con)
† Creagh, Mary *(Wakefield)* (Lab)
† Esterson, Bill *(Sefton Central)* (Lab)
† Flint, Caroline *(Don Valley)* (Lab)
† Frazer, Lucy *(South East Cambridgeshire)* (Con)
† Howell, John *(Henley)* (Con)
† Lewis, Brandon *(Minister for Housing and Planning)*
† McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
† Mackintosh, David *(Northampton South)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Pawsey, Mark *(Rugby)* (Con)
† Solloway, Amanda *(Derby North)* (Con)
† Soubry, Anna *(Minister for Small Business, Industry and Enterprise)*

Glenn McKee, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 23 February 2016

(Afternoon)

[Ms Karen Buck *in the Chair*]

Enterprise Bill [*Lords*]

Clause 32

Objectives of UK Green Investment Bank

2 pm

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

The Minister for Small Business, Industry and Enterprise (Anna Soubry): Good afternoon, Ms Buck; it is a pleasure to serve under your chairmanship. I shall explain why this clause should not stand part of the Bill. The clause was inserted by the Lords, and I can understand why it was felt that that was the right thing to do. There is a general agreement that the Green Investment Bank—there is no debate about this—has been extremely successful. It is beginning to return some money and has also made it very clear to the market that it is possible to invest in excellent green projects and get a return.

The time has now come for us to sell the Green Investment Bank, so getting back the money that has been invested by the taxpayer and, most importantly, ensuring that it goes into the private sector not just for the sake of it, but so that it can continue to do its excellent work and, crucially, be free to raise equity.

We have always said that the Green Investment Bank will still be green after privatisation. Green investment is what it does, and it is difficult, frankly, to believe that anybody would want to buy it or have a share in it unless they subscribed to its fundamental core business, which is to invest in green projects. We have to be realistic: why would anybody buy it if they wanted to turn it into some other bank?

We also said that the only reason we had to repeal the green protections from existing legislation was to allow the Green Investment Bank to be off the Government's balance sheet post-sale. In other words, we have to do this—repeal the green protections—or it will still, in blunt terms, be on the Government's books. However, if we repeal them, it will be off the books and in the marketplace and able to trade in the way that it has been doing.

However, because we understand the concerns of hon. Members and noble lords in the other place—indeed, many of us share those concerns—we have found a device to protect the Green Investment Bank's green purposes but without the need for legislation. In other words, to use a phrase that has been used quite a lot so far this week, we are having our cake and eating it.

The Green Investment Bank will implement a special share to be held by an independent company—that is, independent of the Government, Parliament and the Green Investment Bank itself. The special shareholder, as it will be called, will have the right to approve or reject changes to the Green Investment Bank's green purposes if such a change is ever proposed. Work is under way now by the Green Investment Bank to put that in place and it will be implemented at the point of any sale. We will not repeal the current statutory protections until that point. In other words, there will be no gap in protection.

To provide further assurances to hon. Members that we will do this, the Secretary of State said on Second Reading that the special share will be put in place, and the chairman of the Green Investment Bank, Lord Smith, wrote to Lord Teverson on 5 February to give him that assurance. Baroness Neville-Rolfe, who is a Minister in Department for Business, Innovation and Skills, also wrote to Lord Teverson on 17 February saying the same. On that basis, we believe that we do not need green protections in legislation.

Kevin Brennan (Cardiff West) (Lab): Were that proposal to be implemented, it would in effect do the same as is being proposed in clause 32, which still remains part of the Bill at the moment. The key question, however, is not that, but whether that will satisfy the Office for National Statistics in relation to whether the Green Investment Bank will be treated as being on or off the books, as that seems to be the Government's primary concern. What guarantee can the Minister give about that?

Anna Soubry: The best thing that I can say and do is this. I am very grateful because I have copies not just of the letter from Baroness Neville-Rolfe, but of the letter from Lord Smith who, as we all know, is the chairman of the Green Investment Bank. He wrote to Lord Teverson of Tregony. I am more than happy to share the letter in whichever way is best, whether by sending a copy to all members of the Committee or even by putting it in the Library. Although, actually, it is not my letter to put in the Library, I am more than happy—and I know that the noble Lord is more than happy—for it to be shared with everyone. I will not read it all because it is rather long and, interestingly, deals with a number of matters, but I want to put his words on the record. He wrote:

> "In this letter I would like to set out the steps GIB plans to take to deliver the full spirit and intent of the Lords' amendment. The only substantive difference between this plan and the Lords' amendment is that the establishment of a special share would not be required by statute. Requiring the special share by statute is a key indicator of public control preventing the company's re-classification to the private sector. GIB instead will create a special share in the bank on a non-legislative basis, to enable the company's re-classification to the private sector. This is essential to give GIB the freedom to borrow without this impacting on public sector net debt and more importantly to allow GIB to raise equity. GIB intends to have in place a clear process detailing how a special share will be created and will set out that process, and show our progress in delivering it, before the Enterprise Bill returns to the Lords. It is my intention to share our progress as transparently as we can, as a means of building confidence that the special share can be put in place without the requirement to do so in law. I would also note that the current statutory protections over the green purposes will remain in place until the point that the special share is implemented. There will be no gap."

Now, we all want the Green Investment Bank to continue its investments in the green sector, but I hope that everybody in the Committee will accept the noble Lord's words about exactly what he is now undertaking. As he says, we should protect the special green background of the bank—the whole thrust of it. He is already doing that to protect its special workings. There will be no gap, and it will therefore continue as it is sold and, no doubt, in perpetuity.

Kevin Brennan: I have a copy of the letter, as Lord Smith also sent it to Lord Mendelsohn on our Front Bench and he was also involved in the amendment. Will the Minister confirm, however, that the letter contains no indication of the view of the Office for National Statistics about using this mechanism, rather than the mechanism currently in clause 32? As far as I can see, the letter contains no reference to the ONS directly approving this mechanism.

Anna Soubry: I undertake to find Lord Smith, and I will ask him for his views. In the meantime, I can tell the hon. Gentleman that we believe that the proposal will satisfy the ONS. As he can imagine, my officials have engaged with the ONS for some considerable time and have continued to do so specifically about this proposal from the Green Investment Bank. We are satisfied that it will allow the Green Investment Bank to move to the private sector and to protect its green objectives.

Baroness Neville-Rolfe, in her letter to Lord Teverson, who moved the amendment in the other place—it matters not that he is not of the political persuasion of anyone on this Committee—said:

> "I would like to reiterate the commitment that the Secretary of State made in the House of Commons during Second Reading of the Enterprise Bill on 2 February, that a special share will be created in GIB with the power to protect the green purposes."

I therefore seek to persuade the Committee that there is no need for this clause, notwithstanding the fact that the noble lords, with great respect to them, inserted it in the Bill after a debate. Given that the Green Investment Bank has come up with this device—I do not mean that in a bad way; quite the contrary—I seek to persuade the Committee that the rightful concerns about the future of the Green Investment Bank's green objectives are now properly secured for a very, very long time. On that basis, I will ask the Committee to agree that clause 32 should no longer stand part of the Bill.

Kevin Brennan: It is nice to see you again in charge of our proceedings, Ms Buck. We come to an unusual role reversal in that the Minister is arguing that a clause should not stand part of the Bill, and we are arguing that it should. In fact, she is so keen that clause 32 should not stand part of the Bill that she tabled amendment 30, which was not selected, to delete it. The amendment was not selected because, in essence, it was otiose, as the correct way to get rid of a clause is to vote against it following a stand-part debate, which is what she now proposes. I interpret the tabling of the amendment as a kindly way to indicate the Government's position to the Opposition, rather than any incompetence on her part, although she wrote to my hon. Friend the Member for Wallasey (Ms Eagle), the shadow Secretary of State, following Second Reading to indicate that she wanted to get rid of the clause. As the Minister has rightly indicated, the Secretary of State gave such an indication on Second Reading.

The Minister wants to get rid of the clause because the Green Investment Bank would remain on the Government's books after privatisation, according to the Office for National Statistics, if there was any suggestion of statutory control of its purpose. Of course, there is currently statutory control of the bank's purpose. The first point one might raise is whether the Government should allow that ONS ruling to drive policy in this area. It seems pretty obvious that they should not allow the ruling to drive policy so powerfully, but they are so obsessed with being able to say certain things about public debt that they are unwilling to allow a technical issue—that is what this is—that does not truly reflect problematic public debt to spoil their narrative on public finances. That is driving their obsession with removing statutory protection for the Green Investment Bank's purposes. Ironically, that does not always happen. The Treasury is all too ready to allow UK borrowing to be part of the financing of the Asian Infrastructure Investment Bank. The Treasury was not worried at all that public debt will be part of the financing of that bank, yet it is extremely reluctant to allow the same for our own Green Investment Bank.

The Green Investment Bank is a flagship Government policy, and it is a genuinely innovative policy in the public sector. I praise the coalition Government for introducing it, as I have in previous debates. I should point out that it was initially conceived during the previous Labour Government. It would be a terrible shame if we did not acknowledge that; I am sure that no one in the Committee would like me to leave out anything of factual importance for the historical record. It would be a terrible shame if the Government were not willing to do for our own Green Investment Bank what they were willing to do, and have done, for the Asian Infrastructure Investment Bank. Will the Minister tell the Committee why the Government were prepared to do that for the Asian Infrastructure Investment Bank but not for the Green Investment Bank?

2.15 pm

Mary Creagh (Wakefield) (Lab): I know from my time shadowing DFID that many questions were raised about the fact that we chose to be foundation sponsors of the Asian Infrastructure Investment Bank. There were a large amount of questions about the human rights implications, in particular about the sort of projects the bank would be investing in, given that—along with the other founding partners—it is under Chinese state Government control, when they have a completely different approach to human rights and natural resource exploitation, particularly in sub-Saharan Africa, to that of our own country and the Department for International Development.

Kevin Brennan: I wish I had spent my lunch hour more productively, because somebody pointed out to me that a report is out today on human rights, businesses and the Department for Business, Innovation and Skills. With a busy day in Committee, I have missed the opportunity to give a brilliant response to my hon. Friend's intervention. Nevertheless, she is right, and on trend in terms of today's news cycle.

I am not saying that it is easy to solve this problem. As Kermit the Frog said, it is not easy being green. This is not an easy area to navigate, but the Government seem to want to make it more difficult than it is already. As I said earlier, the Green Investment Bank was an embryonic idea under the last Labour Government. It was mentioned by the former Chancellor of the Exchequer, Alistair Darling, in one of his Budgets and it was being developed in the Cabinet Office and in the Department for Business, Innovation and Skills when I was a Minister in both.

[Kevin Brennan]

I was very pleased when the coalition Government brought forward proposals, having worked up those ideas so that they were workable, and when the Bill was passed and the bank was set up. I was also pleased about the good start the Bill has had and how well it got under way, which Members have also mentioned. There have been some criticisms about the straitjacket the Treasury might have put on the Green Investment Bank, but nevertheless it has been able to participate in the financing of projects that otherwise probably would not have taken place and that make a real contribution to meeting our commitments under the Climate Change Act 2008. I think we are all agreed that its creation is a good news story.

The Treasury does not want it appearing on the books because of the targets the Chancellor set for debt and deficit reduction. However, when we consider what we are doing here, we have come to a strange pass when even something that we all agree would be a good thing—that is, even good borrowing—is bad if it is on the Government's books, and for no other reason than that. Sometimes we seem in this country to be the prisoners of public accountancy conventions in making public policy, rather than people who use common sense, as we are supposed to do in Britain, about when borrowing is good and effective and is used to invest—after all, that is what we are talking about—in growing our economy in the future in a sustainable way. During very difficult years following the banking crash, in which we were sometimes in recession, a significant part of recent growth in the UK came from the green economy. By some estimates it accounts for a million jobs in the low-carbon sector, worth more than £100 billion. It is disappointing that the Government are in danger, if they are not careful, of undermining one of the key drivers of that sector. If we were able to tap into our country's potential in respect of wind, wave and tidal power, we could create hundreds of thousands more high-quality, sustainable jobs for our economy.

The CBI's "The colour of growth" report says we have a £130 billion share of a global low-carbon marketplace that is worth about £4 trillion. That will rise hugely, given the opportunities around the world in years to come, but we are in danger of slipping down the ranks. We must not abdicate at this point our leadership on this issue. If we do, our prosperity, as well as our environment, will ultimately suffer.

Privatisation is not the only way that the Green Investment Bank could go out and borrow in the market; that could be done under the current legislation, in any case. However, because of the Government's financial orthodoxy and desire to be able to say what they want to say about their targets, they are extremely reluctant to allow the Green Investment Bank to do it.

Mary Creagh: One thing that came out in the Select Committee's evidence session was that the Green Investment Bank was very keen for the Government to retain their minority shareholding in the bank. That confirms my hon. Friend's point about the fiscal orthodoxy with which the Government are pursuing this sale. Obviously, the bank's green purposes would be protected as long as the Government's minority share was in place.

Kevin Brennan: My hon. Friend makes a valid point. I met and had discussions with executives from the Green Investment Bank, and I think it is fair to say that, like any good public servants, they are trying to carry out Government policy in the best way they can. I think it is also fair to say that they would see privatisation as a positive step for the bank. Whatever decision the Government ultimately take on privatisation, it is sensible at this early stage—we heard earlier about market conditions and whether this is the right time for the sale—for them to retain some sort of stake, at least into the near future.

In a sense, we are debating a notional concept. This is not the sort of debt on the books that will be of great concern to markets or to the City. It is part of the obsession of the boffins at the Office for National Statistics that where the Government, in any minor way, have an influence over what an institution such as the Green Investment Bank does, by setting out to limit the types of investment that it makes in any way shape or form, it has to be counted as being in the public sector for the purposes of Government debt. It is an incredibly esoteric and technical reason for requiring the Green Investment Bank to be privatised, even though there is clear evidence of real problems with that process, as we heard in our discussions earlier today.

When the Government announced their privatisation plans for the bank on 25 June 2015, the Secretary of State for Business, Innovation and Skills gave the following assurance to the House in a written statement:

> "This should bring a number of important benefits, giving GIB greater freedom to operate across a wider range of green sectors in accordance with its green purposes, which are enshrined in legislation."—[*Official Report*, 25 June 2015; Vol. 597, c. 27WS.]

In that announcement, the Secretary of State emphasised that the green purposes of the Green Investment Bank were protected by the legislation in which its duty to pursue them was enshrined. Obviously, something has gone horribly wrong since that announcement. The advice from the Office for National Statistics to which I referred earlier has led the Government to say that they instead intend to repeal the very legislative protection that the Secretary of State prayed in aid when announcing the decision to privatise the bank on 25 June 2015. That is why, by October 2015, they had to say—and this time I am not directly quoting, I am paraphrasing, bowdlerising, perhaps satirising—"Do you know what? That is not so important after all. It does not really matter if we repeal all that to make sure that the Green Investment Bank does not appear on the books". The letter of 15 October, in which the Secretary of State for Business, Innovation and Skills announced his intention to repeal the relevant measures in the Enterprise and Regulatory Reform Act 2013, offered no assurance, at that point, that those green purposes would definitely be maintained. He said:

> "We want to ensure the Green Investment Bank's green principles continue to underpin its business in future and this will form an important part of our discussions with potential investors".

That is all very well, and I am sure that potential investors will come along and happily assent to the green purposes of the Green Investment Bank prior to privatisation. That is not the question, however; the question is what happens after privatisation. That is what we are considering here and now.

At that point, when the bank is either fully or partly in the private sector, how are we to ensure that it maintains its green purpose and does not simply become yet another bank, albeit a very small bank that can easily be, and is likely to be, gobbled up by somebody else in the marketplace? That is why the Lords defeated the Government on this issue and introduced the special share that is the feature of the clause we are debating. The Minister said that the Green Investment Bank can create this special share itself and she quoted the letter from the chairman of the Green Investment Bank, Lord Smith, to our noble Friend Lord Mendelsohn and to Lord Teverson, one of the instigators of that amendment in the House of Lords.

I think the Minister said that this would satisfy the Office for National Statistics. She said she was confident that it would; I do not think she gave us a guarantee. We need, frankly, an absolute assurance on that before we relinquish this legislative opportunity to future-proof the purposes of the Green Investment Bank. I cannot see, having read the letter carefully and listened carefully to the Minister, that there is any such cast-iron guarantee in that letter or in what the Minister said. Surely, it would be better to leave the clause in place, if this is intended to be sent back as an assurance to the House of Lords, which is what the Minister seemed to be indicating, so the House of Lords can decide, ultimately, whether she has satisfied the concerns raised in that House. If she wishes to use her Government majority in this place to remove it from the Bill at this stage, she is doing so without having given such a cast-iron guarantee and I would not be surprised to see the provision put back in.

Can the Minister guarantee categorically to the Committee that the special share will be acceptable to the Office for National Statistics? Can she guarantee that privatisation will not dilute the green purposes of the Green Investment Bank, or is she just keeping her fingers crossed in that regard? Have the Government discussed or considered the possibility of some form of penalty for the privatised company should it depart from the green purposes currently enshrined in legislation when the legislative guarantees are removed?

Am I right when I say that the only reason the legislative lock on the green purpose is being repealed is purely in order to get the Green Investment Bank off the Government books? Is that the only reason for removing the lock? If it is, is it a good enough reason, given what I said about the technical nature of the issue? Can she give us any indication of the Government's view about the stake that they expect to retain in the Green Investment Bank, if any, following privatisation?

There are other points under clause 32 that are relevant and about which the Government ought to be able to tell us, in particular as regards the £1.8 billion the Government set aside to fund the Green Investment Bank and its projects, much of which is yet to be committed. Do the Government intend that the £1.8 billion originally intended to be committed to green projects will stand? Or do they intend that the money will be taken back to the Treasury during the privatisation process? If it is the latter, what do the Treasury intend to do with that money? Will it be set aside against the deficit or will it be used for other green projects and initiatives? We need clarity on that.

2.30 pm

I understand this is a market transaction, but we also need an idea of the kind of return the Government expect from the sale of the Green Investment Bank. We talked earlier about market conditions, but we need to know whether the Government really think they will get a significant return from the privatisation, given all the pain associated with this process. I do not expect the Minister to be precise, but she will obviously want to avoid the criticism that the Government encountered about the lack of value that was achieved for taxpayers in the privatisation of Royal Mail.

Is the Minister concerned that these matters will provide further uncertainty for low-carbon investors at a time when there is great concern about the Government's retreat on investment in wind power? Are the principles being used by the ONS that are causing the Government such a problem and dilemma used in other European jurisdictions, or is this a particular problem that we have in the UK? Are we therefore allowing an accounting convention to undermine a key green policy initiative?

We have learnt over many years that making policy in haste is not wise, and it is certainly not wise to privatise in haste. We might well repent at our leisure if this innovative and effective piece of public policy is lost as a result of a lack of care and a rush to privatise the Green Investment Bank. That is not a sustainable way to make policy, particularly not in an area where we are trying to create a sustainable future for the country. I look forward to hearing more from the Minister on the points that I have raised.

Mary Creagh: I apologise for my late arrival in Committee, Ms Buck. I spent my lunch hour delving into the Green Investment Bank's remuneration committee, and I have printed edited highlights to share with the Committee.

I am keen to put the record straight. In the discussion that we had this morning, I said that as public sector employees the bank's executives could not earn more than the Prime Minister. That was the case in 2012-13, when the chief executive earned £139,000, but things changed quickly in 2013-14. The latest figures show that the chief executive is earning £325,000 a year, with £147,560 awarded under the long-term incentive plan. There is also a short-term incentive plan and an offshore wind fund that is linked to remuneration, as well as a 10% contribution to a defined benefit pension scheme, and also life insurance and medical insurance. I want to put that on the record to inform the Committee's deliberations.

The current rules of the bank, as set out in statute, are to provide for best practice and leadership on remuneration in the financial services industry. That is indeed what the remuneration committee sets out: it sets out very clearly what people are paid. I will come back later to some aspects of the bank's remuneration, but I was keen to put the record straight on the amount that the chief executive earns.

I return to the clause stand part debate. The Environmental Audit Committee concluded that the protection of the green purposes was the most important objective of any sale; in its view, the sale should not go ahead if those green purposes could not be protected. Our Committee argued that the protections proposed

[Mary Creagh]

by the Government, centred on assurances from buyers and the commercial logic of continuing to invest in green projects, were not sufficient. We recommended that the Government support the creation of a special share in the Green Investment Bank to protect its green purposes. We accepted that the share should be owned in a way that did not compromise reclassification to the private sector—in other words, that the share was not owned by the Government or a public body.

At the time our report was published, just before Christmas, such a mechanism had been added to the Bill by the House of Lords under clause 32. We have heard from the Minister that she plans to approve the creation of a special share, which the bank itself is somehow going to do. I have a series of questions for her. If the mandate for the special share is not laid out in statute, what guarantee is there of its longevity? If the bank's board or chief executive changes, or if the shareholders decide to change the special share through a vote at their annual meeting, how will it be protected? How will it be established? The Minister discussed some sort of separate company being set up; would it be registered at Companies House? Who would its directors be? What would their relationship be to the Green Investment Bank and what control would they have when eventually all the shares were sold off? How would it be maintained? What constraints would there be on how it could be used?

On the principle of the sell-off, I return to the Select Committee's report. It is a shame that the evidence was not really consulted on and there was no real consideration of alternatives. Our Committee was disappointed that the Government appear not to have considered a wider range of options for recapitalising the Green Investment Bank, such as citizen finance—green projects are currently extremely popular given the very low returns people can expect to earn on cash deposits—or the European fund for strategic investment. We were surprised that the Government had apparently undertaken little or no external consultation on the move, especially as the bank's inception was marked by a laudably high degree of consultation.

Before proceeding with the sale, the Government must publish a robust business case—this goes back to our deliberations on clause 31—and an impact assessment in support of the decision to sell and of the timing of the sales, in accordance with the lessons identified by the National Audit Office's Comptroller and Auditor General after the Eurostar sale. As part of those publications the Government must also indicate whether the full range of options for the bank's future, including innovative recapitalisation options, were considered before the announcement of the intention to privatise. If they were not, they should explain why.

On the Government's minority share, the Select Committee's report also recommended that, in line with the bank's own wishes, the Government should retain a minority stake in the company for as long as possible to ensure the bank's future success. It is not only a matter of protecting the green purposes, although that would be a happy by-product, but about the signals the Government are sending to the market at a time of high investor uncertainty and potentially low investor confidence.

In response to the Select Committee's recommendation, the Government reiterated their plan to sell the bank as a going concern but disagreed that a continued Government shareholding in the GIB would be essential to its future success, without giving any specific reasons for that disagreement. The Government gave no commitment on their future stake, and the Minister's comments when she gave oral evidence suggested that the plan is eventually to sell the entire Government stake. If there is a phased sell-off, how will the Government use their minority share in the interim period? What is the objection to continuing to hold it? When they have relied so heavily on the bank's views in favour of privatisation, why do they disagree on that point?

I turn to the green purposes. In paragraph 46 of the Select Committee report, we made it clear that we were keen to ensure that the bank retained its unique role in the green economy. In terms of establishing a special share that is owned in a way that does not compromise reclassification to the private sector, we recommended that:

"The Government should examine and report on the possibility of including under the share's protection: (a) a nominated set of priority sectors, which would be much wider than that allowed under the State Aid rules and could establish GIB's focus on specific Sustainable Development Goals in which the UK already excels, such as Affordable and Clean Energy, Industry Innovation and Infrastructure, and Responsible Consumption and Production"—

all areas in which the UK has a clear lead—

"and (b) an explicit statement of GIB's focus on projects which lack sufficient funding. If such protections via the special share are not practicable, the Government must say how it intends, through the sale, to preclude the possibility of 'mission creep' even if the green purposes are protected."

For example, the new special share could specify, by either volume or value, the type of green investments. That would require some thought and preferably public consultation on either the volume or the value route, because we could end up with one big green project and lots of ungreen projects, or lots of very small green projects and one very big ungreen project. There are pros and cons to both volume and value. There could be some sort of lock between the two or a formula in the shares to ensure that, by volume and by value, the bank's green purposes are protected.

Finally, our Committee expressed concern that a privatised bank could invest in questionably green projects, such as fracking and coal-fired power stations, although I understand that the Secretary of State for Energy and Climate Change has said that she wants the coal-fired power stations to close by 2025. That concern was exacerbated by the Minister's comments in oral evidence, where she appeared relaxed about that possibility and implied that it could be possible within the bank's existing green purposes. The Government's response to our report claims that it is not possible to place controls on the Green Investment Bank limiting such investments while achieving their aim of reclassifying the bank to the private sector. Will the Minister say whether, through this workaround—the special company and the special share—questionably green projects can be ruled out?

The Government claim that the Green Investment Bank's business plan sets out a clear path for investment in established green sectors over the coming years and makes no mention of a move into controversial sectors. However, as we know, markets change, economies change,

times change and—one day, we hope—Governments change, so things may look very different in 2020. What guarantees can the Government or the bank provide about the nature of its future investments, and what constraints will there be to prevent it from altering its green purposes?

Representatives of the bank told the Select Committee that they are very happy for the Government to remain a minority shareholder. They said that the Government have been a very good shareholder, and they want that continuity in going from being purely publicly owned to being publicly and privately owned. They envisage some sort of hybrid stage. They also want the Government to retain a minority shareholding to demonstrate a commitment to the bank. The bank's chief executive said in oral evidence:

"with that commitment you will get much more interest in the people wishing to buy the reciprocal 70%-ish, 75%, whatever that number is. That is important in terms of driving the competitive tension in the process to get the best possible price, to get the best possible commitment to the greenness of the Bank going forward, and to make sure that we have an enduring institution here that is around in five years' time, in 10 years' time building the clean, green infrastructure the country will still need."

As I said earlier, any future sale of shares must be preceded by a period of consultation and evidence gathering, and a report to Parliament on the success and impact of the initial majority share sale.

Anna Soubry: I am going to talk about why I seek the support of the Committee in ensuring that the clause does not stand part of the Bill. I am not going to answer all the points that have been made, because, frankly, that would be way off topic. However, there are a number of points that I can address and questions that I can answer, and I hope that that will be helpful.

2.45 pm

On funding for the bank after the sale, the Government will continue to fund its minority share until 2019 if, of course, the Government maintain a share. The Committee can be assured that we will select investors with deep pockets—that is how we have put it—who can continue to fund the Green Investment Bank's ambitious business plan. In response to the hon. Member for Wakefield, an impact assessment is not required, as selling the Green Investment Bank does not change existing policy goals or involve significant regulatory or cost impacts on business.

Comment was made about the Office for National Statistics. I am sure that the hon. Member for Cardiff West did not intend the ONS any disrespect, but it is slightly more than an "office of boffins" and he might want to ponder on whether his phrase really is the right one to use. The ONS is a wholly independent—it is independent of Government—and well-respected organisation. It is, therefore, the organisation that will determine whether the Green Investment Bank is in the private sector or remains in the public sector. Should the clause be taken out of the Bill, we are confident that the ONS will determine that the bank is part of the private sector. We need to be clear that we want to sell the bank not only to get a good return on taxpayers' money but to free it up to continue to do the good work it does even better.

I am sorry to have to do this, but I return to the letter from Lord Smith. He makes it clear that removing the clause:

"is essential to give GIB the freedom to borrow without this impacting on public sector net debt and more importantly to allow GIB to raise equity."

When the hon. Member for Wakefield asks what the guarantees are, forgive me, but she obviously has not had the opportunity to read Lord Smith's letter. He explains the guarantees in some detail, in paragraphs 3 and 4:

"The special shareholder: GIB will establish an independent not-for-profit organisation to hold the special share. It will be established in a way that will ensure that the UK Government cannot prescribe or limit its independence, and that it is also independent of GIB at the conclusion of a transaction. The special shareholder will be a private company limited by guarantee. Its Articles of Association will lay out its governance arrangements and establish its purpose as approving amendments to GIB Articles only if such amendments are not inconsistent with the green Objects. We expect these Articles of Association to allow for its registration as a charity. The Trustees may choose to register the company as a charity (although any such application would have to be accepted by the Charity Commission or Scottish equivalent).

This is intended to satisfy the charitable company requirement in Clause 1.d of the Lords' amendment."

He goes on:

"The independence of the special shareholder will be achieved by giving its independent trustees freedom to amend its Articles of Association and to determine the terms of its registration as a charitable company and the scope of its activities. There will be no UK Government or GIB involvement in the ultimate appointment of the Trustees of the special shareholder, who will all be selected through an independent process. The first stage of that process will see GIB ask three reputable and well-established professional membership bodies, with no perceived conflict with GIB, to form an independent Nominations Committee. That Committee will then independently undertake a search for and appointment of three independent Trustees."

So I hope that everyone is really satisfied that we are not talking about some token gesture. For some weeks now—the letter is dated 5 February—the chairman of the Green Investment Bank has been putting things in place to guarantee the green objectives, with all the securities and checks and balances that everyone wants. Lord Smith continues:

"This is intended to ensure that Clause 5.a.b.c. and d. of the Lords' amendment are met. This approach was designed specifically to meet the intent of the Lords' amendment while at the same time minimising the classification risk of control by the public sector."

The noble Lord takes the spirit and everything that the amendment in the other place sought to achieve, but he is putting it into practice now. He is almost desperately saying, "We can achieve all of this, but if you legislate, it will skewer or scupper the whole project."

Kevin Brennan: On a point of order, Ms Buck. Is it in order to quote so extensively from a letter that has not been shared with all members of the Committee? I have seen the letter because it was sent to another Member of the House of Lords, but I seek your ruling.

The Chair: It is perfectly in order, but it would be useful, as the Minister has indicated, if she circulated that letter.

Anna Soubry: It is not mine to circulate, but I have no problem doing that. I am sure that Lord Smith will not have any problem with it either. It is all on the record.

Caroline Flint (Don Valley) (Lab): We haven't got a copy, though.

Anna Soubry: The hon. Member for Cardiff West has said that he has seen the letter. What is important is whether what is in the letter is to be believed. That is what matters, and I respectfully suggest that Lord Smith's fine words can be accepted. If anyone has got a problem or thinks that in some way I am reading something out inaccurately, I am sure—

Mary Creagh: What the Minister is saying is fascinating, but she is asking the Committee to remove clause on the basis of a letter we are hearing for the very first time in response to our remarks. My hon. Friend the Member for Cardiff West has seen the letter, but I have not, despite the big report that the Environmental Audit Committee did on the bank. It is the Minister's responsibility to circulate things to the Committee in good time, so that we can look at them and all work from the same bundle of documentation.

What the Minister has said is interesting. I have more questions on the basis of the establishment of a charity and so on that come out of what she said. I would have made a different speech had I been in possession of that letter, but I was not, so I could not. I respectfully suggest that it is for the Minister, in asking us to remove the clause, to give us the reasons why we should do so, by circulating the documentation.

Anna Soubry: It is not for me to tread into what must be a dispute with the hon. Member for Cardiff West. He has the letter. Presumably, Opposition Members met to decide which way they would vote. If the hon. Gentleman has not shared the information, had the debate and said, "By the way, gang, I've got a letter here that absolutely sets out all these things," that is not for me to tread into.

The most important point is not procedure and process—the Labour party has to learn and understand this—but content and delivering in the right way. That is what I am seeking to do. It is absolutely clear that Lord Smith and, most importantly, the Secretary of State and the noble baroness have all given an absolute guarantee in this place and the other place that we will take and have taken all the intent of the clause and put it into action. Members may remember that that is how I began my remarks. I explained what would happen, the process and how we would achieve what Members want us to achieve, and that is the most important thing and that is what is happening.

Mary Creagh: On a point of order, Ms Buck. A whole series of evidence has come to the Committee. Some of it has come in from people, such as the Magnox emails, and I seek your guidance on whether the Committee Clerk has received the letter under discussion. I have not seen or received it in any of the emails that have been sent to us. Given that it is a material point on which we are being asked to vote imminently, I cannot understand why there is this gap.

The Chair: The fact is that the Minister has the opportunity to circulate the letter, although it has not been circulated.

Caroline Flint: Further to that point of order, Ms Buck. If I understand correctly what you said, the Clerk has not received a copy of this letter. Can the Committee adjourn, so that we can get the letter photocopied and circulated to the whole Committee? Perhaps hon. Members can put up their hands if they have the letter in front of them. It seems that many of us do not.

The Chair: I do not believe that it is appropriate to adjourn the Committee, but the Minister has the opportunity to circulate the letter and I hope that that will be done. Given that we have taken a number of points of order and interventions, I hope that we can quickly revert to the substance of clause 32.

Anna Soubry: I am more than happy to circulate the letter, but the point remains that this is not about process, but substance. I started off by saying—I am happy to repeat it—that we understand hon. Members' concerns. We have found a device to protect GIB's green purposes. GIB will implement a special share, to be held by a company independent of the Government, Parliament and GIB itself. The special shareholder will have the right to approve—and so it goes on. I referred to letters, and I read out those letters, though I did not have to do so.

The simple truth is that Opposition Members perhaps now realise that we have grabbed hold of the intention of the noble lord's amendment that was successfully moved in the other place. Nobody should have a problem with that. As I said from the outset, we have found a device to implement it without passing legislation, to secure the objectives of the Green Investment Bank. Nobody can have any complaint. On that basis, I hope that the Committee will vote to reject the noble lord's amendment and that the clause does not stand part of the Bill.

Kevin Brennan: I say gently to the Minister that we are not discussing a matter of arid process.

Anna Soubry: Why didn't you share the letter?

Kevin Brennan: The Minister asks me from a sedentary position why I did not share the letter, yet she is the person whose legislation this is. She is the person who has the panoply of a Bill team of civil servants supporting her in her work. I have told the Committee that I am in possession of a letter to Lord Mendelsohn, which I presume is identical to the letter on which she relies in praying in aid her policy. I have a copy of a similar letter among my papers, which I happened to procure. If she wants to pray mainly in aid a document to support her position as a Minister in Committee, at the minimum, it is a simple courtesy to share that document with all Committee members in advance. She knows that to be true.

All manner of huffing, puffing and bluster will not take away the fact that that is the sort of courtesy from Ministers—whatever political party they come from—that is part of this House's procedure and has been for a very

long time. Rather than trying to defend her position, she should go away and think about what needs to be done, as a Front Bencher, in relation to making arguments and providing documentation to the Committee, as the normal courtesies require.

Apparently, we are going to get the letter circulated to hon. Members at some point, but not until after we have disposed of the very clause that she is praying that letter in aid of, so that she can expunge it from the Bill. That is not good enough. It is a slipshod approach to parliamentary scrutiny, so the Government must improve how they handle such matters in Committee.

3 pm

Let us move on to some of the other substantial issues. One point that the Minister did not answer in her response was why it is acceptable for the Asian Infrastructure Investment Bank to be on the books but it is not acceptable for the Green Investment Bank to be on the books.

Anna Soubry: I did not respond to that because I did not think it was particularly relevant, but I am happy to tell the hon. Gentleman that that is an international bank and, because of that, we are not aware of any legislation over it that comes from this country. I therefore do not think he can make that comparison.

Kevin Brennan: Frankly, sometimes the Minister seems to want to chair the Committee as well as be the Minister on it so that she can decide what is relevant, what is in scope and what is not in scope. The Chair is perfectly qualified to tell us what is in scope when we discuss clauses and amendments to the Bill and I am sure that, if we were out of scope, Ms Buck would be quick enough to tell us. That is not for the Minister to decide. As I have said before, the Government have their way and the Opposition have their say and it is her minimum responsibility to make a good attempt to answer questions that are put to her about the Bill. She really should respond to such inquiries in a more appropriate fashion.

The Minister did not answer that question in the course of the debate and she has not explained fundamentally what the problem is with the Green Investment Bank being on the books. She gives the impression that it cannot be privatised without getting rid of the statutory requirement for the bank to have green purposes to its investment, but it can be. The Government could privatise the bank and hold not a single share in it, it could be completely in the private sector, with every intent and purpose except one: the technical ruling by statisticians in the Office for National Statistics —I am not sure whether boffins is the right term, so I will call them statisticians. I will not call them boffins, as long as she agrees not to call hard-working public sector and private sector workers "fat cats". The bank could be in the private sector completely, the Government could hold no stake in the bank whatever—to all intents and purposes it would be a private sector company—but it could retain, perfectly legally, a statutory obligation to invest in green projects.

Caroline Flint: My hon. Friend is making an interesting point about what happens when an entity is transferred from the public sector to the private sector. Presumably, when it was decided to privatise our rail sector, we must have ensured that in doing that we kept providing a rail service within its locus. When we privatised our energy, there must have been the condition that the companies were run as energy companies. I cannot really see why, for the Green Investment Bank, which was born in the public sector to meet a particular need, that cannot be enshrined in its transfer to the private sector.

Kevin Brennan: My right hon. Friend is completely right. I have heard no convincing argument from the Minister that there is any other reason than the desire to get the bank off the books at all costs, even at the expense of the statutory protection that the Secretary of State prayed in aid as necessary protection—*[Interruption.]* If the Government Whip wants to intervene, he is free to do so, although it is not the convention for Whips to do so during Committee sittings.

The Secretary of State prayed in aid that legislation when he was saying that he wanted to privatise the Green Investment Bank while maintaining those green protections. The Minister has said that she is confident, in creating the Green Investment Bank special share, that the Office for National Statistics will allow the Green Investment Bank to be taken off the books. My point is twofold. First, why is it so necessary for the Green Investment Bank to be taken off the books, other than the fact that the Government want to tell a particular story with regard to public sector debt? Secondly, she cannot offer a complete guarantee at this stage that the ONS will approve that mechanism. If we had in front of us a different letter—one from the ONS confirming that it has had discussions with Government, the Green Investment Bank and possibly others and that the arrangement the Minister says we should rely upon, in relation to the ruling and the bank not having to be on the books, is completely acceptable to the ONS—we might be in a different position. If that letter were circulated to us all, we might be better placed to make a judgment on whether it is right at this stage to give up the protection of the clause. We still have Report stage and an opportunity for the Lords to look again at these matters.

Hannah Bardell (Livingston) (SNP): To clarify, Scottish National party Members have had sight of that letter through the Scottish Parliament. It was made available through the Scottish Parliament Information Centre—SPICe. However, I take the point that it should have been submitted to the Committee. That is not the responsibility of others, but it would have been respectful. There has been a legislative consent motion in the Scottish Parliament, and our Government in Scotland have sought assurances and come to an agreement, but there is a valid point in terms of procedure that I want to put on the record.

Kevin Brennan: The hon. Lady is right; that is a basic courtesy. Rather than resist that, it would be better if the Minister simply said, "Yes, it would have been better had the letter been circulated." We could then move on from the issue. However, she is not prepared to say that. I say to her gently that in future, it would be better if she followed that procedure if she is going to rely so heavily on a particular piece of correspondence.

Anna Soubry: I realise that it is a bit embarrassing that the hon. Gentleman has a letter he has not shared with his colleagues, but in any event, it does not matter. The most important thing is that we are going to share it. I assure him—he need have no fear—that if there are any such letters that support a good argument, I will be more than happy to share them with everybody on the Committee. It is not a problem.

Kevin Brennan: I will interpret that in an extremely generous way and take it that the Minister is promising not to rely in future on a letter in this way without sharing it with the Committee, as per the usual conventions and normal courtesies of the House.

I return to the Government's desire to remove the clause from the Bill. I am not satisfied—I sense, looking around me, that my right hon. and hon. Friends are not satisfied either—that that is the right thing to do at this stage. Not least because of the issue around the letter, we should at the very least be given time to cogitate further between now and Report on the protections in the clause. The Minister is confident on this; she always displays confidence, so there is nothing unusual about that, but it is still not a guarantee.

I cannot say in all honesty that I am convinced the special share proposal—interesting though it is; I am certainly not ruling it out—provides a guarantee that the green purposes of the bank will be protected, without a clear indication from the Office for National Statistics, rather than the coded message the Minister has given the Committee. On that basis, I will resist the removal of the clause from the Bill at this stage, so that we can consider it on Report. If Government Members choose to exercise their majority and the clause is removed from the Bill, despite the debate we have had, we will certainly want to consider that further on Report.

The Chair: The Question is that clause 32 stand part of the Bill. As many as are of that opinion say "Aye".

Hon. Members: Aye.

The Chair: To the contrary "No". I think the Ayes have it.

Anna Soubry: I move that the clause does not stand part of the Bill.

Kevin Brennan: On a point of order, Ms Buck. The Question was that the clause stand part of the Bill. The Committee voted that the clause should stand part of the Bill. The Minister cannot then move that the clause should not stand part of the Bill.

The Chair: For clarity, I will put the Question again.

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

The Committee divided: Ayes 6, Noes 11.

Division No. 4]

AYES

Brennan, Kevin	Flint, rh Caroline
Creagh, Mary	McKinnell, Catherine
Esterson, Bill	Morden, Jessica

NOES

Barclay, Stephen	Lewis, Brandon
Bardell, Hannah	Mackintosh, David
Brown, Alan	Pawsey, Mark
Churchill, Jo	Solloway, Amanda
Frazer, Lucy	Soubry, rh Anna
Howell, John	

Question accordingly negatived.

Clause 32 disagreed to.

Clause 33

MARKET RENT ONLY: CONDITIONS AND TRIGGERS

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

The Chair: With this it will be convenient to discuss Government new clause 5.

Anna Soubry: We announced on Second Reading that the Government will accept the intent of clause 33, but will table tidying-up amendments. That is what we now seek to do with new clause 5.

The clause was added by an amendment in the Lords and inserts a near-identical replica of a clause in the Small Business, Enterprise and Employment Act 2015, including the provisions on market rent options. Discussions with Opposition Front Benchers and pub tenants clarified that their main concern was that the first part of the pubs code consultation proposed that the market rent-only option should only be offered to tenants on a rent increase. The intent of the amendment was to prevent that.

The second part of the pubs code consultation, which was published on 4 September, sought views on whether the condition for a rent increase or rent assessment should remain or be removed. The consultation document confirmed that the Government did not intend to frustrate access to market rent-only options. The consultation on the pubs code regulations closed on 18 January.

The evidence in the consultation showed that there was a risk that our proposals would limit significantly the ability of tied tenants to choose MRO at rent assessment. Many recent rent assessments have resulted in no increase. So, contrary to our intentions, a large number of tenants would be denied the offer of MRO at their rent assessment. We have therefore tabled a new clause to ensure that the effect of the Lords amendment is absolutely clear. It puts beyond doubt that MRO will be available at rent assessment, irrespective of the level at which the rent is set. Finally, as the pubs code regulations will be made under the Small Business, Enterprise and Employment Act, we have ensured that the territorial extent of the new clause is in keeping with the 2015 Act by formulating the pubs provision as an amendment to it.

Other points at which MRO will be made available were subject to the consultation regulations. We will publish responses when we have analysed and considered the responses on all the issues raised in the consultation. The point, in short, is that the measure should have been in the Bill, but was not. The noble Lords understandably and rightly added it. We do not seek to undo their work. The new clause does nothing more than tidy up the measure and make it effective.

Bill Esterson (Sefton Central) (Lab): What a lot of tidying up needed doing. Confusion reigned at one point. We have moved from one debate in which the Government have not exactly covered themselves in glory to another in which they have been in danger of making heavy weather of something on which there has been broad, cross-party agreement for quite some time.

The challenges faced by tied tenants have provided an opportunity for long discussions with publicans in my constituency, and MPs from across the House have had similar conversations with pub tenants and pub companies around the country. The relationship between pub companies and tied tenants has long been of concern to those of us who value our pubs. The average of four pub closures a day, according to CAMRA, is the highest closure rate since the early 20th century, when legislation forced one in 10 pubs to close. Implemented properly, the legislation we are debating could help many tied tenants in the UK, whose pubs account for around 29% of pubs according to industry research in 2012.

3.15 pm

The tie is a 400-year-old system that closed off the open market for beer from tenant landlords in favour of beer produced by the pub's owner. These days, that means removing the ability to buy beer from anyone other than the pub company. The theory of the tied system is that, although it increases the cost of beer for the tenant landlord, it provides landlords with a range of benefits, such as lower rent, repairs and investment in pub buildings. In turn, the pub's owner, the pub company, has the stability of steady demand for its beer. The logic appears to be straightforward, but 400 years on we are faced with what can be a deeply imbalanced relationship that too often places an undue financial burden on tied pub tenants.

The argument for a tie-free option for tenant landlords reflects the growing criticism of the tied pubco model, under which the pubco's effective monopoly on its tenants distorts the market and the cost of tied beer too often far outstrips the benefits of lower rents. The concept of a tie-free or market rent-only option has received wide support. This is not simply about a fairer deal for tenant landlords; it stands to benefit brewers, pub tenants, consumers and the wider economy. If implemented correctly, the market rent-only option represents a significant opportunity for microbrewers, which are currently locked out of almost a third of the market due to large numbers of pubs being tied to their pubco's beer.

In my constituency, we have three microbreweries: Red Star in Formby, Rock The Boat in Little Crosby, and Neptune, which is opposite my office in Maghull. I know them all well. All of them were set up last year, all of them brew outstanding beer, and all of them have a limited market in pubs under the current arrangements and face significant barriers to entry, largely as a result of how the beer tie operates.

It is hoped that the changes we are debating will help many small breweries, including those in my constituency, and will contribute to an ongoing improvement in the brewing and sale of a wide variety of quality local beers. The majority of microbrewers' sales are to tie-free pubs. Extending their market to pubs that have the option to go free of tie will be a real benefit to businesses not only in my constituency, but across the country. As an aside, I hope that Members on both sides will be able to try the beer brewed in my constituency when Red Star's "Formby Blonde" is the guest beer in the Strangers' Bar in the week commencing 8 June, news which is hot off the press today.

Jo Churchill (Bury St Edmunds) (Con): I represent Bury St Edmunds, the home of Greene King. I just want to put it on the record that other beers are available.

Bill Esterson: My hon. Friend the Member for Cardiff West just suggested that I was about to be invited for a pint of something that is already on in the Strangers', but we can discuss that later perhaps.

The market rent-only option will also benefit consumers. We have seen welcome growth in sales of real ale and micropubs that specialise in local, microbrewed ales. The Cornerpost in Brighton-le-Sands in my constituency opened last year and serves locally brewed beer; it is already popular in the neighbourhood. It is clear that many people, including me, have enjoyed access to micropubs. Giving more pubs the opportunity to go free of tie will be as welcome for pub goers as it is for tenant landlords.

The argument for a tie-free option is clear, but it has taken a significant amount of time for the Government to reach the point of putting real support on the table for tenant landlords. In January 2013, the Government announced a statutory code of practice and an adjudicator, but it was not until mid-2014 that they included the plans as part of the Small Business, Enterprise and Employment Bill—now the SBEE Act 2015. However, the option to give tenants the automatic right to go free of tie was not included in the Bill.

In November 2014, amendments to the SBEE Bill were agreed in this House, despite Government opposition. The amendments included a market rent-only option as part of the new regulatory regime. In the Lords, the Government accepted the will of this House, and in March 2015 Baroness Neville-Rolfe made clear the Government's commitment to both market rent-only and the parallel rent assessment that goes with it. Following the assurances of the Minister, amendments were not pressed to a further vote. Baroness Neville-Rolfe told peers:

"I was clear at Second Reading that the Government accept the will of the other place that there should be a market rent only option. Our work since has been to ensure that it delivers the protections for those tied tenants without potential unintended consequences. The questions that have arisen and the discussions that have taken place are over exactly how the market rent only option should work in practice. I am pleased to say that we have now reached a position where the Fair Pint campaign and CAMRA are content with our amendments."—[*Official Report, House of Lords,* 9 March 2015; Vol. 760, c. 448.]

On parallel rent assessments, she said that the pubs code would

"require pub companies to provide parallel rent assessments and turn the adjudicator functions in relation to PRAs into a duty. We have made a commitment to this House to introduce PRA. This commitment, together with the duty on the Secretary of State to produce the pubs code in Clause 42(1)"—

of what was then the SBEE Bill—

"means that the Government must deliver on these provisions in…secondary legislation one year after these provisions come into force, as I explained a minute ago. There can be no doubt that we will introduce these provisions."—[*Official Report, House of Lords,* 9 March 2015; Vol. 760, c. 468.]

I note that one year is coming up very, very soon.

[Bill Esterson]

The promise of parallel rent assessments is of course important, as it means that pub tenants can compare like with like. As long as the parallel rent assessment is an independent process, then tenants can make a meaningful comparison between the situation they face as a tied pub tenant who buys beer and other supplies from their landlord on the one hand, and a tenant who only rents the pub premises, buying their beer where they want, on the other hand.

When Baroness Neville-Rolfe made her promises last March, tenants and pubcos alike had accepted the arrangement, and yet what followed was a lengthy delay, and the feeling among organisations representing tenant landlords that they were being kept in the dark about progress. The consultation on the draft pubs code, when published, caused dismay on all sides: parallel rent assessment was missing and conditions were placed on market rent-only that would block access to it for many tied landlords—a point that the Minister accepted in her opening remarks.

I will return to details of the draft code shortly, but for now I should like to reiterate the importance of improving the relationship between pub tenants and pub companies by quoting Dave Mountford. Dave used to be a tied tenant and now runs a free house called The Boat. I am sure Dave will be known to some Committee members at least from his work with the Pubs Advisory Service. Dave said:

"Between 2007 and 2012 I ran a Punch Taverns leased pub. During that period…I lost in excess of £85,000, eventually going bankrupt in 2013, despite running what became the busiest Pub in the area, achieving sales of £500,000 per year.

In 2012 myself and my wife took on a Free of tie Pub very close to our first Pub in The Peak District. This Pub was sold by Punch Taverns as being non viable, having had 5 tenants in the 6 years Punch owned it. It was purchased by a local business man for us to run.

Despite being closed when we took on the Pub it is now, 4 years later, a thriving and profitable business, and despite paying a higher rent than we did at our tied Pub, the ability to choose who we purchase our beer from means we can negotiate our own suppliers and prices.

Being able to utilise the huge range of craft beers, which were denied to us by the exorbitant price charged by Punch, we have developed a reputation for a wide range of choices, and an excellent reputation for food.

We have invested our own profits back into the Pub, developing it further, and in our 4th year we achieved a turnover of over half a million pounds running a Pub that Punch sold as being 'unviable'."

Dave goes on to say:

"It is important to remember that MRO is only an option and if the Pub Companies and Brewers run a robust and positive business model then they have nothing to fear from an alternative model. MRO should encourage competition between Pub Companies striving to recruit the best people to run their Pubs rather than exploiting the unwary and the inexperienced."

Strong words. Sadly, Members on both sides of the House have heard numerous examples of similar experiences from pub tenants up and down the country.

The Government's new clauses will in principle make it easier for a tenant to qualify for a market rent-only agreement. The inclusion of a parallel rent assessment should give tenants the opportunity to make an informed and objective decision about the best option available to them, as it will mean that tenants will be able to compare what they are being offered by their landlord—the pubco—with the situation if they pay only market rent.

The adjudicator will be able to take into consideration broader issues of unfair practice in what has become a very unbalanced relationship between many pubcos and their tenant landlords. It is hoped that that will mean that examples of pub tenants who have been promised major investment by the pubco but seen nothing, or who live in very poor living accommodation at their pub, will become a thing of the past, and that if the landlord promises to repair or maintain the public area or the living area, the repairs will take place in a timely fashion if they are part of the agreement with the tenant.

New clause 5 entitles a tied pub tenant landlord to market rent-only at rent renewal. When the Government published part 1 of the consultation, the impression was given that tenants would be able to access market rent-only agreements only if a rental increase was on the table at assessment, a point raised by a number of Members at Business, Innovation and Skills questions at the time. That was clarified by the Minister, and she has done so again today. We are pleased to see that the Government have listened to the many voices calling on them to confirm the position on market rent-only and parallel rent assessment.

New clause 6 enables the adjudicator to report on breaches of the code to the Secretary of State. It is a report mechanism to keep in check the large pubcos, both on the issue of market rent assessment and, more broadly, on the type of unfair business practices to which I referred a few moments ago. I commend Members in the other place for their dogged determination on this issue before the Bill came to this place. We should also commend the Pubs Advisory Service, which has done a great deal to fight for a fairer deal for tenant landlords right the way through the passage of this Bill and did so for a considerable time before the Bill was published.

Ultimately, the measures are about giving tenant landlords a transparent set of options when it comes to negotiating their rental agreements with pubcos. What was needed was an option for tenant landlords to choose to shake off their beer ties with the pubco and agree to pay them only rent while getting their beer elsewhere. That is what was agreed in the previous Parliament, it is what the Lords amendments sought to clarify and it is what we are told is the purpose of new clauses 5 and 6.

It is important to remember that there are significant concerns about what has happened since Baroness Neville-Rolfe made her promises in March 2015, hence the need for in-depth debate this afternoon. By including market rent-only in the Bill, Members in the other place intended to give us a chance to rectify any shortcomings in the pubs code that might still result from the Small Business, Enterprise and Employment Act 2015, not least following the apparent omissions in the consultation on the pubs code.

Market rent-only is a valuable option to have on the table at rent renewal, but its absence for the majority of tenants, according to the consultation, meant that until the amendments—now to be replaced by the latest round of Government changes—were agreed in the Lords, a significant question mark remained for many pub tenants about whether they would ever be able to consider it. Remember: that was because the Government's consultation suggested that market rent-only would be available only for tenant landlords at rent renewal if the renewal was going to lead to a rent increase.

The problem with having a rent review that was triggered, among other things, only if rents were rising was that recent rental surveys showed that rents for some pubs were decreasing at rent review. Under market rent-only conditions, as indicated in the first part of the consultation, none of the pub tenants whose rent reviews were due would have been entitled to the market rent-only option. Market rent-only is not just about rent. Indeed, the whole point of it is to reflect the overall financial burden of being a tied pub. It is also about the beer tie, which places a financial obligation on the tenant, and any other obligations they face.

3.30 pm

The consultation proposed that the tenant would have the right to request a market rent-only offer at a rent review, but only if the proposed rent was higher than the tenant's existing rent. In fact, according to the consultation document, it seems that rents could rise in line with inflation and still not trigger a market rent-only option. So the true position was that the option might have been triggered only if the rent was set to rise by more than inflation—and inflation, as we know, has more than one definition.

For pubcos keen to keep tenants tied, the condition appeared to offer a blindingly simple opportunity to sidestep giving their tenants a market rent-only option. They would merely have had to maintain rent rises at or below the level of inflation. The rent levels would not have had to be particularly fair. Meanwhile, the pubcos could have taken money hand over fist from tenants for other things—an allegation made by too many tenants now—the obvious one being beer ties, which is the exploitative practice that led to the campaign for the market rent-only option in the first place. That was not the finest hour for those responsible for implementing the pubs code or for trying to create a level playing field for pub tenants.

The consultation on the draft code was phrased in a way that sent out a strange message: "Yes, we appreciate that there is a problem. We will put a solution on the table, but we will place it out of reach for most of you". That was the message that pub tenants received.

The view of Labour Members, shared by CAMRA and the Pubs Advisory Service, is very simple. It should be market rent-only, on rent renewal. There should be no conditions, and certainly no open invitation to pub companies to put the solution out of the reach of their tenants. All that should be backed up by the pubs code and the adjudicator with, of course, the parallel rent assessment, so that tenants can compare the alternatives.

Parallel rent assessment and market rent only go hand in hand; we cannot really have one without the other. The parallel rent assessment is a comparison of tied tenancy agreements with market rent-only agreements, so that tenant landlords can make an informed decision about which to take. It has to be an independent assessment, not one carried out by someone with a vested interest in its outcome.

The disappearance of the parallel rent assessment from the Government's draft code was another baffling step. We supported the Government's proposal last year on the understanding that market rent-only and the parallel rent assessment would be dealt with thoroughly in secondary legislation. That was in accordance with agreements made in the previous Parliament, which had received cross-party support. For the parallel rent assessment suddenly to disappear was not just a blow to the tenant landlords, who believed they were on the cusp of real progress—it was unhelpful, given that Opposition Members, and indeed many Government Members, had acted in good faith to get the proposals through, to ensure that pub tenants could benefit as quickly as possible.

Failure to keep the market rent-only option accessible regardless of the circumstances at rent renewal would have sent tenant landlords a message that a fair deal was being placed just out of their reach, but the absence of the parallel rent assessment sent out a different message: "Yes, there may well be a fairer deal on the table, but you will go in blind, unable to make any meaningful comparison or any informed decision about which is the better deal." The passage of the measures has been haphazard, and the Government sent frustratingly mixed messages to pub tenants for several months.

During the passage of the Small Business, Enterprise and Employment Act 2015 it was agreed that the parallel rent assessment and market rent-only options would be looked at in secondary legislation and, after to-ing and fro-ing that ought not to have happened, the parallel rent assessment is back in, as the explanatory note to new clause 5 states. We are glad about that.

The parallel rent assessment as originally proposed was to be both an informative tool and a remedy: a neat way to offer a side by side comparison for tenant landlords to compare and determine their rental options. It was proposed by tenant and consumer groups as an informative tool, enabling a tenant to have sight of a comparison of the tied and free-of-tie terms on offer. It was only the concerns raised by the response to the draft code that led first the Lords and now us even to debate pubs during the passage of this Bill. There was agreement and there was reassurance from Ministers that the issues of market rent-only and parallel rent assessment would all be addressed in the consultation and through secondary legislation, as clearly stated by Baroness Neville-Rolfe in March.

The Government appear to be reaching the right end point, but they have gone about it in such a way as to needlessly frustrate tenant landlords, and to cause a great deal of concern to Members in both Houses about whether the Government intended to do everything that was agreed last year. The consultation itself was timed for Christmas, by far the busiest period in most pubs' calendars. This was extended, but only after a fuss. To time a consultation as important as this for the few weeks in which pubs see 25% of their annual trade appears to show a worrying lack of understanding of the industry.

The structure of the consultation was also questionable. Why have a consultation in two separate parts when those parts are interconnected? Why place an expectation on tenant landlords to respond to the first part in isolation from the interconnected part in the second part of the consultation? If the tied tenant considers the terms demanded by their pub-owning businesses to be leaving them worse off than if they were free of tie, the idea is that they could remedy the situation by taking a market rent-only option, ending their product and service ties and paying a market rent. For that reason, the parallel rent assessment and the market rent-only option are closely co-dependent, one providing necessary

information and the other providing the remedy. Separating them out was a very strange way for the Government to proceed.

Fortunately, Lord Mendelsohn and others put up a fight on this point. Thanks in part to their efforts with the support of the organisations outside this place, the deadline for the consultation was extended to January. The basic expectation of Members of all parties in both Houses when we agreed to the secondary legislation to deal with market rent-only and parallel rent assessment was that the consultation would put forward a range of opportunities for tenant landlords to switch to a market rent-only option—the basic option that we would have expected as a matter of course being the periodic rent review. We expected the consultation to include some form of parallel rent assessment, so that any decisions made by tenant landlords about market rent-only options would be with full information. It is in this context—good will from the Opposition, and expectation of us as much as of the Government from tenant landlords across the UK and in all of our constituencies—that the consultation itself came out.

On parallel rent assessment and market rent-only, taking one out of the consultation and placing conditions on the other nullified the work that had been done. As Lord Mendelsohn adroitly put it in Grand Committee, it

"looked to many like a suspicious neutering of all the positive steps that the primary legislation had provided."—[*Official Report, House of Lords,* 30 November 2015; Vol. 767, c. GC962.]

He, like me, will hope that such suspicions were unfounded, and we will wait to see how the new provisions are implemented later this year. We have probably reached a place where we can all be cautiously optimistic about the relationship between pub tenants and the big pub companies, although, for the tenants of smaller companies, the provisions do not apply and there are suggestions of some pubs being sold off to new smaller companies to avoid being caught by the requirements of the pub code.

There will be much work for the regulator to do, as with the Groceries Code Adjudicator and the proposed small business commissioner that we debated here. We must hope that the regulator is given the resources and the teeth to be effective. Where have we heard that before? The Minister will forgive me if I stop short of a ringing endorsement of her proposed amendment, because the whole protracted process has left a sour taste. The phrase "suspicious neutering" does rather stick in the mind—parallel rent assessment in and out; market rent-only with unworkable conditions on it, then out, and then back in; stakeholder groups left feeling sidelined and ignored; and Opposition Members feeling we have been misled after acting in good faith on the implementation through secondary legislation.

Nevertheless, we are now in a position where a pub tenant will have automatic access to a market rent-only option on rent renewal. The parallel rent assessment process has been absorbed into the market rent-only process, so it will be provided to tenant landlords. This is what was needed, but the way we got there is a cause for concern in itself.

How to ensure fair rents, the balance between the commercial needs of pub companies and their tenants and the opportunity to get out of unfair ties are serious matters. The operation of the pub code, the adjudicator, market rent-only and parallel rent assessments will affect the livelihoods of thousands of publicans. The new clauses make it easier, in principle, for a tenant to get a fairer deal with their pub company. It remains to be seen how effective the new system will be.

Anna Soubry: I am glad that we all agree. To make it absolutely clear, new clause 5 will replace clause 33. I hope all Members of the Committee will vote in favour of these amendments. I know it sounds strange to vote against clause 33, but the new clause will replace it and all that will happen is that we will honour the full intention of the other place by making sure that their amendment is better written and any loose bits are tied up. We want anybody who is listening to this to know and understand that the full weight of what the other place put into the Bill will stay in the Bill—it is just that we have tidied it all up. We are all as one.

Bill Esterson: Briefly, I hope that the Minister's confidence is justified that this does what she says it does and that it achieves what was agreed by Parliament in the previous Session, what was in the Small Business, Enterprise and Employment Act 2015 and the essence of what the Baroness said in March and what was agreed in the Lords. I hope for her sake that that is all true and that it really will deliver for pub tenants. I take those assurances away. We have got to this point; it has not been the Government's finest hour—I think the Minister acknowledges that—and with those remarks we will support what the Government are doing.

The Chair: For the sake of clarification, new clause 5 will come at a later stage. Now, the Question is that clause 33 stand part of the Bill.

Question put and negatived.

Clause 34

REPORT ON PUB COMPANY AVOIDANCE

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

The Chair: With this it will be convenient to discuss new clause 6.

Anna Soubry: Again, the new clause replaces clause 34; it tidies up and clarifies but does not change the intent of clause 34. I make that absolutely clear. It clarifies that it relates to avoidance of all regulations made under part 4 of the Small Business, Enterprise and Employment Act—the pubs code—not just the Act itself. It makes clear that business practices occurring after the Act was passed in March 2015 can be reported on. It amends the 2015 Act rather than leaving a separate provision in the Bill. It makes the territorial extent consistent with the 2015 Act; in other words, it makes it consistent in England and Wales.

3.45 pm

Bill Esterson: I do not intend to detain the Committee on this section except to say that the Minister's explanatory statement makes very clear where we stand: that this is intended to clarify the effect of the Lords amendment. With that assurance, as I said in my closing remarks on the previous provision, assuming that all is going to go ahead and that this will be brought back later to be voted on, the sector is happy as things stand.

We have finally got where we need to get to on the pubs code. I am sure there will be a decent degree of scrutiny of the implementation of the code, the role of the adjudicator and how the pub tenants' relationship with pub companies operates in the future. With those comments, I am happy to go along with what the Minister is proposing.

Anna Soubry: I have nothing to add; I think I have made everything clear.

The Chair: As with the previous clause, new clause 6 will be dealt with at a later stage. We are now considering the Question that clause 34 stand part of the Bill.

Question put and negatived.

Clause 35

Restriction on public sector exit payments

Kevin Brennan: I beg to move amendment 116, in clause 35, page 50, line 16, after "exceed" and insert

"a maximum of no less than"

This amendment would provide that regulations may make provision to secure that the total amount of exit payments made to a person in respect of a relevant public sector exit does not exceed a maximum of no less than £95,000.

The Chair: With this it will be convenient to discuss the following:

Amendment 109, in clause 35, page 50, line 16, leave out "£95,000" and insert "£145,000"

This amendment would increase the cap to a level similar to the NHS, £145,000.

Amendment 112, in clause 35, page 50, line 16, at end insert

"which amount shall be subject to annual re-evaluation"

This amendment would subject the amount of the cap to annual revaluation.

Amendment 114, in clause 35, page 50, line 16, at end insert

"except for payments made to a person earning below the national average wage"

This amendment would exempt from the cap those earning below the national average age.

Amendment 115, in clause 35, page 50, line 16, at end insert

"except for a person who has been in long-term service"

This amendment would exempt from the cap those who have provided 'long service'

Amendment 128, in clause 35, page 50, line 16, at end insert

"the level of the provision made under subsection (1) will be linked to inflation and earnings growth."

This amendment would ensure that the level that the restriction on public sector exit payments is set will be linked to inflation and earnings growth.

Amendment 104, in clause 35, page 50, line 34, leave out paragraph (c)

This amendment would exclude from the cap compensatory payments made by an employer to a pension scheme which do not go to the person leaving the service.

Amendment 121, in clause 35, page 50, line 40, leave out subsection (g)

This amendment would remove payment in lieu of notice from the public sector redundancy exit payment cap.

Amendment 105, in clause 35, page 51, line 7, at end insert

"including payments relating to employees earning less than £27,000 per year"

This amendment would provide that regulations may exempt from the public sector exit payment cap those earning less than £27,000.

Amendment 106, in clause 35, page 51, line 7, at end insert

"including cases relating to employees who have been in long-term service"

This amendment would provide that regulations may exempt from the public sector exit payment cap employees who have provided 'long service'.

Amendment 108, in clause 35, page 51, line 7, at end insert

"including where the full council of a local authority decides to grant a waiver of the cap"

This amendment would provide that regulations may make exemptions where the full council of the local authority decide to grant a waiver of the cap.

Amendment 122, in clause 35, page 51, leave out lines 18 and 19 and insert—

'(9) The amount for the time being specified in subsection (1) shall be increased by order made by the Secretary of State every year by a revaluation percentage.

(9A) The revaluation percentage to be specified in section (9) is the percentage increase in the general level of earnings in Great Britain in that year."

This amendment would ensure that the level of the cap is maintained in real terms.

Amendment 124, in clause 35, page 52, line 35, at end insert—

'(2A) All prescribed public sector authorities may relax the restrictions imposed by regulations made under section 153A, if certain conditions are met.

(2B) The Secretary of State shall by regulations made by statutory instrument specify the conditions to be met under subsection (2A)."

This amendment would extend the waiver in respect of the cap to all public sector authorities.

Kevin Brennan: We have had a very exciting afternoon, as I am sure you would agree, Ms Buck. The Government have adopted what might be called the "Boris principle" on voting—namely, that they can ignore the result of the first vote if they do not like the way it came out and demand a second. We live and learn about parliamentary procedure. We obviously respect your ruling on the matter, Ms Buck, with absolute and total respect.

We now come to part 8, which interestingly has nothing to do with enterprise, despite the Bill's title. This has been called a "Christmas tree Bill", because it has lots of different baubles on it. If that is the case, part 8 is an Easter egg hanging on the Christmas tree, because it has absolutely nothing to do with enterprise. Nevertheless, the Government chose to include it and it was ruled to be in scope, so it is completely in order for us to discuss these matters as part of the Enterprise Bill.

Let me make it clear from the outset that the Opposition agree that excessive exit payments in the public sector should not be paid, and that abuses in that regard should certainly be ended. The problem with the Government's approach is that they are attempting to govern by headline in a very complex area. In doing so, they are creating anomalies and unfairness, and—that

[Kevin Brennan]

old favourite of ours—legislating to invoke the law of unintended consequences. That is what is likely to happen as a result of legislating rigidly on this matter, as they are doing.

Governments often resist legislating rigidly in Bills because they understand the mess that can ensue. It was Otto von Bismarck—not Leo from "The West Wing"—who first said that people should not see how two things are made: laws and sausages. This is a very good example of that. Putting such things in the Bill is basically a Government headline for the tabloid press about public sector fat cats—an odious remark that the Secretary of State made on Second Reading, which was an insult to many thousands of decent, hard-working people in this country. By legislating in that way, all sorts of messy, sausage-like substances will seep out.

The first group of amendments to clause 35 are about where an exit cap should be placed, who should be covered and who should be exempt. They are largely probing amendments, but I may press one of them later to test the Committee's opinion on it, because it refers to what the Government said their intention was in introducing this legislation on exit payments. The amendments also cover an annual revaluation to ensure that the value does not diminish and that more workers are not caught inside the exit cap net.

Let me go through the amendments in turn. Amendment 116 would provide that regulations may make provision to secure that the total amount of exit payments made to a person in respect of a relevant public sector exit does not exceed a maximum of no less than £95,000. In other words, it seeks to ensure that the cap cannot be lowered further without legislation. I would be interested to hear from the Minister what the Government's intension is on the question of whether it can be lowered without further legislation.

Amendment 109 probes why the cap has not been set at a level similar to the NHS level, which was £145,000. Although it is a probing amendment, I am interested to know why the provision introduces a disparity between different sets of public sector workers. The NHS caps underwent proper research, consultation and subsequent scrutiny, and were seen to be fair. I am afraid that that compares very badly with a completely rushed consultation with minimal research and the resultant limited scrutiny that these Government proposals have had.

In the other place, Baroness Neville-Rolfe said:

"A cap even at the level proposed by the Government will not affect the large majority of public sector workers"—[*Official Report, House of Lords,* 4 November 2015; Vol. 765, c. GC366.]

Will the Minister supply the Committee with the figures for the workers who would be affected by an exit cap payment of £95,000? The words, "a large majority" are a bit woolly; we need a bit more precision than that when we are legislating. What are the exact projections for the cap of £95,000 and what would the exact projections be if the cap were introduced at £145,000? I do not intend to press the amendment to a vote—it is a probing amendment—but we want to understand who is being affected and what we are talking about. Perhaps the Minister would supply the Committee with the cost to the public purse of the cap set at those two limits. I hope that she is able to do so. If she is not accepting on the grounds of costs, she will obviously have those figures to hand.

Mary Creagh: Has my hon. Friend looked into whether the employees of the UK Green Investment Bank would be covered by the cap? Obviously there are several executives who, as I mentioned previously, get significantly more than the £147,000 cap. Looking into their terms and conditions, I notice that they have a six-month notice period and that pay can be given in lieu of notice. In the event of that happening for one of the Green Investment Bank employees, does my hon. Friend think that this cap would click into force? Give that the Green Investment Bank might not be privatised until 2018 or 2019, how does he think that those employees would be affected?

Kevin Brennan: As I understand it from the Secretary of State, they would be affected only if they were officially classified as fat cats. If they are not affected, they are not officially fat cats in the eyes of the Secretary of State and if they are affected, they are officially fat cats according to the Secretary of State. It remains to be seen whether those employees are fat cats under the Government's own definition.

Amendment 112 would subject the amount of the cap to an annual re-evaluation. Amendment 122 covers a similar subject. It is vital that any proposed cap is flexible and updated on a regular basis to take into account differences in pay and increases in separate areas of the public sector. In considering the scope and impact of the policy, it is important to note that the proposal to make the cap effective at £95,000 means that it will not just impact on higher paid senior managers.

If the £95,000 figure is not uprated, it is likely to affect more and more grades, so we ask the Government to consider re-evaluating it annually, perhaps using the same uprating as for public sector pensions. Similarly, will the Minister open discussions with the relevant stakeholders on technical considerations such as whether the cap will include other means by which an individual can access an unreduced pension, such as on compassionate grounds?

Uprating is important if workers are not to fall further behind. Having the uprating enshrined in primary legislation rather than being devolved to secondary legislation would ensure that it is reviewed annually. I would be interested to hear the Government's explanation for why they are not picking this route and why they want to do it through secondary legislation. We will listen to that explanation with an open mind.

Amendment 114 would exempt from the cap those earning below the national average wage, who, by definition, could not be called the best paid—they would, however, be called fat cats by the Secretary of State. It is hard to see how the Government can include that group of workers if that is really what they think the measure is about. What are the specific reasons for not including people earning below the national average wage in an exemption from the exit cap? The only way those workers could get up to the cap is through decades of long service, and surely that kind of loyalty is not something the Government want to punish.

How many workers earning below the national average wage will be included in an exit cap of £95,000? I would be interested to hear the Government's figures. I am sure they will have crunched the numbers carefully in considering and developing the policy, and I presume the Minister will have the figures to hand and examine them carefully before deciding whether to oppose our amendment.

It has been widely mentioned—this is really important and I will come back to it later—that the then Exchequer Secretary to the Treasury, the right hon. Member for Witham (Priti Patel), said in January 2015 on exit payments:

"This commitment, which will be included in our 2015 General Election manifesto, will cap payments for well-paid public sector workers at £95,000."

I give her credit for her clarity on that. She went on to say:

"Crucially, those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants."

That commitment was given by a Treasury Minister a year ago. When the Conservative party manifesto came along, it said on page 49:

"We will end taxpayer-funded six-figure payoffs for the best paid public sector workers."

On Second Reading in the House of Commons, the Secretary of State for Business, Innovation and Skills said that the measures were needed because

"Too many public sector fat cats are handed six figure pay-offs when they leave a job"—[*Official Report*, 2 February 2016; Vol. 605, c. 817.]

If someone is affected by this provision, according to the Secretary of State they are a fat cat. The amendments will allow us to explore exactly why that is a dreadful thing to say.

Mary Creagh: Has my hon. Friend seen any figures on the impact of the measure according to gender? Does he know whether there has been a gender impact assessment? I am thinking in particular of people who have worked for a long time as, say, teachers or nurses and who will be above the £27,000 a year de minimis requirement set out by the Treasury Minister, but who find themselves unable to continue, perhaps after a traumatic event or injury at work, and are able after a period of 30 years to leave. How does he think they will be affected? Does he see that there could be a discriminatory impact?

Kevin Brennan: My hon. Friend's astute intervention saves me from going into too much detail on that score, but she is absolutely right: we simply do not know the equality implications of the measures, particularly in regard to gender, because the Government have not supplied us with the figures. It seems intuitively highly likely that the impact will be skewed heavily against female workers in the sorts of occupation that she outlined and perhaps in other public sector occupations.

The Bill, as it stands, does not have any such exemption as the Treasury Minister indicated it would last year. As far as I can make out, that was not the initial intention or, indeed, what was stated in the Conservative party manifesto. Despite the Government's arguments, while the public sector exit payment cap includes pension entitlement within its scope—that is a key issue—it will affect employees on even lower salaries, as current pension protections wither on the vine.

Mary Creagh: That is a key point. We know that people working in the public sector have certain protections. In some services, those protections kick in at age 50, and in others at age 55. By including pension rights, people who may be forced to retire on the grounds of ill health or their simple inability to carry on working will find a cap on exit payments, meaning that they can get the six months' notice. But the far more lasting injustice will be that their pensions cannot be made up as though they had worked to 60 or, in some cases, to 65. They will suffer detriment for the rest of their lives through loss of pension income that will not have been made up.

4 pm

Kevin Brennan: My hon. Friend makes that point far better than I would have made it. Again, her intervention is astute and understands the implications of what the Government have done by including pension payments within the exit cap. If the Government were serious in their rhetoric that doing so would affect only the best paid, it would be straightforward to include a provision in the Bill to exclude those on average earnings or below. On Second Reading, the Minister said:

"What we do know is that there is a very small number of workers in the public sector on about £25,000 who could be caught by this… But those are extremely rare conditions."—[*Official Report*, 2 February 2016; Vol. 605, c. 886.]

We are concerned about the Government's reluctance to make the necessary exemptions to ensure that those unfortunate few, which is what Ministers tell us they are, are not disproportionately affected. If the low and average paid are affected in rare circumstances only, excluding them from the cap will not result in the Government losing a great deal of money, so what is the problem with exempting the low paid from the provisions?

Lucy Frazer (South East Cambridgeshire) (Con): Does the hon. Gentleman know of any private company that pays three times annual salary as an exit payment?

Kevin Brennan: That is not what we are discussing here. We are discussing the terms and conditions that public sector workers signed up to in agreement with the Government. In many cases, such people may have been in service for a long time and may well have given up the opportunity to earn more in the private sector by working as loyal public servants.

During the clause 26 discussion on Report in the Lords, Baroness Neville-Rolfe indicated that a drop of £500 would not be disproportionate for someone previously entitled to a pension of £12,500. I have to say that a drop of 4% is significant for somebody on a relatively small income, especially when that income is below that of someone on the national minimum wage. To say that a 4% cut is not significant is highly misleading.

The Government made the case in the House of Lords that leaving with a payment of £95,000 or above would be a large amount for any employee. For example, the Minister in the other place said that she does

"not accept that those exiting with a payment of £95,000"—

[Kevin Brennan]

which is not the case—

"will generally be subject to hardship".

The idea that someone will receive £95,000 is a myth. A large amount will never actually be seen by employees on low to average incomes, because the payment includes compensation paid to the pension scheme. My noble Friend Baroness Hayter pointed out that

"they cannot go off and use that money to live on while trying to retrain or move or find another job; it is an actuarial payment that never comes near their bank account… This is not a sum of money they can use to buy themselves an annuity to help train or move or anything else—it is money they never see.*"—[Official Report, House of Lords,* 30 November 2015; Vol. 767, c. 984-985.]

Mary Creagh: On the point made by the hon. and learned Member for South East Cambridgeshire, I did a quick Google search and discovered a headline relating to Tesco, which we have discussed in Committee previously:

"Ousted Tesco boss is handed £20million payoff".

I do not know whether that was three times his annual income, but that is what the *Daily Mail* reported was received by Philip Clarke, 54, who stepped

"down after 3.7% drop in like-for-like quarterly sales".

Kevin Brennan: As ever, I cannot fault my hon. Friend's interventions, even if I might fault her sources from time to time. She is right to point that out to the Committee. Let us take a hypothetical example of how someone might be affected. The Government are trying to make out that people will not be affected, but, to take her point, if we take someone who has been a librarian in the public sector for 34 years and who has reached the age of 55 with a career-average salary for pension calculation purposes of £25,000, their pension accrued at one 49th per year of service would add up to £510.20 for each year of service. With 34 years of service that would come to £17,346.93. Under the regulations, if it came to pass that that person had to leave the service owing to redundancy, they would get a pension of £17,346 11 years earlier than the normal retirement age of 66. Therefore, if we take those 11 years and count in the pension, that adds up to £190,816 of pension paid before normal retirement age.

The payment required by the pension fund to enable that unreduced pension to be paid would be likely to breach the Government's proposed £95,000 exit cap. There are technical reasons why it does not add up to the full amount of £190,000, but the so-called strain payment required is highly likely to exceed the Government's proposed cap, so the employer would not be able to make the member redundant without breaching either the proposed cap or the current local government pension scheme regulations.

On Report in the House of Lords, Baroness Neville-Rolfe said of that example that that person would not be affected by the cap if they were aged 52. That is correct, but that misses the point as no pension payment would be in play if someone were made redundant earlier than age 55. That would be a simple redundancy payment, paid directly to the member of staff in the normal way, which would be unlikely to breach the cap. The issue is with people made redundant after the age of 55 who are automatically entitled to early retirement rather than a straightforward redundancy settlement.

It is important to note that in the example I gave the normal retirement age is 66 and while many local government employees who are currently 55 will have some protections in place to mitigate the worst effects of such a cap, that will not be true for all employees, nor will it be true for staff as time moves on. We must remember that the proposals are expected to be in force for some considerable time and all current protections are withering on the vine as we speak.

Amendment 115 would seek to protect workers who earn less than £27,000 and have many years of loyal service. The Government's manifesto referred to "best paid workers", so I wonder whether they consider a worker earning £27,000 a year to be one of the best-paid workers in the country who should be covered by the cap. I do not think that was the original intention—in fact, I know that, because as I said earlier the right hon. Member for Witham, when in the Treasury, said that

"those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants."

She did not think that they were fat cats at that time and she thought they should be protected, so we need to understand why that is not happening in the Bill.

Why not accept amendment 115? Will the Minister outline the unusual circumstances, as Baroness Neville-Rolfe did, in which workers will be caught out? Why was a lower earnings floor not included given that the Government promised that a year ago in their manifesto, which said that they would pursue the "best paid workers" and that that was the cap's intention? Of course, once the election was over, the Government ignored what they had said. The Minister referred to the small number of low-earning, long-serving public servants, but can this Minister supply the Committee with her estimate of how low-paid and long-serving workers will be affected by the cap?

I was going to talk about the poor quality of the consultation. I do not want to detain the Committee for too long, but the consultation was in no way of the same quality—I pay tribute on that score at least to Lord Maude—as the consultation done when caps were introduced previously in the civil service. Further problems have emerged as a result of how poorly the consultation was conducted. Usually, a full consultation takes 12 weeks rather than the four weeks taken by this one, which began on 31 July 2015 and concluded on 27 August 2015. Problematically for a lot of workers in education, of course, that coincides exactly with the summer recess, and the measure could have a big impact in schools and education. The National Association of Head Teachers has pointed out that there are particular problems relating to the proposals as a result, and that it did not get a proper opportunity to consult its membership about them.

That takes me to amendment 128, which would ensure that the restriction on public sector exit payments is set at a level linked to inflation and earnings growth, of which arbitrary fixed caps do not account. If the cap is introduced, there must be a commitment to index-linking it to ensure that it meets the original intention without becoming more and more punitive over time. Any cap must include a mechanism for index-linking in line with pay and prices.

This is a long group of amendments; I apologise, Ms Buck, but I must go through each one. Amendment 104 would exclude from the cap compensatory payments

made by an employer to a pension scheme that do not go to the person leaving the service. That refers back to strain payments, which I was discussing earlier.

Mary Creagh: My hon. Friend is making an excellent point, and I agree particularly with his amendment to ensure that exit payments are linked to inflation and earnings growth. Otherwise, the cap would become an arbitrary bar that could dissuade people from going into public sector jobs.

For the record, I wanted to draw to my hon. Friend's attention, particularly in terms of pensions, the payoff of £3.6 million made to Richard Glynn, chief executive of Ladbrokes. When Dalton Philips, chief executive of Morrisons, left after a chequered reign, his payoff was £4 million. The boss of Barclays, which of course is partially state-owned, left with £28 million in cash and shares. On the pensions point, the disgraced chief executive of Volkswagen, Martin Winterkorn, left with a €21 million pension pot. Just to be clear about the—

The Chair: Order. We are in danger of straying from the subject.

Kevin Brennan: Ms Buck, I will respect your ruling on my hon. Friend's intervention, but I completely understand why she made it.

We were just about to discuss strain payments, which are made when workers in their 50s must take redundancy. The shortfall in their pension is actuarily adjusted at the time of redundancy. As I pointed out earlier, they do not receive the money in their pocket; it is paid by the employer to the pension scheme. I think we can agree that such payments are qualitatively different from the other payments covered by the legislation, which is why special provision should be considered to limit their impact.

Strain payments do not apply to the highest-paid workers. A middle-ranking public servant with long service is much more likely to be affected by the Government's current proposals than a highly paid or best-paid worker who has worked in the public sector for a short period. Strain payments could make up a considerable amount of the £95,000 cap. If so, long-serving, loyal workers could finish work with a significant shortfall in the amount that should have been allocated to help them to deal with redundancy, unemployment and uncertainty. They will have little left over in their redundancy payments to pay for annuities to provide for long-term security. Some in areas of high unemployment will have little chance of getting alternative employment, and they will also be too old to retrain effectively. In other words, they will be left high and dry. I do not think that was the intention of the Minister, her Department or the Government, but surely she can see the difficulties for these workers if the vast majority of any settlement is taken up by strain payments, which are related to pensions.

4.15 pm

An individual will only experience the benefit over a number of years. Even then, the impact is not great. If the employer pays £10,000-worth of strain compensation, the individual will only get about £500 in additional pension but will have lost that sum from their exit payment. The Minister in the other place appreciated that that raises real concerns, and she said so in her response to the debate.

Will the Minister for Small Business, Industry and Enterprise acknowledge the importance of pensions to public sector workers' remuneration packages and respond to the points about strain payments? Many people are affected including, as we have heard and will hear again later, workers in the private sector—this not only affects public sector workers—such as those working for organisations such as Magnox. We will come back to that later. Will the Minister consider the implication of strain payments?

Amendment 121 would remove payment in lieu of notice from public sector redundancy exit payment caps. The reason for probing the Government with this amendment is that we have received representations, particularly from the National Association of Head Teachers, that the proposals might make it harder to address underperformance and might breach contractual entitlements, which will cost public sector bodies more money. The Government aim to class contractual entitlements such as notice pay and holiday pay as exit payments. Those entitlements are contractually owed to the employee. Have the Government assessed whether the provision—superficially unfair as it is—is actually workable or even legal? Could the provision lead to a large number of legal cases? Is it consistent with existing employment law?

Mary Creagh: I am not clear whether the provision applies retrospectively or about how far back it goes. Does it not potentially open the door to class actions from large groups of people? I can see one class action in development from the Magnox employees, who are working for a privately owned company that has been nationally owned. Does my hon. Friend find it interesting that the Minister was so keen to resist our amendments this morning that would have provided transparency on the remuneration of executives of the Green Investment Bank yet is so very keen to impose a cap on people working for a formerly state-owned company that is now a private company?

Kevin Brennan: I do not believe the provision is retrospective—retrospective legislation is rare in the direct sense—but it certainly affects existing agreements and undermines previous agreements that the Government made and said were fair and would stand for a very long time. In the case of contractual obligations, the provision raises serious questions as to whether the Bill as it stands is legally sound. As well as the practicalities of the measure to include notice pay in the cap, there is also the impact on those who are too ill to work. Modelling by the National Association of Head Teachers shows that a headteacher who is compelled to leave work due to developing a physical condition and who is unable to work out their notice due to illness will be significantly worse off compared with an able-bodied head because of the proposed cap currently being drafted to include pay in lieu of notice. Does the provision to include notice pay and holiday pay comply with the provisions of the Equality Act 2010? What advice has the Minister had on that?

My next point relates to the way in which schools are run, because they are different from other organisations

[Kevin Brennan]

in relation to notice for obvious term-time reasons. The Government have committed to academise poorly performing schools. That can often include the removal of a headteacher from a school. How would that be possible under the provisions if that same headteacher decided to work out their notice, rather than leave straightaway? That is what anyone would do if their payment in lieu of notice was to be included in the exit payment. If a school is trying to make a fresh start under a new head, it will find it very difficult to remove the incumbent swiftly, because that person will seek to work out their notice rather than depart immediately. That is understandable, because who would act in a way that was financially disadvantageous to them in such circumstances?

The real problem is that notice periods for headteachers are often exceptionally long. If a headteacher is leaving just after Christmas, their period of notice might not technically run out until after the summer holidays in some cases. Schools and pupils could suffer under these plans if there were such delays. Has the Minister considered that? What is her response to that problem?

Amendment 105, on which I may well seek the Committee's opinion, provides that regulations may exempt from the public sector exit payment cap those earning less than £27,000. Amendments 115, 105 and 106 offer protection for low to moderately paid public sector workers who have provided long service. I will not repeat the arguments made earlier, but the fact remains that excluding workers who earn less than £27,000 per year would protect workers earning the average wage of £26,400. A promise to protect those workers was made by the Government; that is the point.

Anna Soubry *indicated dissent.*

Kevin Brennan: The Minister shakes her head, but the then Treasury Minister specifically made that promise. I will read the quote again:

"those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants."

I cannot imagine anything more emphatically clear being said by a Government Minister, so why has that exemption not been included in the Bill? Amendment 105 would provide that exemption. As such, unless the Minister can convince us otherwise, we should insist on the Government keeping their word by pressing the amendment to a Division.

Amendment 108 is about the waiver process. The Government's consultation response made mention of a waiver process and said that the full council would

"take the decision whether to grant a waiver of the cap in cases involving Local Authorities and for local government bodies within their delegated powers".

In the Lords, Baroness Donaghy said that despite the assurances made in the consultation response, there was no reference to that in the Bill. That is a crucial issue for local government and should be dealt with in the Bill, rather than through secondary legislation. The Government's draft statutory instrument allowing a waiver if the full council agrees has been published. That does not give local government the certainty it needs if it is to continue the job of restructuring itself in the face of the huge cuts to it. We have already seen agreements dealing with pay and conditions that were drawn up in 2010 disregarded just six years later. There is a concern in local government that it is not being given the certainty on waivers that it expected to see in the Bill, and it would like to know why.

Which public authorities will be allowed to exercise a waiver, and which will not? If there are exemptions from the waiver, will the Minister explain her logic in deciding which public bodies should be exempted and which should be included? The Government have done much to try to remove schools from local authority control. Will the waiver apply to all schools in local authority control? Will waivers apply to academy schools? Will there be a level playing field between the two categories of taxpayer-funded schools, or will one be favoured more than the other?

The ability of a local authority or other public sector body to seek a waiver would concur with the Government's professed desire for local democracy and localism in general. Will the Minister explain how she drew up the rules for including or excluding public bodies and her role in the monitoring of waivers?

Hannah Bardell: I echo much of what has been said by the hon. Member for Cardiff West. His comments have been extensive and detailed, so I will not keep the Committee for long. However, I want to support the amendments and highlight our concerns with the Bill. As we have heard, the Cabinet Office confirmed that someone earning less than £25,000 could be affected because of their long service. We share the concerns raised directly with us by Unison that the cap would affect redundancy payments for a wide range of NHS staff. Those people are not classed as executives, because redundancy calculations are made on the basis of length of service and earnings. Because a significant number of NHS staff work unsocial hours, capping the payments could affect staff in band 6 and above.

There is logic and sense in supporting the amendments and some of the comments made in the briefings. For example, the Local Government Association criticised the Government's plans and the cap of £95,000. We understand the logic behind having a cap, but it is about how we legislate. In the other place there were concerns about the lack of an impact assessment to go with the proposals. Once again, we are seeing legislation that has not been clearly thought through. The Cabinet Office has admitted that a small number of people might be affected, but we need a proper impact assessment to understand that, and the amendments speak to such concerns.

My hon. Friend the Member for Kilmarnock and Loudoun, who was very keen to speak, has had to go to another debate. The issues that he wanted to raise relate to his experience and the experience of others in local government, particularly in Scotland. The Scottish Government have not been in favour of compulsory redundancies and have managed their workforce in a more creative way, which is something that should be considered. It is important that we look behind the pay cap and the details of it.

The overarching issue for us relates to the strain payments. As has been said, much of the payment does not actually go into people's pockets; it goes to making up the shortfall in pensions. In summary, we support the amendments.

Catherine McKinnell (Newcastle upon Tyne North) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck. My hon. Friend the Member for Cardiff West, the shadow Minister, made a powerful speech to which I hope the Minister has listened. I hope we will hear about changes to the current proposals, and I hope that our logical amendments to what seems to be an irrational approach to dealing with a problem of the Government's own making will be accepted. Ideologically driven cuts to the public sector have proved far more costly than the Government initially anticipated. We only have to look at the payments made as part of the top-down reorganisation of the NHS, which is estimated to have cost £1.6 billion in six-figure pay-offs alone to 1,000 highly paid officials. That goes some way to explaining the Government's keenness to claw back some of those payments, or certainly to ensure that that does not happen in future. They appear to be trying to slam the gate shut after the horse has bolted.

Nobody questions the logic of what the Government are trying to achieve in trying to prevent significant pay-offs. However, it seems to be a sledgehammer to crack a nut approach. In my former role as shadow Attorney General, I came across examples in parliamentary questions to the Department that tried to uncover similar practices in the Law Officers Department. The Crown Prosecution Service had spent £83 million since 2010-11 on redundancy packages, and 24% of that went to just 153 individuals who received redundancy payments in excess of £100,000 each.

No one is questioning the principle behind what the Government are trying to achieve. They have clearly said that the measure is aimed at the highest paid officials, but in reality it will hit the redundancy packages of ordinary civil servants on modest wages—even some on wages below the national average—who have given long years in public service. It would, for example, hit a worker on just £24,611 who had worked for 34 years and was over 50.

When their lordships considered the proposal in Grand Committee, my noble Friend in the other place, Baroness Hayter, asked:

> "Is this just a rather nasty, crafty little device that they have alighted on simply to help to reduce the deficit, given that the Chancellor seems to be having difficulty with it, by hanging that deficit around the neck of their own employees? Or is this just mistaken drafting, which the Minister will be happy to amend on Report?"—[*Official Report, House of Lords,* 4 November 2015; Vol. 765, c. GC359-60.]

Unfortunately, the answer given seemed to indicate that it was not a mistake, that it is the Government's intention and that they do not intend to amend the measure. I very much hope that the Minister tells us something else today. It would be good to hear from her that the Government have taken on board some of the concerns about the impact of the measure. I hope that they will accept the amendments we have tabled or give some indication that they will amend the clause themselves, as they seem happy to do with other clauses. That does seem to have caused confusion with voting in Committee.

4.30 pm

I have received a number of representations from extremely worried constituents. Large number of civil servants work in Newcastle, and they are concerned about the impact that the clause will have on very average earners, some of whom are on less than £25,000. Thousands of civil servants work for Her Majesty's Revenue and Customs and Department for Work and Pensions in Longbenton in Newcastle, and I have been contacted by a huge number who say that they are concerned about the unfairness in how the cap is being implemented. They want to see it brought more in line with the promises made by the Government before the general election.

The cap should impact on only those highly paid workers who the Government said they were seeking to target, and not on those on modest salaries. Does the Minister recognise those concerns, which are being raised by Members of this House and members of the public? Does she agree that the proposals in clause 35 will inadvertently hit long-serving civil servants on very modest salaries? Or does she consider them all to be fat cats, as they seem to have been characterised in previous comments?

My constituents have also pointed out that their terms and conditions and exit packages were already significantly altered by legislation passed in the previous Parliament. When the changes were introduced by the civil service compensation scheme in 2010, the former Cabinet Office Minister, now Lord Maude, described them as fair for the taxpayer and right for the long term. Given that we are looking at the matter again today, it would be useful if the Government recognised that their approach is deeply disconcerting and in many ways discourteous to public sector workers, who ultimately feel that their contract with the Government is being broken in a manner that is not well considered or thought through.

Alternatively, if the approach is well considered and thought through, it certainly appears to be an abuse of power by the Government. The Minister has placed great emphasis on provisions that allow for special exemptions from the cap, but she has not provided sufficient information as to how and where those exemptions will apply, and that concern is very much shared by employees in the private sector and in the public sector, who will be impacted by the changes. Will she give some consideration to the concerns that have been raised not only by the shadow Minister, very eloquently, but by the hon. Member for Livingston and by constituents and public sector workers up and down the country who want a fairer approach from the Government?

Anna Soubry: It has been a good debate and I will be the first to admit that there have been some good contributions. It is absolutely right that we should go into the matter in detail. It has to be said at the outset that the Government are acting on what was very clear in the manifesto promise upon which we were elected. We said that we would cap the public sector pay-out to end six-figure pay-outs. I am bound to say, as somebody who was self-employed for nearly 20 years, that this is the sort of stuff that simply never came my way at all. That does not mean to say that I do not have any sympathy for people who—and this is the most important point—are made redundant. That means that they had a job and, suddenly, they do not have a job. We have to recognise that we are talking about people who are being made redundant.

To answer the hon. Member for Wakefield directly, people who are made redundant because of ill health are not touched by the cap at all. I hope that we can deal

[Anna Soubry]

with that claim. We have to set this in some context. In terms of statutory redundancy in the private sector, I am reliably informed that the maximum statutory payment that someone could receive if they earned £25,000 and had worked for some 30 years is £14,250. I am told that the evidence is that the average payment is in the region of £16,000. We have to set what happens in the private sector in sharp focus and contrast that with what happens in the public sector.

We have heard much about modelling, in effect, of what happens when people are on lower pay and find themselves being made redundant. They first thing to say, of course, is that nurses do not get made redundant. On the contrary. It is fair to say that we are rather keen to employ more nurses, not to make nurses—nor, indeed, teachers—redundant. In any event, the Cabinet Office has confirmed that no civil servant earning below £25,000 will be caught by the cap. We are not saying that there are not exceptions. To be truthful—and I always want to be truthful—we cannot actually find an exception. I will go through some examples that I hope will give some assurances to people. We cannot actually find an example—we are not going to say that there are not any but we cannot find one—of somebody who could be earning £25,000 but finds themselves having a payment, on being made redundant, of more than £95,000 and therefore having it capped.

A senior manager at grade 7 in the civil service with a classic pension scheme who leaves aged 55 with 30 years' service would not be caught by the cap if he or she were earning below £50,000. A prison officer earning £28,000 with 34 years' experience would be able, even with the cap in place, to retire on a fully unreduced pension aged 52. A tax inspector aged 52, earning £60,000 a year with 25 years' experience, would have a pension of £17,500 per annum instead of £19,000.

The hon. Member for Livingston was specifically concerned, and many others would be concerned, at the thought of a nurse being made redundant. Frankly, it is difficult to conceive but it might happen. I am trying to imagine what the circumstances could be. No one earning below £47,500 in the NHS will be affected by the cap and the vast majority of nurses earn below that figure. To satisfy the hon. Lady—I know that she specifically raised that point—we said that we would go away and look at it all and that is exactly what we have done.

Catherine McKinnell: I thank the Minister for giving way, and I would very much hope, obviously, that she would be truthful. The information she provides gives some reassurance for today but, given that the £95,000 will not be indexed by the Government, will she explain how longer-term security will be provided? Also, if she is so confident that no one will be affected, why will the Government not accept the £27,000 cut-off that they seemed to promise before the election but are not delivering in the legislation?

Anna Soubry: Let us make it clear that what a Minister said before the manifesto was written does not count as a manifesto commitment. The manifesto is what matters the most, and in it we made it clear that we would place the cap at £95,000. I can go only on the figures—I specifically asked for them. Someone on £25,000 who has worked for 30 years in the private sector will get a maximum of £14,000 and we are talking about people in the public sector who have been working on that same salary for the same length of time having their payment capped because it might exceed £95,000. We really must see the cap in context.

Catherine McKinnell: Will the Minister clarify something? When she talks about someone in the private sector earning a maximum of £14,000—

Anna Soubry: Not earning.

Catherine McKinnell: Gaining a maximum pay-out of £14,000. Is the Minister talking about a statutory redundancy payment or a private contractually agreed one? If it is the latter, how does she know what all the private contracts provide for?

Anna Soubry: It is the statutory one.

Catherine McKinnell: That is nonsense!

Anna Soubry: That example shows the profound difference between the private and public sectors. I do not for one moment say that people who work in the public sector do not work hard, but we must take a long, hard, honest look at the terms and conditions of those who are paid for by other taxpayers, to ensure fairness and equality between the sectors.

Catherine McKinnell: I thank the Minister for giving way. She is not comparing like with like by saying that the statutory redundancy payment is all that a private sector employee would get. In the vast majority of cases there would also be a contractual sum that would or could be agreed, and her analysis is, therefore, unfair.

Anna Soubry: I am just putting out the figures on statutory redundancy payments, and setting the context—it is important that we understand the context. That does not mean that there are not lots of people working in public service on low wages—my own brother works on a very modest wage within the NHS. We have to look honestly at those terms and conditions. My hon. and learned Friend the Member for South East Cambridgeshire made an important point. She struggled to think of examples of people on £25,000 who had worked for 30 years and would, in the event of being made redundant, be entitled to more than £95,000. That is all I am saying. That is why such examples are so interesting and, I think, make my point.

I will give some more examples. A librarian, earning £25,000 and with 34 years' experience, would, even with the cap in place, be able to retire on a fully unreduced pension at the age of 55. A health and safety inspector earning £50,000, with 20 years' experience, would receive a pension of £12,000 per annum, rather than the £12,500 they would have received before the cap. I think we would all struggle to imagine teachers being made redundant, but a classroom teacher earning £38,000, which is the maximum of the upper pay range, with a normal pension age of 60, would not be caught by the provisions.

We know that the armed forces are exempt. Again, I am grateful to my officials, because I asked why and whether they were put into a special case for good

reasons such as the nature of their service. In fact, I am helpfully advised by my officials that, given the higher payments to those in more senior ranks, who can get quite substantial amounts of money for redundancy, we are looking at that situation and ensuring that there is a responsible attitude and pay-out.

4.45 pm

Mary Creagh: Earlier, I made the point about the impact of potential gender discrimination. Has the Minister done any sort of gender impact assessment of the working of the two rules, in particular given the exemption for the armed forces, which are dominated by men?

Anna Soubry: I am not aware of any tooling, but I do not see this as a question of gender at all; rather, I think—

Mary Creagh: Of course it is.

Anna Soubry: I am sorry, I really do not see it as a question of gender. If it was a question of a large number of public sector workers being women and tending to be low paid, the hon. Lady might be making a good point. Therefore, it behoves all councils, of whatever political persuasion, to ensure that they do not in any way, shape or form discriminate against women, nor should they see certain jobs as jobs for women or as in some way for pin money; and, if we are honest, local authorities of all political persuasions have done that over the years. I am delighted to see that those old-fashioned, outrageous attitudes are beginning to move.

Mary Creagh: Will the Minister give way?

Anna Soubry: No, I am going to make some progress, if I may. I did not intervene on any hon. Members, because I want people to be able to develop their arguments.

I will go through the list. Among firefighters there have been few if any formal redundancies. They receive statutory redundancy entitlements and the other staff fall under local government arrangements. People might want to know about the judiciary. Why are judges not covered? Judges cannot actually be made redundant. Magnox workers we will deal with in connection with the next group of amendments.

I was asked a number of other questions, including about academies, which are classified as part of the public sector—I will deal with that one in a moment. On pension top-up, it is often the case that those with the highest salaries will receive the greatest top-up, and we know that there are some examples of that. In answer to the hon. Member for Wakefield, the Green Investment Bank could well be in scope if it remains in the public sector as defined by the Office for National Statistics. If we are successful and the bank is sold into the private sector, it will not be in scope. Another important point is that the £95,000 cap represents only 5% of exits to date. As we might imagine, those primarily affected are the highest paid. That is an important statistic.

Catherine McKinnell: Will the Minister address the point about indexation? I appreciate that she is giving helpful statistics about the number of people affected or likely to be affected today, but it would also be helpful to keep in line with rising prices and wages into the future.

Anna Soubry: That is a good point. I am more than happy to take that one away and give her a response later.

Lucy Frazer: Subsection (9) states:

"Regulations may substitute a different amount for the amount for the time being specified in subsection (1)",

so it looks as if there is provision to up the cap in future.

Anna Soubry: I am grateful to my hon. Friend. Another question that has been asked is why so much will be in secondary legislation. One reason why we are doing that is that it is genuinely a much better way to introduce something that will undoubtedly—I am not going to pretend otherwise—have its complications and nuances. It is important that we do not just introduce blanket rules, but have provisions to look at any cases that might or should be exempted.

Somebody asked a question—forgive me for not remembering who, but I think it might have been the hon. Member for Wakefield in an intervention—about the national health service, which, as she identified, has a cap of £160,000. This legislation will affect the existing cap, taking it down to £95,000.

I want to make some progress and deal with the amendments. Amendment 109 seeks to raise the cap to £145,000. I would argue that it is unclear whether the Opposition favour completely uncapped exit payments or a cap set at what could be over 10 times the maximum statutory redundancy. The Government have made it clear, however, that we want to put the figure at £95,000. We were very clear about that in our manifesto.

Amendment 105 seeks to impose a £27,000 earnings floor for the cap, but the cap will have no impact at all on the large majority of public sector workers. As I have said, it will affect only the top 5%. We are really struggling to find an example of any civil servant earning below £25,000, for example, who would be in any way affected by the cap. Those earning below £27,000 will not be caught and, in any event, we believe that this represents a generous package that many will be entitled to.

Amendments 106 and 115 would exclude those in long-term service. There may be some instances where individuals with very long-term service on more modest salaries could be affected by the cap, but as I have explained, the £95,000 represents a generous package compared with what is available to those on similar pay in the private sector. The majority of long-serving employees caught will be those with high or very high salaries.

Amendments 112, 116, 122 and 128 relate to annual revaluation. Amendments 112, 122 and 128 all seek to subject the cap to annual revaluation, while amendment 116 seeks to impose a minimum level of £95,000 for the cap. All those amendments fail to offer the flexibility that the clause provides for. The clause allows the Government to amend the level of the cap to take into account all prevailing circumstances, with the additional scrutiny of the affirmative procedure. Any form of fixed-term revaluation would just create an artificial and arbitrary

[Anna Soubry]

mechanism. As any amendments to the cap require an affirmative procedure, the current mechanisms for changing the cap offer both flexibility and full parliamentary scrutiny.

Amendments 104 and 121 would exclude pension top-ups and payment in lieu of notice. We are not discussing retirement in the normal manner; we are discussing the additional top-ups linked to redundancy, funded by employers. As I mentioned previously, any earned pension that has been accrued by an individual is outside the cap. Again, it is really important that everybody appreciates that any sums of money paid by an employee into a pension pot of any description—anything accrued by them through their own money—is outside the cap. These top-ups linked to redundancy can greatly increase the value of pension payments above the level that has been earned through years of service. They often represent a substantial amount of an individual's exit payments.

Payments in lieu of notice are also part of an exit payment and can be substantial for high earners—again, the emphasis really is on high earners—as some recent high-profile exits have shown. Excluding such payments would not just be unfair, but provide an obvious loophole to avoid the effect of the cap.

Amendments 108 and 124 relate to extending the waiver to local authorities and public authorities. Although we note and agree with the intentions of amendment 108 to give the full council of a local authority waiver power, I would argue that the amendment is unnecessary. Our indicative regulations, published on 3 November 2015, demonstrate that it is already our policy to give the full council of a local authority waiver power, and that will be articulated in the final regulations.

Amendment 124 seeks to grant all public sector authorities waiver powers. However, the potential inappropriate use of settlement agreements and exit payments more widely is precisely why the clause requires approval by a Minister of the Crown— rather than the employer—to relax the cap. Ministerial or full council approval means that the power will be exercised objectively with full accountability and will prevent circumvention and misuse.

For all those reasons, I very much hope that Committee members will take the view that the amendments add nothing and are not necessary, and that the Government have done the right thing by introducing the cap at £95,000. The reality is that in any event very few, if any, lower-paid workers will be affected if they are made redundant. It has to be said again that, compared with what is available in the private sector, an exit payment of £95,000 for someone who has been on low pay must be seen as generous.

Kevin Brennan: Let us make sure that that "very few, if any" is none. We have the opportunity to do that now. We could fulfil the Government's objective and, if the Minister is right that no lower-paid workers will be affected, it would cost nothing at all, but it would provide assurance to people who are not fat cats on high pay in the public sector that the provision is not intended for them and will not affect them.

Mary Creagh: Does my hon. Friend think the Minister was being slightly misleading when she said that people in the private sector would be entitled only to the maximum statutory redundancy pay of £14,500? That is the statutory maximum, but, as I said in earlier interventions, when people are made redundant they are often entitled to pay in lieu of notice, so it is slightly misleading of the Minister to use the statutory maximum for redundancy in the private sector as a comparator.

Kevin Brennan: I do not think the Minister was being misleading, because had she been, it would have been out of order, but she was perhaps using an example that was not directly comparable, if I can put it that way.

Jo Churchill: I am listening to the hon. Gentleman and, having run a small business, I can say that when one faces decisions about making staff redundant, one is invariably looking at a situation in which one's business is compromised by financial circumstances or a change in direction or whatever. To surmise that the majority of businesses—99%-plus of which are small and medium-sized enterprises in this country—give enhanced rates and so on is an illusion.

Kevin Brennan: That is certainly not what we are saying with the amendments, which are designed to ensure that the Government's avowed intentions and the sentiments with which they were expressed are actually fulfilled. Without going over all the detail in this lengthy groups of amendments—the Minister made an effort to respond in some detail, for which I thank her—it is important that we test the Committee's view on the Government's previous position.

Last year, the then Treasury Minister, the right hon. Member for Witham (Priti Patel), said:

> "This commitment, which will be included in our 2015 General Election manifesto, will cap payments for well-paid public sector workers at £95,000. Crucially, those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants."

That is exactly what amendment 105 would do. It would fulfil the commitment that that Minister made to the British people at that time, which was the basis on which people understood the Government were intending to act to ensure that those earning less than £27,000 would not be affected. On that basis, I ask my hon. Friends and others to support me in voting for amendment 105, but I beg to ask leave to withdraw amendment 116.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 110, in clause 35, page 50, line 16, at end insert

"except in the case of conciliation settlements"

This amendment would exclude settlements made at an early conciliation stage from the public sector exit payment cap.

The Chair: With this it will be convenient to discuss the following:

Amendment 111, in clause 35, page 50, line 16, at end insert

"except in the case of exit payments for potential claims under Part IVA of the Employment Rights Act 1996 (protected disclosures)"

This amendment would create an exemption from the cap for whistle-blowers.

Amendment 127, in clause 35, page 50, line 16, at end insert

"except for those payments made in COT3 pre-conciliation settlements."

This amendment would ensure that Early Conciliation settlement via ACAS, cases when organisations use payments as an alternative to legal claims, which employers are legally obliged to attempt, would be excluded from the restrictions on public sector exit payments.

Amendment 118, in clause 35, page 50, line 16, at end insert—

'(1A) Regulations under subsection (1) may not apply to exit payments paid under terms of settlement agreed between the parties in respect of litigation concerning claims of unlawful discrimination, harassment or victimisation (or both) brought under the Equality Act 2010, or exit payments that comply with an award order (or both) of a court or tribunal in relation to such claims."

This amendment would exclude discrimination cases from the cap on public sector exit payments.

Amendment 125, in clause 35, page 53, line 24, at end insert—

"153D Reporting and referral mechanisms to be included in regulations under section 153A

(1) The Secretary of State shall by regulation make provision in relation to restrictions imposed by section 153A where the exit payment relates to a potential claim under Part IVA of the Employment Rights Act 1996 (protected disclosures).

(2) Regulations under subsection (1) shall—

(a) provide for the creation of a regulatory referral system, to apply where an exit payment relates to a potential claim under Part IVA of the Employment Rights Act 1996, in circumstances where—

(i) the Minister of the Crown as described in section 153C considers it appropriate; and

(ii) there has been suspected or likely wrongdoing, malpractice, health and safety risk, breach of law or regulation; and

(b) provide that any individual who is subject to an exit payment as described in subsection (1) shall have access to legal advice on section 43J of the Employment Rights Act 1996 (contractual duties of confidentiality).

'(1) The Secretary of State or the Treasury shall periodically produce guidance on exit payments made in accordance with section 153D(1) for relevant public sector employees as described in section 153A(2)."

This amendment would provide further protections for employees who have made protected disclosures when being considered for exits.

Kevin Brennan: The amendments deal with the impact of the exit cap on conciliation and tribunal services for those who have been involved in disputes because of disability or whistleblowing, or general conciliation. Amendment 110 would exclude from the public sector exit payment cap settlements made at an early conciliation stage. I am discussing this in tandem with amendment 127, which would ensure that early conciliation settlement via ACAS—cases when organisations use payments as an alternative to legal claims, which employers are legally obliged to attempt—would be excluded from the restrictions on public sector exit payments.

5 pm

This issue has not been addressed in the debate on the Bill so far, and it is important that we know what early conciliation is. These are settlements via ACAS which are used when an employment tribunal claim has been formally lodged and organisations or individuals are obliged to use a facilitated process to attempt to settle the claim, rather than go straight to a tribunal hearing. The long and the short of it is that employers and employees are legally obliged to attempt to settle during this process. As such, there is a case for settlements to be excluded from the restrictions on public sector exit payments, because when an employee wants to lodge an employment tribunal claim, they must first notify ACAS, and ACAS has a statutory obligation to offer early conciliation for an initial period of up to a calendar month, with the conciliator having the discretion to extend that if both parties agree.

When a resolution is agreed, the conciliator will record what has been agreed, both parties sign up to that as a formal record of the agreement and it is a legally enforceable contract. That means the claimant will not be able to make a future tribunal claim on those matters. If a tribunal claim has already been lodged, it is then closed by that process. These agreements are currently included in the restrictions on public sector exit payments, and there is a concern that placing a cap on settlements made by the early conciliation process would create a perverse incentive for employees to avoid settlement at this early, optimal stage.

I would like to hear from the Minister, without going through chapter and verse of how the procedure works, what consideration has been given to the law of unintended consequences. Including early conciliation settlements could lead to the perverse outcome of even more tribunal claims being made in future. I would be grateful if the Minister directly addressed that point. I will not press the amendment to a vote, but I want to hear what she has to say and we may need to consider this further. She may need to go away and consider it further, as it has not been rehearsed very much in deliberations on the Bill.

Catherine McKinnell: My hon. Friend makes an important point. I hope the Minister is listening, because it is not just about the financial savings in these cases, but also the human cost involved where there may be a discrimination or whistleblowing claim, which is a very traumatic experience to have to take to tribunal. People should be able to get a fair settlement through the ACAS process if that is the most sensible course of action for them.

Kevin Brennan: I will come on to whistleblowing, but my hon. Friend is absolutely right to make that point.

Amendment 118 would exclude payments from the cap if they relate to claims of unlawful discrimination, harassment or victimisation under the Equality Act 2010. The Equality and Human Rights Commission is concerned that the provisions of clause 35 disincentivise the early settlement of disputes. The Government have given assurances that the cap will not apply to tribunal awards but, perversely, the cap will therefore encourage claimants to pursue their claim at tribunal, where awards in discrimination cases are uncapped, rather than settling at an early stage.

What assessment has the Minister made of the concern raised by the Equality and Human Rights Commission? Would a better approach not be to make it clear in the Bill that payments in respect of discrimination litigation, both tribunal awards and settlements, are excluded from the cap, while monitoring the existing, robust safeguards to ensure that the approval process continues to operate effectively? These safeguards will deter unmeritorious claims and encourage settlement where that is merited and offer value for taxpayers' money. It is important that we hear the Government's thinking on this matter.

Catherine McKinnell: Again, my hon. Friend makes an important point, which also highlights the Government's glaring omission in not undertaking any form of equality impact assessment of these changes. Had they done so, it may well have highlighted the impact on these groups, who will obviously be disproportionately affected if the changes are not made by the Government.

Kevin Brennan: Yes, and that is exactly how bad law gets made, as we know. Therefore, I encourage the Minister to give some further thought to those points if she has not already decided how she will deal with them.

Amendments 111 and 125 would provide protections for whistleblowers—my hon. Friend mentioned this earlier—and remove them from the cap on exit payments. Capping payments could act as a deterrent to whistleblowers. There is concern across the House about the unintended consequences of an exit cap on whistleblowers' willingness to come forward. Whistleblowers are public-spirited individuals who, when they spot an injustice or malpractice, make it public. We have seen their value not just in the public sector but in the private sector as well, but whistleblowing often leads to a backlash from the authority or business concerned. As a result, many whistleblowers do not continue to work in the same industry, understandably, and they often suffer financially as a result of their brave actions.

It is possible that such workers might think twice about whistleblowing if they are to be further punished financially by the proposed cap. Will the Minister update us on the latest view of the Treasury and her own Department on relaxing the cap for whistleblowers? The Government would do a grave disservice to openness and transparency in the public sector if they did not afford those brave individuals the protection they deserve.

Anna Soubry: I get slightly agitated when it is suggested that we did not think of something. Obviously we have thought about this issue, and we have already discussed with officials precisely those two points about people who have been booted out or unfairly dismissed for whistleblowing or through discriminatory injustice by their employer. As we know, tribunals—unusually, given the powers of the various tribunals—can give an award that is basically unlimited, meaning that in such circumstances, people who have done the right thing by whistleblowing or who have been treated unfairly through discrimination would find themselves unfairly treated by the imposition of a cap. We are absolutely alert to that issue.

Catherine McKinnell *indicated dissent.*

Anna Soubry: I do not know why the hon. Lady is saying no. That is exactly the mischief that the amendments seek to cure. We understand exactly what the trap could be. The other thing that we absolutely understand is that only a tribunal can find that somebody has been made redundant or dismissed unlawfully because of their whistleblowing or because of discrimination. In other words, people must go through the whole process of giving evidence, with all the trauma involved, in order to get a finding. The difficulty is ensuring that we know on exactly what basis someone is entitled to a substantial amount of money in damages, in effect, for injustice.

If they have not gone all the way through to a determination by tribunal—everybody is wildly and rightly encouraged not to go all the way through the process but to settle, avoiding all the trauma, costs and loss of time—the problem is then that usually, although it should not be so, they will be subjected to a confidentiality agreement, or to some device that satisfies everybody. They get the money to which they are properly entitled, but nobody says, "Actually, yes, we did sack you because you are a whistleblower." We are absolutely alert to the possibility that the measures could create problems.

That is why the regulations will deal specifically with such instances. We will issue good guidance to all public authorities so that in instances where there is a settlement—in other words, where an organisation says, "Yes, we accept that we made you redundant because you blew the whistle, and that was the wrong thing to do, but we are not going to go all the way to tribunal; we are going to settle beforehand"—the parties must clearly mark in some way the reason why they are settling, so that the payment can be exempted from the cap.

The hon. Member for Cardiff West and I are both trying to cure the same mischief. The question is how we achieve that. The trouble with the amendments is that they would open the process to abuse because somebody could claim to be a whistleblower without in fact being a whistleblower—they could be a fantasist. Such cases are rare, but it is a dangerous loophole that could be opened up, which is why we must ensure that we have a mechanism so that we know whether a person who is entitled to a large sum of money because they have either blown the whistle or have been discriminated against is not subject to a cap. We aim to do that through regulations.

In the case of a settlement agreement, where there is no finding by a tribunal, the claim might not be genuine for the reasons I have just explained, so appropriate scrutiny is essential before making exit payments over the cap. We will issue guidance to assist relevant authorities in determining when to use their discretion to relax the cap. Obviously, they should relax the cap if they have accepted that somebody has been unfairly dismissed or made redundant because they were a whistleblower. I hope that makes sense.

Catherine McKinnell: As a former employment lawyer, I can not help feeling that the Minister is creating a potential can of worms. Even though the issues may not be successful at tribunal for one side or the other, it is often in the employer's interest to settle a case simply on cost grounds where the case would cost more to fight than to settle. From what the Minister is saying, it is not clear that the provision will allow for such circumstances and will not significantly complicate the situation for public sector employers across the board.

Anna Soubry: Forgive me, but I thought I had made it absolutely clear that this is about settlement agreements. Obviously we do not want people to go to tribunals; we want people to settle. In the case of a settlement agreement—this is the point—there is not a determination by a tribunal. Conciliated by ACAS or agreed privately, there is no finding by a tribunal, but the claim may not be genuine, so appropriate scrutiny is essential before making exit payments over the cap. *[Interruption.]* The hon. Member for Newcastle upon Tyne North says that I have not said that, but I have just said it again.

Guidance will be in place to assist relevant authorities in determining when to use their discretion to relax the cap, so it will be made absolutely clear. If a public authority employer is of the view that somebody has been unfairly dismissed either because they are a whistleblower or because they have been discriminated against, guidance will make it very clear that they should relax the cap to allow for an extra-large payment to be made.

Hannah Bardell: Unison has raised concerns that a perverse incentive will be created for employees to avoid settlement via the early conciliation process, which is the optimum stage. What is the Minister's view of that?

Anna Soubry: That is exactly what this is all about. It is about ensuring that, when two parties reach their settlement, the employer understands that it must not impose the cap. If the employer is admitting, "You have been made redundant in the wrong way. We accept that you are a whistleblower. Somebody said that they were going to make you redundant, and they did the wrong thing," it has to make that clear when deciding the amount of damages to be awarded: "We find that you were a whistleblower. We find that you were discriminated against." By doing that, the employer can relax the cap without any hassle or difficulty. I do not think it could be more clear.

5.15 pm

Catherine McKinnell: To put it politely, the Minister is severely optimistic if she thinks that this is straightforward, because it is not. She will know that a settlement agreement is only entered into when neither party will accept liability. Therefore, it is not as simple as the employer accepting liability for something and entering into an agreement. Would it not make more sense to simply accept the amendment and to exempt all such agreements and arrangements from the cap altogether?

Anna Soubry: Absolutely not—and for the exact reason that the hon. Lady gave: we know that lots of people in settlement agreements will not accept liability. We also know that if we agree to the amendment, we will open the floodgates for people to make spurious claims that they have been made redundant on the grounds that they were a whistleblower. We will then get into a nightmare situation where there is a hearing to determine whether that person's claim is accurate. Members are not letting me make progress, so that I can further explain this provision, which we have put some thought into.

Ministers of the Crown and Scottish Ministers will have discretion and be able to delegate it in the normal way. Under draft regulations, discretion will also be held by full council for local government bodies and for Welsh Ministers. A blanket exemption from the cap would unfortunately open the door to sweetheart deals designed to avoid the effect of the cap, based on dubious claims.

On amendment 125, there is no need for a regulatory referral scheme for whistleblowing claims. Whistleblowers can already make a disclosure directly to the relevant regulator or other prescribed person. Settlement agreements cannot stop them; the law is clear on that. There is no need to require that whistleblowing claimants have access to legal advice before entering into a settlement agreement. The Employment Rights Act 1996 already makes settlement agreements unenforceable unless the employee has received independent advice, so there is no need to require Ministers to produce guidance on settlement agreements for whistleblowers. In fact, we have already had three guidance documents in 2015 alone.

We have looked at this issue. Although I am not an employment lawyer, I am an old lawyer, so I can see the difficulties, but I am satisfied that the way we craft the regulations and, most importantly, the guidance we give to employers will cure the mischief that we all want to be cured.

Kevin Brennan: This is a complicated area. We have skirted over it a little bit, but there are real concerns about the implications for things such as early conciliation, which I raised under amendment 110. It has been rightly pointed out that that is a concern to trade unions, and Unison in particular. There is also a concern about the impact on whistleblowers. I think that the Minister was trying to give the Committee an assurance, in her own unique way, that the Government are committed to ensuring that genuine whistleblowers—

Anna Soubry: And people who are discriminated against.

Kevin Brennan: And, as the Minister rightly says from a sedentary position, people who are discriminated against are not impacted when made redundant. I will not press the amendments to a vote at this stage.

Anna Soubry: As the hon. Gentleman might imagine, I often am quite robust with my officials. I am keen to ensure we get this right. If we need to go away and make another tweak, we will, because I want to be sure we get this right.

Kevin Brennan: The Minister said in response to one of our amendments that, in such areas, secondary legislation is often a better way to do things. If the Bill were rigid, it would create the kind of anomaly and cause the kind of concern raised by myself and other Opposition Members.

I take at face value the Minister's commitment to go back and think about this, and we will have an opportunity on Report to explore some of these issues further and to ensure that we get the right sort of response from the Government. No doubt, those who watch our proceedings will have listened carefully to what the Minister had to say. Perhaps she will provide the Committee with some further information to help our proceedings on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 113, in clause 35, page 50, line 16, at end insert

"except where exit payments are made under existing public service agreements"

This amendment would exempt exit payments made under existing public service agreements.

The Chair: With this it will be convenient to discuss the following:

Amendment 119, in clause 35, page 50, line 16, at end insert—

'(1B) An exit is not a relevant public sector exit if, prior to regulations, the terms of an exit taking place after the regulations issued under subsection (1) coming into effect are subject to a contractual agreement made prior to those regulations coming into effect between—

(a) an employee of a prescribed public sector authority and their employer, or;

(b) a holder of a prescribed public sector office and the relevant prescribed public sector authority."

This amendment would exclude from the public sector exit cap certain exit agreements that have already been entered between the employer and employee, prior to the implementation date of the cap.

Amendment 120, in clause 35, page 50, line 16, at end insert—

'(1C) Regulations made under this section may not take effect before 1 April 2018."

This amendment would ensure that redundancy schemes underway before regulations implementing the cap take effect are not interfered with retrospectively.

Amendment 107, in clause 35, page 51, line 7, at end insert

"including any period of institutional reorganisation being implemented within two years of the passing of this Act"

This amendment would provide that regulations may make exemptions from public sector exit payment cap for any period of institutional reorganisation being implemented within two years of this Act.

Kevin Brennan: I am afraid it is me again. Hopefully, we do not have too much longer to go this evening.

This third group of amendments on clause 35 is about exit payments, which we have already started debating, and whether the Bill—my hon. Friend the Member for Wakefield, who is not in her place at the moment but has been here for the vast majority of our proceedings, raised this issue earlier—will retrospectively apply to agreements that have already started.

Let me first turn to amendment 113. A public service agreement was introduced by Lord Maude in 2010 that saved a significant amount of money in the first year in which it was implemented. More than 90% of one union—Prospect—voted for it. The review was based on research, analysis, consultation and, I think some would agree, a degree of give and take. It was an attempt to find a solution that was fair to both the taxpayer and the employee. It was supposed to settle the issue of access to pensions for 25 years, but now 100 pension schemes will be forced to change their rules. People made plans on the basis of those renegotiated conditions, which were supposed to last for 25 years. They had a significant effect on those workers' life plans and the decisions that they made.

Comparing the quality of the process and the outcome, the 2010 review and the present review are light years apart. That has added to the worry of many workers, particularly those who are in a state of limbo when considering the outcome of the Bill. Why have the Government not considered allowing workers who were covered by the 2010 Maude agreement to continue to be covered by its terms and conditions? If that is not possible, will the Minister at least consider letting workers who started the process under the Maude review continue through to completion?

On amendment 119, many workers would have already started and completed their redundancy process had they known of the Government's true intentions last January. They were wooed into a false sense of security by the pledge that the Minister for Employment said would be made, which I referred to earlier. The Government are directly responsible for the many workers who are now trying to complete their redundancy process before the Government pull up the drawbridge with this change of approach. They would have been reassured by the Government's manifesto pledge to end taxpayer-funded, six-figure payoffs for the best paid public sector workers, because they did not think it was intended to cover them. They would have looked at their pay packet and thought, "I'm on £25,000, £26,000 or £27,000. The Government couldn't possibly mean me." Many people who might have considered taking voluntary redundancy would have thought, "I have had that reassurance from the Government. It has been made twice, so they are not thinking about me. I won't be affected by these measures." If they had known the full story, they might have changed their decision. They might have finished the exit process by now, so they would not be caught in this widened net.

Many of those people are on low or middle incomes and have not had the ability or the time to save large amounts of money to see them through the crisis of redundancy that they might be facing. What assessment has the Minister made of the number of workers who are already in the process of negotiation? What would the cost to the public purse be if all those who have started the process were allowed to finish and not to fall victim to the retrospective nature of this Bill? I am interested to know what figures the Minister has on that, because if she opposes the amendment today, she will obviously be doing so for a reason.

Will the Minister give us an idea of the Government's intended date for the implementation of the Bill, assuming that it completes its passage through Parliament? We found out today that it will be considered on Report in the Commons on 8 March, and then there may be reconsideration in the Lords. When does she expect that it will be implemented? What reassurance can she give to workers that, if they have already negotiated exit settlements, the Government will not overturn those plans at the last minute and in effect make them the victims of a retrospective measure? Many of the arguments that I used for amendment 119 also apply to amendment 120, and I respectfully ask for her responses to them.

I turn to amendment 107. In speaking to amendment 119, I mentioned how workers were caught unaware by the Government's widening of the net. A sensible solution might be to accept that there should be a period of grace, given that there was a change of approach. Amendment 107 would propose a period of two years before the legislation takes effect. Baroness Neville-Rolfe said that that would frustrate the intention of the cap. It would not do that, but it would give people who have plans under way an opportunity to complete them before it comes into force. After all, their expectations were very different as a result of Government's previous statements.

Anna Soubry: Amendments 113 and 119 would limit the cap to new entrants, as has been described, and therefore not stop existing highly paid individuals from

receiving six-figure payouts. That is why I oppose those amendments. Public sector exit payments have cost £2 billion a year in recent years and asking taxpayers to continue to fund exit packages of more than £95,000 for those already employed does not represent value for money and goes against our manifesto commitment.

We signalled our intention to end six-figure exit payments as far back as January 2015. We committed to do so again in our manifesto and in the Queen's Speech. We have since issued a public consultation and consultation response. Public sector employers can therefore be in no doubt about the Government's intention to end exit payments of more than £95,000 and should be planning accordingly. To answer the hon. Gentleman's question directly, the regulations giving effect to the cap will not be in force until 1 October 2016 at the earliest, giving employers and employees time to prepare. The power to relax the cap can address any unforeseen unfairness or hardships that arise, which will include cases where the exit is agreed and scheduled to take place before the regulations come into force, but, for a reason beyond the control of the employee, the exit occurs after they have come into force. For those reasons, I ask the Committee not to support the amendment and I ask the hon. Gentleman to withdraw it.

Kevin Brennan: I will not press the amendment to a vote. I am grateful to the Minister for indicating the earliest date at which the legislation can come into force; it is useful to have that guidance. I do, however, think that again the emphasis on the very highly paid is not correct. Many on lower pay who have made plans accordingly could be affected, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kevin Brennan: I beg to move amendment 103, in clause 35, page 50, line 38, at end insert—

"( ) Regulations shall make provision to require prescribed public sector authorities to consider, prior to making a public sector exit payment—

(a) whether the payment being paid is appropriate; and

(b) whether the payment would provide value for money."

This amendment would ensure that when considering staff for exits value for money is considered.

Value for money is a key concern, which is why it is mentioned in the amendment. The Government seek to justify a cap on exit payments solely on the basis of the cost of payments to staff between 2011 and 2014, which is not a helpful period to look at because the evidence provided fails to recognise that during that period employment across the public sector was reduced by 790,000, which inevitably affected the cost of exit payments. During that period, civil service employment fell by 107,350 using the current compensation scheme arrangements. No evidence has been offered to demonstrate that an exit payment cap would deliver real value for money and savings into the future, and it could do the opposite, as changing the compensation payments will naturally affect the willingness of staff to exit the public sector, which could lead to higher costs elsewhere.

We have already heard about the deal that Lord Maude described in 2010 as fair to the taxpayer as well as fair to workers; he also said that the deal was fair to employees. The agreement took into account length of service, salary and age, and there was a salary cap that protected against extremes, which resulted in a huge decrease in the number of settlements over £100,000, which is the Government's intention in the measures before us.

Exit payment caps will have significant effect on workers, whose terms and conditions will be dramatically altered; there will also be an impact on the efficiency of the Government. Both of those issues should be of concern to the Minster. Baroness Neville-Rolfe said in another place that the amendments on value for money were not "necessary or desirable." She went on to say,

"There is already a fundamental duty on the public sector to ensure that exit payments are value for money and that they are made in the most appropriate manner."—[*Official Report, House of Lords,* 30 November 2015; Vol. 767, c. 981.]

What is the clear evidence that imposing the cap does not represent value for money or is not appropriate in a particular case?

Does the Minister now agree that it might have been a mistake not to have the formal impact assessment that colleagues referred to earlier? Even the Dangerous Dogs Act 1991 had an impact assessment that reached some 50 pages.

Anna Soubry: That didn't stop it being rubbish law.

Kevin Brennan: That is exactly my point. Even the Dangerous Dogs Act had an impact assessment that was 50 pages long. The idea here is that we should not have an impact assessment of a measure that is extremely complicated and affects tens of thousands of workers and hundreds, if not thousands, of public and private sector businesses and bodies. It deserves an impact assessment. It would have made the issue of value for money far more transparent than it is to us in Committee. There is a lack of information about the likely savings to the taxpayer because a proper impact assessment has not been undertaken.

Perhaps the Minister can tell us what proof she is offering that what she is proposing will offer value for money and will bring genuine savings, and that some of the unintended consequences will not militate against that and make any net savings very small or even negative? Where are the facts and figures to support the Government's claim that the previous schemes did not offer value for money and her new scheme will? In 2010, the scheme the Government introduced was said to offer value for money. Does it still offer value for money now? If not, what has changed in the meantime? Can the Minister guarantee that her changes will not damage the existing value for money that is being achieved as a result of that settlement?

What assessment has the Minister made of the impact of reduction of flexibility brought about by the exit payments cap on the ability of management to manage restructuring of organisations in terms of downsizing? What assessment has she made of the potential impact on staff morale? Is she satisfied that introducing exit payment caps will not actually result in moving costs from one section of the public purse to another. Why are the publicly owned banks the ones that are exempted from the value for money test in the Bill?

I want to mention the fact that the impact on value for money also affects the private sector. Private sector companies working in the nuclear industry will be affected by the exit payment proposals and their impact on value

[Kevin Brennan]

for money. We know about the specific concern in relation to Magnox, which we will discuss further at a later stage. When Magnox stopped producing electricity and moved into decommissioning, the staff were promised that their pensions and severance benefits would be safeguarded. If the Bill goes ahead as it stands, many hard-working and long-serving staff would lose a significant amount of money. There could be a significant impact on value for money in the private sector.

Value for money needs to be looked at in the round, taking in its impact on workers, employers' ability to manage change, and the knock-on effect on other Government Departments and, indeed, on nuclear safety. I look forward to the Minister's response.

Ordered, That the debate be now adjourned.—*(Stephen Barclay.)*

5.34 pm

Adjourned till Thursday 25 February at half-past Eleven o'clock.

Written evidence reported to the House

ENT 26 Derrick Ford
ENT 27 Nick Banning
ENT 28 Association of Educational Psychologists (AEP)
ENT 29 Leona Parker
ENT 30 Darren Stevens
ENT 31 Stefan Roman
ENT 32 Mike A Stevenson
ENT 33 Wayne Griffiths
ENT 34 Ray Jeffery
ENT 35 Stuart Lancaster-Rose
ENT 36 Alex L Weir
ENT 37 Philip Thurlow
ENT 38 Neil Bonner
ENT 39 Ian Milligan
ENT 40 Phil Outten
ENT 41 Nick Mills
ENT 42 Sean Kelsey
ENT 43 Ian Gillies
ENT 44 Fred George
ENT 45 Fiona Apfelstedt further submission
ENT 46 Dave Dodman
ENT 47 Ian Falcus
ENT 48 Horticultural Trades Association (HTA)
ENT 49 Federation of Small Businesses
ENT 50 Association of Convenience Stores
ENT 51 Bob Fuller
ENT 52 Royal Institute of Chartered Surveyors
ENT 53 Pastor Peter Simpson, Minister of Penn Free Methodist Church
ENT 54 Andrew Hetherton
ENT 55 CARE (Christian Action Research and Education)
ENT 56 Prospect
ENT 57 Sameen Farouk
ENT 58 City of London Corporation
ENT 59 Leona Parker further submission
ENT 60 ALACE (Association of Local Authority Chief Executives and Senior Managers)
ENT 61 David Martin
ENT 62 Institute of Revenues, Rating and Valuation
ENT 63 Kevin Smith
ENT 64 Nick Banning further submission
ENT 65 Colin Hunter, Lambert Smith Hampton
ENT 66 PCS Union
ENT 67 Mayor of London