Vol. 762
No. 19

Tuesday
23 June 2015

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£4·00

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201516/ldhansrd/index/150623.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £4

Annual subscriptions:
Commons, £865; Lords £600

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
Con Ind	Conservative Independent
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Lab	Labour
Lab Ind	Labour Independent
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday, 23 June 2015.

2.30 pm

Prayers—read by the Lord Bishop of Bristol.

Oaths and Affirmations

2.35 pm

Several noble Lords took the oath, and signed an undertaking to abide by the Code of Conduct.

Housing: Private Rented Sector

Question

2.37 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what plans they have to protect tenants in the private rented sector.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the Government are committed to creating a bigger, better private rented sector. We are empowering tenants through information, including our *How to rent* guide, and legislation to require transparency of letting agent fees while avoiding excessive regulation that would burden good landlords and raise rents. We have also taken action to tackle the minority of rogue landlords by legislating to prevent retaliatory evictions and providing £6.7 million to tackle rogue landlords and beds in sheds.

Lord Dubs (Lab): My Lords, I am sure the Minister will be aware of the recent Citizens Advice report which showed that 750,000 households live in substandard rented accommodation, presumably owned by the rogue landlords the Minister was talking about, and that this substandard accommodation includes damp, rat infestations and the threats of fires and falls. What are the Government going to do to ensure that private landlords meet their responsibilities, and will not the Government's policy of the enforced sale of housing association homes only make the situation much worse?

Baroness Williams of Trafford: My Lords, the Government are ensuring that private landlords do not welch on their obligation to do work that needs to be done in terms of health and safety and substandard accommodation, and that they will not be able to evict tenants should they ask for that work to be done.

Noble Lords: Oh!

Earl Cathcart (Con): My Lords, one of the problems is not knowing who the landlords are. Some suggest that there ought to be a national register of landlords, but the good ones might register while the bad ones will not bother and thus remain below the radar. Surely a better way is if all new tenants, who are required by law to complete a council tax registration form, put on that form the name, address and contact details of their landlords; then, councils would build up over time a complete picture of all the landlords in their area.

Baroness Williams of Trafford: My Lords, one of the areas of concern in the private rented sector is houses in multiple occupation—HMOs. In areas where it can be demonstrated that licensing is needed, it is put in place and councils therefore know where some of those HMO landlords are. The Government intend to expand that.

Baroness Pinnock (LD): My Lords, I press the Minister again about the quality and maintenance of houses in the private rented sector. I know of a landlord who refused to mend a leaking roof, to the detriment, obviously, of his tenants. The landlord lived in South Africa and had no interest at all in undertaking the repairs. I press the Minister again to say what she is planning to do about it.

Baroness Williams of Trafford: My Lords, I myself have been a private landlord of a house in multiple occupation and know that, if a landlord refuses to do something, the tenant can inform the council. The council can come out and insist that the landlord does the work. If the house is in such a state that it is not fit for occupancy, the landlord has to make provision for alternative accommodation for those tenants in the interim.

Lord Morris of Aberavon (Lab): My Lords, if I heard the term correctly, the Minister used the inappropriate term "welching". Will she define it, please?

Baroness Williams of Trafford: I did not mean it as a derogatory term to the Welsh.

Noble Lords: Oh!

Baroness Williams of Trafford: In all sincerity, I did not. There is a term, "to welch on an agreement". I meant it as no insult. I simply meant to not meet one's obligations.

Lord Naseby (Con): Is my noble friend aware that those of us who were in local government in the 1960s lived through the Rachman and De Lusignan eras, and that at that time local authorities such as the London Borough of Islington, where I was chairman of the housing committee, had to have a register of all rented accommodation? If there is a real problem at the moment, surely that is something Her Majesty's Government should look at, and they should authorise local authorities to compile such a register. However, this has absolutely nothing to do with the sale of housing association properties to their tenants. The same scare was put up when we proposed selling council houses.

Baroness Williams of Trafford: I agree with the noble Lord that this has nothing to do with the sale of housing association homes. I think there will have been

[Baroness Williams of Trafford]
more council ownership of houses back in the 1960s. There are now a number of ways to guard against substandard accommodation, and tenants have more rights through various mechanisms than ever before.

I say to noble Lords opposite that I did not realise that, in using the term "welch", I was insulting anybody. I do apologise if any bad feeling was caused through the use of that term.

Baroness Hollis of Heigham (Lab): My Lords, following up the last question to the Minister, is she aware that only 30% of council houses sold under right to buy remain with their original purchaser and most of the rest have gone into buy to let or been sold on, and, in places such as Norfolk, have been bought as second homes? Therefore, surely she accepts that, as my noble friend Lord Dubs said, there is a very real connection between what her Government are proposing for housing association properties and what will be available for affordable rented accommodation.

Baroness Williams of Trafford: My Lords, once someone exercises their right to buy, it is up to them whether they rent the property out. If they choose to sell it on within a five-year period, some or all of the discount can be clawed back. But once a tenant has purchased their home under right to buy, it is their house.

Lord Thomas of Gresford (LD): My Lords, will the Minister agree to scotch the use of the expression that she used?

Baroness Williams of Trafford: I thank the noble Lord for his point.

Health: Palliative Care

Question

2.45 pm

Asked by ***Lord Farmer***

To ask Her Majesty's Government, in the light of the Parliamentary and Health Service Ombudsman's report *Dying Without Dignity*, what steps they are taking to ensure that everyone in need has access to good palliative care.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): The cases highlighted in the ombudsman's report are appalling. Everyone deserves good-quality care, delivered with compassion, at the end of their life. Last year we introduced five priorities for care—the key principles that underpin the care that all people at the end of life receive.

Lord Farmer (Con): My Lords, I thank the Minister for his reply. In the light of the parliamentary ombudsman's report, *Dying Without Dignity*, is it the Government's policy to encourage all schools of nursing to ensure that their graduates have core skills in end-of-life care by having the subject included in the formal assessments of their students' competencies?

Lord Prior of Brampton: I thank my noble friend for that question. I cannot answer it specifically, but the report prepared earlier by the noble Baroness, Lady Neuberger, and other subsequent reports have stressed the need for nurses to be properly trained. That is true both in hospitals and in community settings. I agree with the sentiments behind my noble friend's Question but would like to take advice on whether what he is suggesting is indeed incorporated into nurses' core training.

Baroness Emerton (CB): My Lords, yesterday I was at the Royal College of Nursing, where a lot of work has gone into producing advice on end-of-life care. It has produced a small pocket handbook—and a larger one that goes with it. If the Minister has not seen the handbook, perhaps he would find it useful, from the point of view of spreading it through care homes and hospitals. End-of-life care is in the curriculum for nurses but there is always a need for a reminder. These little cards that are to go in the pocket provide the essentials about end-of-life care.

Lord Prior of Brampton: My Lords, I thank the noble Baroness for those comments. Over the years I have spent quite a lot of time with nurses who are specialists in palliative care and I have always been hugely impressed by their work. I have not seen the booklet produced by the RCN to which the noble Baroness refers and I would certainly like to do so.

Baroness Walmsley (LD): My Lords, was the Minister as shocked as I was, when reading some of the case studies in this report, to realise that the problems did not require further legislation or regulations but required staff who would follow guidelines and who had common sense, compassion and good communication skills? Why are people who lack these skills and attributes not being weeded out at the training stage, before they get anywhere near a patient?

Lord Prior of Brampton: My Lords, if Members of this House have not read the report by the ombudsman, I recommend it. It consists of 12 short, fairly straightforward case histories, which make for appalling reading. There are many nurses in hospitals and community settings who deliver wonderful care. The issue is their ability. The CQC is now making regular inspections of end-of-life care in all its hospital visits. It is one of the eight core services that it looks at. It has found that in the vast majority of cases, end-of-life care is caring. The noble Baroness asked why such care is so variable. I think that in hospitals it is partly because they are often busy places. They are not ideal places to die in. Who would wish to die in a clinical setting in a very busy ward unless they had to? That may be a part of the explanation.

Lord Wills (Lab): My Lords, my father-in-law died this February. He died at home, surrounded by those he loved and who loved him. However, he died in profound agitation because he was denied the palliative care that he so desperately needed. The local GP surgery said that that had to be delivered by the local

Macmillan nurse. She was rung repeatedly throughout the day but never answered the phone. Finally, at 4.30 pm she picked up the phone and said that she could not come until the next day—even when the nurse who was looking after my father-in-law said that he was likely to be dead by then. She said there was nothing she could do about it and rang off. He died later that evening, without the comfort of any palliative care. What assessment have the Government made of the ability of Macmillan nurses to deliver palliative care at home?

Lord Prior of Brampton: The noble Lord describes a truly tragic situation and I am very sorry for him and his family that this happened. I am afraid that variation is at the root of this. There are many parts of the country where good local care is delivered. The noble Lord's story illustrates the fact that it is not just where people die but how they die that matters. It is clearly preferable that people should die in their own home with their loved ones, surrounded by the love that the noble Lord described, but symptom control, pain relief and everything that goes with palliative care are just as important. Indeed, most of the stories in the ombudsman's report are about a lack of symptom control for people dying in pain. That can happen at home, as in his father-in-law's case, but it can equally happen in hospitals. NHS England is reviewing this whole area and will come to some final views towards the end of this year, when I might report back to the House.

Lord Howard of Lympne (Con): My Lords, I declare an interest as chairman of Hospice UK. Is the crux of this issue not the fact that most people do not want or need to die in hospital, and that not enough help is given to allow and help those people who do not need to die in hospital to leave hospital and get the palliative care which can be provided in hospices or elsewhere? Is my noble friend the Minister aware that Hospice UK has put forward a plan to the Government which would enable 50,000 people a year to leave hospital before they die, so that they can get the proper palliative care that they need? That would save the Government money, and all we need is a modest sum to carry out an evaluation exercise to see what is the best way of achieving this eminently desirable objective. Will he go back to the department and urge his colleagues to make this modest sum available?

Lord Prior of Brampton: I thank my noble friend for that question. Perhaps I could suggest that he and I meet outside this Chamber, along with some colleagues from NHS England, to discuss his proposal in more detail.

The Lord Bishop of Bristol: My Lords, given that both NICE and NHS England have commended the services of spiritual, pastoral and religious care in the care of all people and in delivering great services to patients, clients and staff, can the Minister give us any assurances that a chaplaincy will be funded, going forward, in all NHS facilities that provide palliative care?

Lord Prior of Brampton: I thank the right reverend Prelate for that question. I share his sentiments entirely but that is a decision for local hospitals and local trusts.

Mental Health Services: Young People

Question

2.53 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what plans they have to develop mental health services for pupils and young people.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, we are committed to transforming children and young people's mental health and well-being across health, social care and education. The Department of Health is working with the Department for Education and other key partners to develop more seamless and integrated mental health services for pupils and young people. Work is under way to pilot single points of contact in schools and mental health services, and joint training to improve access to mental health advice and support in schools.

Lord Storey (LD): I thank the Minister for his reply. It is a sobering thought that, in every classroom, three pupils have a diagnosable mental health problem. Does the Minister agree that, when pupils are referred, there should be an agreed, minimum time by which they are seen?

Lord Prior of Brampton: I thank the noble Lord for that question. He is right that, out of a class of 30 children, three are probably suffering from diagnosable mental health problems. The Government are commissioning a prevalence survey to establish more precisely what that number is. There is a feeling that it will be increasing with the use of social media and more bullying in schools. I agree with the noble Lord that we must make it easier to access talking therapies in particular and the Government have plans to do that.

Lord Patel of Bradford (Lab): My Lords, will the Minister assure the House that children and young people with serious mental health problems are not treated on adult psychiatric wards, alongside fairly dangerous adults, that they can access appropriate child mental health services, and that they do not have to travel hundreds of miles across the country to do so?

Lord Prior of Brampton: The Government have committed to spending £150 million over the next five years on children who are suffering from eating disorders. This may partly answer the noble Lord's question. They have also now committed to spending £1.25 billion over the next five years to develop mental health services for children and young adults. That is against a background of our current spending of about £700 million, so we are talking about doubling the spend. Doubling the spend does not mean doubling the benefit and output, but the noble Lord can be assured that it is an absolute priority of this Government to tackle mental health problems right where they start: when people are young.

The Lord Bishop of Peterborough: My Lords, mental health cannot be considered in isolation from the rest of life. For example, a number of recent deaths of young people by suicide have been connected to their use of the internet or social media. Is the Minister prepared to work with the Department for Education, other education providers and others, to produce a rounded programme of support for the whole person in their context? Will he also indicate the Government's support for the Online Safety Bill introduced by the noble Baroness, Lady Howe?

Lord Prior of Brampton: I thank the right reverend Prelate for his question. I am not aware of the Bill to which he refers. I hope he will excuse me for that; I will find out about it after today. The right reverend Prelate asked whether we will work with other parts of the Government, particularly the Department for Education. I assure him that we are doing so.

Baroness Howarth of Breckland (CB): My Lords, I welcome the Government's prevalence survey. However, does the Minister's department have any idea at this time of the length of waiting lists and the number of children waiting for very specialist intervention from psychiatrists and psychologists? I hear from groups of people that the waiting lists are growing and the time children spend waiting is getting longer. For a child with a mental health problem, every day makes it worse. What are the Government doing about that? Does the Minister have the numbers?

Lord Prior of Brampton: I do not have the numbers to hand, but I can tell the noble Baroness that the number of beds that have been commissioned has increased significantly over the last three years and I think 1,250 tier-1 beds are now available. The noble Baroness puts her finger on it: the way we provide treatment for people suffering from mental health conditions—and have done for many years—falls far short of what we would expect for people suffering from equivalent physical conditions. We often talk about parity of esteem quite glibly, without putting the necessary resources behind it. The Government are determined to do so.

Lord Bradley (Lab): My Lords, it is welcome that the Government have decided to ban the use of police cells for children detained under Section 136 of the Mental Health Act. However, what action is being taken to ensure that there are appropriate places of safety in every locality? Will the Minister confirm that adult psychiatric wards will not be used as places of safety for children?

Lord Prior of Brampton: The use of police cells for anybody suffering a mental health crisis, but particularly for children, is wholly unacceptable. Last year, the number of children who were held in a police cell was 160. That has come down from a much higher number. The Government and my right honourable friend the Home Secretary are determined to stop this happening—indeed, legislation is about to go through the other place to ensure that it does not happen. But that leads to the question of where, if not to a police cell, they should go. I have been told that there is a risk that young people going through a mental health crisis might actually be arrested to make them eligible to come into a police cell, which would of course be equally unacceptable. The number is getting much smaller and I hope that if I am here in a year's time it will be down to zero.

Lord Elton (Con): My Lords—

Baroness Tyler of Enfield (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, we have not heard from the Conservative Benches yet on this Question. I think my noble friend Lord Elton is next.

Lord Elton: My Lords, the previous answer made it clear that a significant proportion of the pupils and young people the Question refers to are in custody. Can the Minister assure us that there is equality of treatment, within both the spend and the survey he referred to, for those children in these dire circumstances?

Lord Prior of Brampton: I thank the noble Lord for that question. I am not sure that I totally got the question, but I can say that keeping a young person in custody is the absolute last resort. The police do not wish to do it and do so only when there is no bed available in an appropriate, safe setting. The issue is the availability of beds. It is better for a child to be in a single room on an adult psychiatric ward than in a police cell.

Energy: Onshore Wind

Question

3.02 pm

Asked by ***Baroness Worthington***

To ask Her Majesty's Government what assessment they have made of the impact on investment in renewable energy of their decision to end the subsidy for onshore wind farms.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, onshore wind has made a valuable contribution to the United Kingdom energy mix in recent years, but there is now enough capacity in the pipeline for the United Kingdom to meet its 2020 renewable commitments. We will consider carefully the level of investment that developers are likely to bring forward under the proposals announced by the Secretary of State on 18 June.

Baroness Worthington (Lab): My Lords, I thank the Minister for his response. However, would he agree with me that we are not in fact on track to meet our renewables targets because they apply to all energy, and the targets for heat and transport are not on track? Therefore, this is an imprudent blanket ban on one of our cheapest and fastest-to-deploy technologies. Will he not reconsider?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is right about the importance of onshore wind, but it is already delivering for us. On that basis, we are convinced that the mix of other renewables, together with nuclear and CCS, means that the challenging commitments that we indeed have on heat and transport are deliverable.

Lord Vinson (Con): My Lords, as we learn from experience which type of renewable to back and which not to back, and as wind turbines have shown themselves to produce extremely expensive electricity due to their intermittency, would the Minister consider moving on to one of the greatest developments of our age, which is small nuclear reactors? That means that, instead of having one huge nuclear power station that probably takes 10 to 14 years to develop, you could have 10 factory-built nuclear units in a row—if one is closed down for maintenance, the other nine continue to work. This is the technology of tomorrow, which will give us limitless CO_2-free cheap energy. Will the Government consider putting some serious resource into this to make Britain a world leader in this technology?

Lord Bourne of Aberystwyth: My Lords, renewables are important, but it is absolutely right that some renewables are intermittent and we therefore need back-up. Nuclear is certainly vital to us and we need it. We are looking at the possibility—I put it no stronger than that—of smaller nuclear as an additional part of the mix.

Lord Purvis of Tweed (LD): My Lords, the Minister was unable to respond to my question after the Statement yesterday as to whether a jobs and supply chain impact assessment had been carried out by the Government in advance of the Statement. I think that is to be regretted. One way to restore confidence within that community would be to signal that the Government have no plans to change their proposed contract date for contracts for difference from October this year. Can the Minister confirm that they are on course to do that and the details will be published before recess?

Lord Bourne of Aberystwyth: My Lords, first on the economic impact, it is possible to overstate that. That it is why I did not really dwell on the issue. Two hundred and fifty projects are likely to be affected, but a clear majority of those would not be processed even within the old limits, so the economic impact is small. With relation to contracts for difference, as my right honourable friend the Secretary of State said in another place, we will be making a Statement on that in due course.

Lord Foulkes of Cumnock (Lab): Why did the UK Government not consult with the Scottish Government before making this decision?

Lord Bourne of Aberystwyth: The noble Lord will be aware that this is a reserved issue. There was correspondence with the Scottish Government and tomorrow my right honourable friend the Secretary of State will be meeting with Fergus Ewing, the Minister for Energy in Scotland.

Lord Hay of Ballyore (DUP): My Lords, in the Statement that the Minister made yesterday in the House on renewable energy and the ending of subsidies, he indicated that the Government consulted with the three regional assemblies: the Northern Ireland Assembly, the Welsh Assembly and the Scottish Assembly. Could the Minister indicate who the Government spoke to within the Northern Ireland Assembly, and was there forthcoming support from the Northern Ireland Assembly for what the Government announced yesterday?

Lord Bourne of Aberystwyth: My Lords, there is ongoing discussion with the devolved Administrations. I am not sure whether I used the word "consult". I said there had been contact, certainly, with the devolved Administrations and contact that is continuing, particularly on the issue of the grace period where we have indicated that we are very happy to talk to stakeholders.

Lord Cunningham of Felling (Lab): My Lords, every nuclear submarine built in the United Kingdom has had a propulsion unit built by Rolls-Royce. We have decades of experience in the construction of small nuclear reactors. This is an amazing opportunity for our country to take up the point made by his noble friend and develop these small nuclear reactors for urban use.

Lord Bourne of Aberystwyth: My Lords, the noble Lord speaks with great experience. He used to represent the area of Sellafield and I take his contribution very seriously. As I have indicated, we are looking at the issue of small nuclears at the moment.

Lord Callanan (Con): My Lords, is the Minister aware that on 19 January 2015, which was the coldest day of the year so far, electricity demand in the UK was at its highest and yet wind turbines—both onshore and offshore—produced less than 1% of the UK's total electricity demand?

Lord Bourne of Aberystwyth: I was not aware that was the coldest day of the year, or indeed that that was the case. Renewables are a vital part of the contribution to our decarbonisation. That remains very much the case. We have a range of renewables, which are of key importance to us in meeting our targets and particularly in meeting the climate change agenda in Paris this year.

Built Environment Committee

Membership Motion

3.08 pm

Moved by ***The Chairman of Committees***

That Lord Woolmer of Leeds be appointed a member of the Select Committee in place of Lord Haskel, resigned.

Motion agreed.

Information Committee

Membership Motion

3.08 pm

Moved by ***The Chairman of Committees***

That Baroness Byford be appointed a member of the Select Committee.

Motion agreed.

Psychoactive Substances Bill [HL]

Committee (1st Day)

3.08 pm

Relevant documents: 1st Report from the Delegated Powers Committee

Clause 1: Overview

Amendment 1

Moved by ***Lord Paddick***

1: Clause 1, page 1, line 3, after "about" insert "reviewing the Misuse of Drugs Act 1971 and"

Lord Paddick (LD): My Lords, I will speak also to the other amendments in my name and that of my noble friend Lady Hamwee in this group. This group is fundamental to our debate on the rest of the Bill, as it asks the Government whether they are really committed to an evidence-based approach to combating drugs—basically, whether they are committed to doing what works in practice.

Amendment 1 is a minor amendment which sets out our proposals in the overall context of the Bill. The key amendment is Amendment 5, which would require the Secretary of State to commission an "independent evidence-based review" of the Misuse of Drugs Act 1971 and its implementation, and to publish the results. Amendments 111, 112 and 115 would ensure that this review had to take place before the rest of the provisions in the Bill came into force. If, in the face of the evidence that such a review would produce, the Government were still determined to press ahead with this, so be it. However, our amendments would give the Government time to consider whether a different approach, based on evidence of what works, would produce the outcomes we all seek.

I will be clear: the Liberal Democrats are as concerned about the harm caused by the misuse of drugs in general, and the misuse of new psychoactive substances in particular, as anyone else in this House, including the Government. Liberal Democrats want what parents and families want. Parents want their children to avoid taking drugs. The evidence suggests that education, rather than criminalisation, is more likely to achieve that end. If their children use drugs, they do not want them to be harmed by taking them, let alone be killed by them. The evidence suggests that the best way to do that is through education and concentrating resources on the drug dealers, not the users. If their children use drugs, the last thing they want is for the rest of their children's lives to be ruined by a criminal record for simply having small amounts of a relatively harmless substance on them. Educate them if they are being reckless, and if they are addicted, treat them.

Our concern, borne out by the evidence from other countries, is that prohibition and the criminalisation of drug users do not reduce the harm caused by drugs. They do not save lives, reduce addiction or deal with the serious criminality associated with drugs, such as the violence associated with drug dealing. Our concern is that the Bill—yet another Bill based on prohibition and criminalisation—will not only be ineffective in reducing the considerable harm caused by new psychoactive substances but will increase that harm, cost more lives, increase addiction and boost the profitability of drug dealing.

I expect the Government to say that they do not believe this will be the case, and that they have a manifesto commitment to enact this legislation—and of course under the Salisbury convention we on these Benches will not try to wreck the Bill. What we are asking for is an independent, evidence-based review of how effective current legislation is in achieving what it sets out to achieve—that is, a review of the Misuse of Drugs Act 1971—before we give effect to another piece of legislation which is very similar to that.

I can tell noble Lords that making drugs illegal is not an effective deterrent, and that the classification of drugs under the Misuse of Drugs Act lacks a sound scientific basis in the case of many of the drugs listed in that legislation, and therefore it lacks credibility in the eyes of those whom the system of classification is designed to deter. However, rather than taking my word for it, I ask the House to support an independent review. We are not asking for a major piece of new research but for a similar exercise to that carried out recently by David Anderson into the far more complex area of surveillance, which he completed in less than 12 months. We are not trying to delay the passing of this legislation, just asking that we hold back from giving effect to it until after the review has been conducted. It may well be that, having seen the review, the Government decide to adopt a different approach.

The Liberal Democrats want a health-based and harm reduction-based approach to dealing with the problems caused by the misuse of drugs. If I thought that making even more drugs illegal would save one life or stop one person becoming addicted, I would not be asking for this review. Therefore, will the Minister commit to having such a review so we can ensure that, before this Bill comes into force, we learn the lessons of the past? I beg to move.

3.15 pm

Lord Howarth of Newport (Lab): My Lords, it is indeed time for a fundamental review of the Misuse of Drugs Act 1971. It is now almost half a century old and was the product of the prohibitionist orthodoxy that developed during the 1960s. It was the way in which our country implemented the requirements of the UN convention of 1961; subsequently, we doggedly signed up to the 1971 and 1988 conventions. It is through this legislation that the full panoply of prohibition was established, with the criminalisation of supply and possession. It is more than time to look again at

the principles underlying this legislation, because there is an abundance of evidence that the legislation has failed in its purpose of protecting society from harm. I agree very much with the noble Lord, Lord Paddick, that our objective has to be to minimise the damage that drug usage causes in our society.

Since this legislation was introduced, we have seen, generation by generation, very significant increases in the use of drugs. There have been fluctuations in the use of cannabis, but if noble Lords study the latest annual report from the European Monitoring Centre for Drugs and Drug Addiction, they will see that it sounds alarm bells over the rising problem of cannabis, in particular the increasing potency and purity of herbal cannabis and cannabis resin. The cannabis that is available in the market for consumers in this country is now far higher in THC, the most dangerous component of cannabis, than the cannabis that people were accustomed to using in the 1960s. A far larger proportion of our population now uses cannabis than in those days. Britons are among the largest consumers of controlled drugs in Europe. Therefore, there is evidence that the system is not working.

Prohibition is based on a false analysis of supply and demand. Where supply is interdicted, demand does not consequentially fall. Prices rise and the profits of criminals rise, but demand is displaced to different drugs. One reason we have the problem of new psychoactive substances, which the Bill seeks to address, is the prohibition of other substances, which has displaced demand, and people are looking for new opportunities to find the experience that they seek.

MDMA, better known as ecstasy, is another controlled drug, but the control has simply failed. Statistics indicate that some 300,000 young people each week are using ecstasy. As I mentioned at Second Reading, in universities its use is widespread, as is the use of smart drugs that are supposed to facilitate mental concentration and help people do better in severely competitive situations.

It is more than time for an analysis of the kind that the noble Lord, Lord Paddick, has recommended—an objective expert review of the way that this legislation has worked. It has been a gift to criminals. On the black market, price increases of 100 times between production and retail are not uncommon. In 2013, it was estimated that taxpayers across the world were spending something in the order of $188 billion on the enforcement of prohibition regimes, with the effect of creating an illegal drugs market of some 240 million users, with a turnover of $320 billion. This is a massive illicit business created by the prohibitionist orthodoxy.

At the same time, the Home Office estimated that the social and economic costs of organised drug crime in England and Wales were £10.7 billion a year. The collateral damage of the war on drugs has been immense, with diversion of public spending from health, education, development and other good causes—or, if you prefer, from the lowering of taxes and the reduction of deficits—and from tackling social exclusion and violent crime on estates in this country. That extends to the countries of production and transit: there have been 100,000 deaths in the drug wars in Mexico for which our people, as consumers, have to take serious responsibility. There is corruption of public life in many countries, and the proceeds of the illegal drug trade are used to finance terrorism. There are abuses of human rights, the use of the death sentence in a number of countries across the world, and environmental damage; for example, in Latin America, where the coca bean is produced.

Money laundering is a very significant problem, which is greatly exacerbated by prohibition. Banks in this country—unburdened by any particular sense of civic responsibility or by effective regulation—fund money laundering of drugs money, which is a profitable activity, as do money transfer services. It is not just the financiers, though. Other white collar professionals—accountants and lawyers—do not ask the questions they are required by the law to ask and are happy to facilitate the transfer of the proceeds of the illicit trade into the licit economy. It is ubiquitous across the country. At the other end of the scale, nail bars, taxi firms, car washes and, I am told, even childcare organisations are local small businesses that are used to facilitate the laundering of the proceeds of the drugs trade.

The Chancellor now wishes to make the City of London an offshore centre for trading in the Chinese currency regardless of the fact that the great majority of new psychoactive substances emanate from China. Prohibition is an engine of crime, of international organised crime, of gang-related street crime and of acquisitive crime. It accounts for between one-fifth and one-third of acquisitive crime. More enforcement leads to more violence and more profit. Prohibition drives innovation.

The Misuse of Drugs Act was never effective, but to attempt to overlay a regime that was not effective in the circumstances for which it was designed on today's world of digital communications is, I believe, doomed to failure. The internet has made it far easier for people to obtain the information they need to know how to synthesise such drugs, to market them and to make them available. Smartphones enable people to tell each other about the arrival of new consignments of drugs—I am told even that invitations to parties contain links to suppliers. To extend the prohibition regime as the Government propose in the Bill seems a project doomed to failure.

Over the years, the Government have lacked conviction in the enforcement of prohibition. The noble Lord, Lord Fowler, to his immense credit, when faced with the challenge of HIV and AIDS in the 1980s, wisely and humanely decided that to provide clean needles and needle exchanges was the right thing to do and that harm prevention should trump law enforcement. There has been vacillation by successive Home Secretaries about the classification of cannabis. In 2010, when cannabis had once again been moved to a different classification, the *Lancet* stated:

> "Politics has been allowed to contaminate scientific processes and the advice that underpins policy".

The noble Lord, Lord Bates, may correct me but I understand that in the preparation of this legislation the Advisory Council on the Misuse of Drugs, created under the 1971 legislation to be the Government's statutory adviser in this field, was sidelined. As the noble Lord said in moving this amendment, this seems to be an end to evidence-based policy and the attempt at a rational assessment of harm. Ministers have done

[LORD HOWARTH OF NEWPORT]
this through this legislation and the broader policy of further discrediting the Misuse of Drugs Act, on which they rely and which they insist is so necessary.

In an interview in the *Independent* in 2005, David Cameron said:

"Politicians attempt to appeal to the lowest common denominator by posturing with tough policies and calling for crackdown after crackdown. Drugs policy has been failing for decades".

I greatly fear that this Bill will be another failure, and I commend to the Minister and the Home Secretary the course of action proposed in this amendment.

Lord Condon (CB): My Lords, I cannot support these amendments, not because I challenge the sincerity of those who wish to encourage wider debate about drugs and the value of criminalising or decriminalising them, but because I think this is the wrong Bill at the wrong time to try to bolt on this wider debate. There is a real mischief that needs to be dealt with now: the mischief of so-called legal highs, which, tragically too often, are lethal highs. Many families are grieving in this country because youngsters, in particular, have taken these substances and died as a result. The mischief that needs remedying as soon as possible is the spread of so-called head shops and other such shops in many of our major cities around the country. We are just getting into the serious music festival season. Many of those festivals will have the equivalent of head shops on open display. There is real confusion among many vulnerable, naive youngsters, who assume that, because there are head shops or stands at music festivals selling these substances, they must be medically safe.

I spoke yesterday to the chief constable of Hertfordshire, Andy Bliss, who leads for the police service on these issues, and the police are adamant that there is a real need for this legislation as soon as possible. So let there be a wider debate around the big issues of evidence, prohibition and legalising or not legalising drugs, but we need to deal now, laser-like, with this real and present mischief. Any attempt to make this Bill into a wider debate will dilute, probably defer and possibly damage our intent to deal with this real and present mischief. Although there is a need for this wider debate, I hope that it will not destroy the laser-like focus of this Bill, which deals with a real and imminent problem.

Lord Richard (Lab): The specific terms of the amendment are:

"The Secretary of State shall commission an independent evidence-based review of the effectiveness of the Misuse of Drugs Act … and the implementation of the Act",

and,

"The Secretary of State shall lay a copy of a report of the review before both Houses of Parliament within one year".

Is the noble Lord saying that he approves of the amendment but does not think that it should be linked to the passage of this Act? If so, I would be grateful if he clarified that he is in favour now of an independent review of the way in which the Misuse of Drugs Act is actually operating.

Lord Condon: Certainly, I am not against such a review. It is for those who wish to make the case for it to put it forward and to find a mechanism for it to take place. I would very happily give evidence to such a review or assist in any way I could. The point I am making today is that, at the very least, there would be a 12-month delay, probably longer, and there is a pressing need to get legislation now to do something about the production, supply and distribution of these so-called legal highs, which, as I said, are lethal highs on some occasions and are killing young people.

3.30 pm

Lord Patel of Bradford (Lab): My Lords, I have listened to arguments on both sides and I am struck by the point that we somehow think that the introduction of legal highs is a phenomenon we have never come across. We had cheap, smokeable heroin in the early 1980s. There were outbreaks in various cities across England where people were smoking heroin. There was anxiety. We had a knee-jerk reaction and we set up services for heroin users. Then we had amphetamines in the nightclub scene, and in the mid-1980s kids were sniffing solvents and glue. There was huge panic and uproar and we banned children from buying solvents in supermarkets. We thought that thousands of kids were going to die because they were sniffing solvents. Things moved on.

Then we had MDMA, GBH and crack cocaine, and then heroin came back again. These things keep coming. We do not want to have a knee-jerk reaction to yet another drug that young people will take. The evidence, from watching last night's "Newsnight" report from Ireland, is the opposite of what the noble Lord said his police officers wanted here. Officers there were saying that they could not enforce this law. This is simply imposing a blanket ban on new drugs as they keep coming out—and they will keep coming out. We can ban one thing and I guarantee that in the next five years, there will be another substance that young people are using and we will be panicking again. We cannot continue to do this.

There is a desperate need to review the Misuse of Drugs Act 1971. We have had all these policies and other Acts dealing with prescription drugs, and we have never looked at the evidence—not just this Government but the Labour Government as well. We have never looked at the evidence because, as my noble friend Lord Howarth said, Ministers look at what the public want and they want hard, strong enforcement tactics on tackling the use of drugs. The evidence is fairly clear and we have a lot of it in this country, so we desperately need a review. Whether we need to tag that on to this Bill I do not know, but my anxiety is that we will be passing a Bill because of a knee-jerk response.

We have not looked at the connections with existing legislation. We are creating legislation that is not looking at harms but simply banning everything in sight under this umbrella body, and it seems to everyone to be unenforceable. We need to take a step back. There has to be an opportunity somewhere along the way to have a review and to look at drugs policy effectively.

Lord Blencathra (Con): My Lords, I had not intended to speak on this amendment until I heard the speech of the noble Lord, Lord Howarth. With all due respect, I must say that he is profoundly wrong and also out of date. I say to the Minister that there is no need to do

another independent review. A couple of years ago, EU Sub-Committee F, chaired by the noble Lord, Lord Hannay, conducted a thorough review of drugs legislation. We discovered in that committee that enforcement has worked exceptionally well for all the main hard drugs we have had in this country. Drug use of heroin, crack cocaine and other such drugs has dropped dramatically. Where we are in the lead, unfortunately, is with the use of the new psychoactive substances.

It would seem from the evidence that we took in committee that children today do not want to smoke the same old stuff their hippie fathers did. If it was good enough for dad, the kids today want something different. We see that in a whole range of things, such as children who go off Facebook because their parents have joined. The fads on drugs seem to have the same trends.

Enforcement has worked exceptionally well in driving down the use of heroin, crack cocaine and other serious drugs. Enforcement can work equally well on psychoactive substances, provided that we can get the legislation watertight. The Government have tried enforcement with psychoactive substances by naming certain drugs, and within hours the chemical composition is tweaked slightly and the law is no longer effective.

Enforcement works, provided we have effectively drafted legislation. I entirely support the views of the noble Lord, Lord Condon. We have an urgent problem at the moment with psychoactive drugs. We do not need to review the whole of the drugs Act in this Bill. Maybe a review in a couple of years might be sensible, after we have seen how the legislation proposed in this Bill works. Finally, it is not a matter of enforcement or harm reduction, which are not mutually exclusive. We have been doing both in this country. It is right to have criminalisation and tough enforcement action against drugs and, at the same time, a harm-reduction policy that tackles drug use among first-time users and young kids, who probably do not know any better. Yes, we need education. Yes, we need harm reduction. But for goodness sake, keep the criminal law, which works.

Lord Patel of Bradford: My Lords, before the noble Lord sits down, yes, there may have been a reduction in the use of illegal drugs over the last five years. I know that Ministers have responded by saying, "We do not need to look at this any more, because drug use has plateaued and acquisitive crime has decreased, although drug-related deaths have increased". Why has that happened? Not because of better enforcement but because, for the last 10 years, the Labour Government piled £800 million per year into drug treatment—and drug treatment that worked. That was a pooled, ring-fenced pot of money. We quadrupled the number of people treated, and it worked. For every £1 invested, within a year you had a £2 return and on a longer-term basis you had an £8 return. Drug treatment works. We do not have the same evidence for education prevention and we do not have the evidence for enforcement, but we do have the evidence that treatment works.

The problem is now that the £800 million a year has gone into Public Health England's £2.6 billion budget, which goes to the 152 local authorities around the country to spend as they wish. That money is not ring fenced. There is no local authority in the country that has the expertise or the inclination to spend hundreds of thousands of pounds on drug treatment. Instead, funds are rapidly being withdrawn and we see the outcome: we see drug services shutting down and we see drug-related deaths going up. I guarantee that within five years we will see acquisitive crime going up and drug use increasing again. This is not to do with enforcement policies; it is clearly to do with how we invested that money properly last time.

Lord Blencathra: Again, I must disagree with the noble Lord, Lord Patel. Of course, harm reduction is good and of course treatment is essential, but unless we have Customs and Excise and the National Crime Agency and all the others interdicting tonnes and tonnes of drugs, we would need a lot more treatment because we would have a lot more drug addicts in this country. Enforcement has worked. Enforcement is driving down the use of those drugs which were rapidly increasing in the 1980s and the 1990s. There is no suggestion that that trend is wearing off, and there is no suggestion that enforcement is now failing with those drugs. Enforcement is failing in the new psychoactive substances for two reasons. First, the kids find it trendy and sexy to use them because they are not using the same old drugs that dad smoked. Secondly, we do not have legislation tight enough to enable the police and the enforcement authorities to use enforcement properly against those psychoactive substances.

Baroness Meacher (CB): My Lords, I support this amendment and the comments of the noble Lords, Lord Paddick, Lord Howarth and Lord Patel, but I have to say that I cannot support the noble Lord who has just spoken. This country has some of the strongest and toughest rules and legislation relating to drugs, yet we have one of the highest levels of use of the dangerous drugs that we try to ban. The reality is that we are not succeeding. Countries with relatively liberal, harm-reduction, health-focused policies do a great deal better than we do.

I want to use this opportunity to try to get across to the Minister and to your Lordships why I feel so strongly that we need a review of the Misuse of Drugs Act. I worked in secondary mental health for about a quarter of a century on and off, working with severely psychotic patients. I would say that the majority of those patients take cannabis. Why do they take it? They have told me many times, "Because it makes me feel human". Thankfully, I have never had a psychotic illness, but if you do and you are given antipsychotic medication, the mix of the illness itself and the medication leaves you feeling, if I may put it this way, subhuman. You do not feel that you have any feelings; you feel dead. If you take cannabis, it makes you feel human. That is the word these patients use—"human". In my view, that is not unreasonable.

If herbal cannabis is illegal, which it is, these patients along with all sorts of young people all over the country—I am slightly less sympathetic about them, but I am very sympathetic about patients—are driven to take skunk, very high THC cannabis, which is bad for their hallucinations and voices and makes them

[Baroness Meacher]
worse. But they still take the cannabis because it is so important to them to feel human. As I say, that is not unreasonable.

While they were within our services, these people were treated as patients because they had severe health problems. However, it always struck me as peculiar that when they left our hospital, day centre or whatever it was, these very sick people could be picked up by the police and charged with a criminal offence. Why? Because of their health problem. When our Convenor, as she was then, said when I came to this House, "Molly, you must put your name down on the ballot for a debate", I said, "Oh no", but I did and I won the ballot. I was told to produce a subject within the hour, and it came to my head that it would have to be about drugs. I feel strongly that our laws are illogical, unjust and cruel, and they are doing an enormous amount of damage to very large numbers of children and young people. That is why I cannot say that I am against the amendment tabled by the noble Lord, Lord Paddick.

Of course I understand that this Bill is about psychoactive substances, and we will come to discuss them, but the fact is that we have only one market, and it is the market for illegal drugs. It is not a market for psychoactive substances over here and a market for controlled substances under the Misuse of Drugs Act over there. They are one market, and therefore it makes no sense to look at this market without looking at that market. That is why I believe firmly that the Government would find it very helpful to look seriously at how the market is working and to draw conclusions from other countries.

We will come to the experience of Ireland and psychoactive substances, where a ban has been in place for four years. What does the deputy chief of the drugs and organised crime branch say about the ban? It has not worked. Therefore, Ireland is thinking of going back to its misuse of drugs Acts. I think that we will be in the same position, so it is really important that we get the Misuse of Drugs Act right as well as the Psychoactive Substances Bill. If we do not, we will just go round and round in very unfortunate circles from one bad policy to another.

I have something else that I want to say. The Labour Party is worried about a delay in this Bill. It does not need to worry, because bans do not work. They have not worked in Ireland. A little bit of delay will not make any difference. We now know from scientists that, of the deaths which have been caused by psychoactive substances, maybe every single one of them—certainly 90% of them—has been as the result of young people taking banned substances, not legal highs. I want to make that point very strongly. A ban does not stop people taking a substance, and some of them will die from doing so. If low-level psychoactive substances were regulated and labelled, with the consequences of taking them clearly specified, the risks and side-effects explained and the maximum dose made clear—in the case of ecstasy, you must take water, but you must not take more than 1 litre, or whatever it is—they would be much safer. My only concern is the safety and well-being of our young people.

3.45 pm

Lord Cormack (Con): My Lords, one rises with some trepidation following that passionate plea by the noble Baroness, Lady Meacher, whose expertise, commitment and sincerity we all acknowledge and admire.

It seems to me that there are three issues before the Committee this afternoon. The first was gently but firmly underlined by the noble Lord, Lord Condon, and echoed by my noble friend Lord Blencathra from the Privy Council Bench. The Government are seeking in the Bill to deal with a specific problem: dangerous substances are legally available on our high streets and there is no doubt whatever, as the noble Lord indicated, that great harm has been done already. The Government committed themselves at the general election to legislating on the matter—and that they are doing by placing the Bill before your Lordships' House.

The second issue, of course, arises from the amendment moved very moderately and quietly by the noble Lord, Lord Paddick. Again, I do not for a moment question his knowledge as a former senior police officer, nor his commitment and sincerity. But I have to say to him—as he is already an accomplished parliamentarian, he will know that this is right—that the amendment he moved has some of the qualities of a wrecking amendment. It would delay for at least a year the implementation of legislation that is considered by many to be urgent.

This brings me to my third point. The noble Lord referred to the Salisbury/Addison convention that in your Lordships' House we do not seek to vote down manifesto Bills at Second or Third Reading; nor do we introduce wrecking amendments that would either inordinately delay or negate the purpose of the Bills. I am delighted to see the noble Lord, Lord Lisvane, in his place. In his previous incarnation as Sir Robert Rogers, clerk of the other place, he had to adjudicate on wrecking amendments—or those that could be so construed—because in another place there is an absolute rule against them: no such amendment can be selected for debate.

I am not suggesting that there is anything improper—far from it—in what the noble Lord, Lord Paddick, has sought to do this afternoon. Of course there is not; it is entirely within the rules of your Lordships' House. But there is another convention that is not binding, as Salisbury/Addison should be, which certainly has governed the general conduct of our business in this place. It is the convention that in Committee it is desirable to have good, clear debate on a subject, but not to vote. There are exceptions—there have been in my time, in the past five years.

Lord Addington (LD): My Lords—

Lord Cormack: May I just finish this point? On the whole, the suggestion that in your Lordships' House it is better to have a thorough debate in Committee, give the Minister a chance to reflect and then come back on Report if necessary has a great deal to commend it. This afternoon, we have on the Bench to reply to this debate my noble friend Lord Bates. He may prove me wrong this afternoon, but I regard him as an exemplary Minister who has proved on many occasions that he

truly listens to debate in your Lordships' House and often comes back with genuine recognition and concession. I very much hope that he will listen to the debate this afternoon in that exemplary fashion and reply accordingly.

I have heard a whisper that there could be an attempt to divide your Lordships' House this afternoon. I very much hope that that will not happen because this is a profoundly serious matter—literally a matter of life and death for some people. It is crucial that we should have full and thorough debate. It is through that that we have earned our reputation for scrutiny, critical examination and the improvement of legislation. We have a chance to do that in this Bill, which, like every Bill, is far from perfect and is certainly capable of improvement.

I conclude by saying that I believe the point made by the noble Lord, Lord Condon: we are seeking to tackle a specific issue and the Bill is tackling that issue. We should take no steps that would frustrate that, and certainly not frustrate it at this early stage.

Lord Richard: I put the same question that I asked the noble Lord, Lord Condon. I hear what he says about the relationship between the Bill and the general proposition in the amendment moved by the noble Lord, Lord Paddick, that there should be an independent review of the operation of the Misuse of Drugs Act. Does the noble Lord support that?

Lord Cormack: I would give a very similar answer to that given by the noble Lord, Lord Condon. He said that he acknowledges that there is a very good case for it, and so indeed do I.

Lord Addington: If I may make one small point: any convention about not voting in Committee is very recent, and it is one determined by the procedures in Grand Committee. It is a waste of time for us to go over the same debate twice if we are determined to have a vote or if we feel that the answer cannot be given. If the noble Lord, Lord Bates, says that he is very positively minded towards this amendment—let's face it, the smell ain't exactly in the air at the moment—of course, there would be no need to seek a conclusion. If, however, he is not, why go through it again?

Lord Cormack: If that question was addressed to me, I should perhaps have given way earlier. There is every case for the most wide-ranging, critical scrutiny of any Bill. The point that I sought to make—I did not do so aggressively at all—is that in this House we tend not to vote in Committee but rather to reserve our votes for Report. There have been only a handful of such occasions in the past five years. That is all I am saying and I commend it to your Lordships.

Lord Stoddart of Swindon (Ind Lab): It seems to me that the noble Lord has changed his mind. I want to be very clear. A convention is a convention and it is almost legally binding in some cases. Now he is saying that a habit has grown up that we do not vote in Committee. But it is only a habit, and in my view it is quite a bad habit. I hope that the House will not be swayed into not allowing voting in Committee to become a convention.

Lord Lester of Herne Hill (LD): It is my fault and my stupidity but I do not understand how this amendment can properly be regarded as a wrecking amendment. Can the noble Lord explain that to me?

Lord Cormack: I said that it had some of the ingredients of a wrecking amendment because it would delay by at least a year the implementation of legislation that many believe to be urgent and necessary.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I am puzzled. Somebody has lost the plot and it is probably me. I do not see why this has to delay the legislation at all. I follow that in this group, Amendment 115—the last one—would indeed delay the legislation. It involves an insertion into Clause 57, which is about commencement. However, I do not think that applies to any of the other amendments. On the face of it, Amendment 5 seems to demand the implementation of the Bill. How would one review its implementation under proposed new subsection (1)(b), except by bringing it into force and letting it go ahead? Unless someone can explain why Amendment 115 within this group necessarily has to be passed, I do not see that any delay at all is involved.

Lord Paddick: My Lords, if I may assist the Committee, clearly these amendments can be taken separately and, if the Committee is minded to say that there needs to be a review and no delay in giving effect to the legislation, that is a matter for the Committee. We are talking about the Misuse of Drugs Act in that amendment rather than the Bill, if that helps the noble Lord.

Baroness Meacher: I wonder if it might help the Committee if the noble Lord withdrew Amendment 115 simply so that we can debate the need for a review of the Misuse of Drugs Act without setting it in the context of a delay to the psychoactive substances ban.

Lord Rosser (Lab): I acknowledge the strength of feeling of many noble Lords on this issue but I hope we can all accept that, whatever our view, we all have the interests and protection of young people in particular in the forefront of our minds when discussing this group of amendments and the Bill as a whole. That is not the prerogative of one particular point of view. The effect of this group of amendments—certainly its intention—is to put back the commencement of most of the Bill's provisions for, in reality, probably at least 18 months after the Bill has been passed.

The proposals in the Bill for a blanket ban on new psychoactive substances have been supported by the New Psychoactive Substances Review Expert Panel, whose report was called for by one Liberal Democrat Minister and accepted by another. The ban has also been supported by a similar panel in Scotland, the Health and Social Care Committee of the National Assembly for Wales, the Commons Home Affairs Select Committee, the Local Government Association, the police and the two largest political groupings in this House, including the Opposition, at the recent general election. The Liberal Democrats said that they would clamp down on those who produce

[LORD ROSSER]
and sell unregulated chemical highs. Whether all these organisations, committees and parties reached their conclusion in either the face of all the evidence or the absence of any evidence—as has been implied—is unlikely.

We need to start to tackle the issue of legal highs now. The United Kingdom now has the second largest legal highs market in the world, beaten only by America. We are the top country in Europe for emerging new psychoactive substances. Over the past four years, hundreds of new internet sellers have been established in the UK, along with an estimated hundreds of specialist high street head shops. Beyond this, an unknown number of other stores, including late-night garages and takeaways, have started selling these products. In short, an entire industry became fully established under the previous coalition Government, selling and marketing dangerous drugs largely aimed at young people, many of whom would not otherwise have considered experimenting with drugs.

It also appears quite common in the legal highs market for legal high sellers to send out samples of new psychoactive substances to existing customers and use human beings as guinea pigs with no consideration of the consequences. The evidence also shows how far behind the market we currently are.

4 pm

Baroness Meacher: I thank the noble Lord for giving way. He says that head shops have no consideration for their customers. In our experience, head shops are the one outlet that do have to have some concern about their customers because, if they kill them or if they finish up in hospital, they will not come back for more and head shops will not make profits, which is what they are there to do. That is the one reason why, unpleasant though head shops are—and they are—if they were properly licensed and controlled, they would be rather better than the alternative: the black market.

Lord Rosser: I think I actually said that it is quite common in the legal highs market for legal high sellers—and there is more than one way of selling it—to send out samples of new psychoactive substances to existing customers and literally use human beings as guinea pigs, with no consideration of the consequences. I do not think that implies that everybody is doing that; it is saying that it is not uncommon for that to be the situation.

The evidence also shows how far behind the market we currently are. Substances were being banned following parliamentary debate earlier this year, when it had been known that sellers were sending out to potential customers samples likely to be toxic three years previously.

I wish to quote the Home Affairs Select Committee report, to which I referred earlier. I realise that some have already challenged this statement but it is set out in the Home Affairs Select Committee report. The report states:

"England and Wales has almost the lowest recorded level of drug use in the adult population since measurement began in 1996. Individuals reporting use of any drug in the last year fell significantly from 11.1% in 1996 to 8.9% in 2011–12. There was also a substantial fall in the use of cannabis from 9.5% in 1996 to 6.9% in 2011–12".

That does not mean there is not still a problem, but the area where things have been going in the wrong direction, as identified in the report of the expert panel, has been as a result of the emergence of new psychoactive substances. The explosion of new psychoactive substances in the last few years is a unique phenomenon which warrants specific legislation. Some 670,000 young people in the UK were thought to have experimented with new psychoactive substances by 2013, and this is leading to an increase in deaths. To my knowledge, no new psychoactive substance which has been referred to the Advisory Council on the Misuse of Drugs has been found to be safe.

We are not in agreement with this group of amendments, which will delay the introduction of key parts of this Bill, including the blanket ban, when the need for action to address the growing issue of new psychoactive substances, including through education, prevention and treatment, is now.

Lord Richard: My Lords, for the third time, I ask the same question: if the link between delaying the Bill and the part of the relevant amendment which calls for an independent inquiry is broken, does the Labour Party support an independent inquiry into the operation of the Misuse of Drugs Act?

Lord Rosser: I can only say that I am not aware that it is currently Labour Party policy to press for such a review.

Lord Mackay of Clashfern (Con): My Lords, it is wise to remind ourselves of what has been going on in relation to these substances in the past year or two. The system has been that, once a new substance is discovered, the procedures of the Misuse of Drugs Act have been used to add that substance to the prohibitions under that Act. It seems to me that the trouble with that is that it is very late in the day in relation to the emergence of the new substance. The purpose of this Bill, as I understand it, is to eliminate that particular difficulty and to make the provision operate in a general way so that you do not need to move, as in the past, during the emergence of a new psychoactive substance. So, that is what Parliament has been doing for some time. This seems to me to be a much better way to handle the problem than what has been available in the past.

Baroness Meacher: I would like to point out that the Government introduced what I consider to be a very good instrument, the temporary class drug orders. These could be sped up. You can, or should be able to, put an order in place quickly for a 12-month period while an assessment is undertaken. If the drug is not deemed to be safe, it is placed under the Misuse of Drugs Act. There is an instrument in place.

Lord Howarth of Newport: From all his experience, does the noble and learned Lord anticipate that there may be problems in the criminal justice system over definition and establishing that a substance is indeed psychoactive; and that in the case of individuals it is

their intention to supply illegally? Also, does he have any anxieties about the practicalities of enforcement? In the interests of the courts and of wider society, it is important that legislation that lays impossible burdens on the police, HMRC and other enforcement authorities is not enacted. They are going to have a large, complex and difficult additional set of tasks under this legislation, at a time of diminishing resources.

Lord Mackay of Clashfern: The impact assessment to some extent deals with that. It is plain that the difficulty has arisen in relation to the emergence of new substances whenever a particular prohibition is enacted. I hear what the noble Baroness, Lady Meacher, says about this. The problem is that by the time the enactment takes place, considerable harm may be occurring. The idea of this Bill is to prevent the production of these dangerous substances as a general matter of course.

Baroness Bakewell (Lab): Perhaps I might add to this conversation about the need for evidence. At Second Reading, on the matter of addressing the damage being done to these young people, Ireland was cited as evidence of the effectiveness of legislation.

I refer my colleagues in the House to a report made by a fellow journalist at the BBC. Following Second Reading he went to Ireland to examine what is happening with the Bill. Young people there are taking a great many of these legal highs. He found that one young man had hanged himself from a tree in the middle of the estate where he lived. The parents were frantic. In County Monaghan and in a number of towns my BBC colleague found that there was an abundance of these drugs, and that young people were turning to them.

After this young man's suicide the police seized 34 grams. They offered it to the scientists, who analysed its contents. They said that they were not able to prove that it was a psychoactive drug. At that point the police were stymied procedurally, because the scientist to whom they turned could not verify the evidence they needed. My colleague speculated in a conversation with me that the police were turning back to the Misuse of Drugs Act 1971, because they did not know how to handle this matter.

What ties this issue, Ireland and legal highs to the amendment is that young people are turning to legal highs because they cannot get natural cannabis. That is the crucial link. If we are to stop these young people doing such terrible damage to themselves, we must consider the broader spectrum of motive that turns them towards these legal highs. Young people do not grow up knowing about them. They grow up in a community that perhaps 20 years ago was using cannabis plant. Now, the whole drugs business has accelerated to such an extent that millions of pounds can be made through criminal behaviour, and that has driven the legal drugs industry to invent more substances to market to young people. It is a desperate situation, but we need to examine and unpick the motives that drive young people into this market. That is at the heart of this amendment and the conversation about the Bill.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, first, I welcome the amendment and the way in which it was proposed by the noble Lord, Lord Paddick, because it has sparked a genuine debate, one of real high quality and passion on all sides of the argument. I thought that the arguments in the contributions we heard were pretty finely balanced for and against. I want to try to respond to some of those points. The point made by the noble Baroness, Lady Bakewell, relating to Ireland is an example worth looking at. That issue comes up in a later group of amendments and I will be happy to respond in more detail at that point, if I can.

I want to pick up on the comments made by my noble and learned friend Lord Mackay of Clashfern. He talked about the difficulties that the Government are facing and about these new versions of psychoactive substances that are coming on to the market. In fact, the European centre that monitors these things is identifying two new versions per week. More than 500 have been identified and banned since 2010. That is the difficulty that the noble Baroness, Lady Meacher, touched upon when she referred to temporary banning orders. We have tried those so we have some evidence that they do not work, because the minute we clamp down on one substance, up pop another one or two—or three or 10—somewhere else. The challenges that we face are clear.

Another point in the evidence—evidence that people have cited in all their contributions from their different perspectives on this—for the Government to take action on this is that we are seeing a general fall-off in the use of drugs, as the noble Lord, Lord Rosser, mentioned. The positive signs are there about the current approach to drugs. I will come back to this at some point but there has been an overemphasis on the Misuse of Drugs Act, which was a response to a series of international conventions, such as the UN convention. It recognised that the fight against narcotics and drugs was a global fight. We therefore introduced legislation but if there was just the Misuse of Drugs Act, as it was configured in 1971, there would of course be little support from any part of the House. The fact of the matter is that that is only one part of the legislation.

The noble Lord, Lord Patel of Bradford, talked about the excellent work being done in treatment and rehabilitation. There is work going on in education and very sophisticated work going on in policing, a point raised by the noble Lord, Lord Condon. In fact, having been a commander, the noble Lord, Lord Paddick, was at the centre of the challenge of finding new ways to tackle those issues through law enforcement. There is a whole suite of different ways in which we are tackling this but across the majority of drugs and age groups, there has been a long-term downward trend in drug use over the past decade, a point made by my noble friend Lord Blencathra. Among 11 to 15 year-olds, drug use has been falling since its peak in 2003. More people are recovering from their dependency now than in 2009-10, and the average waiting time to access treatment is now down to three days. As a result of such innovation, the work that has been done in that area is providing alternatives and treatment. However, enforcement is part of that.

I come to the point that against the downward trend that we are seeing, in one area we see that the opposite is actually the case: usage is increasing and the number

[LORD BATES]
of deaths has almost doubled. There were 120 deaths of young people in 2013, and all the evidence is that that trend is on the rise.

Lord Paddick: Of those 120 deaths, for how many were new psychoactive substances the sole cause and for how many was it a mixture of these with alcohol and other controlled drugs?

Lord Bates: I do not have an exact breakdown, but that is how the health—

Lord Paddick: I can assist the Minister, because in only 23 of those deaths did the post mortem find only psychoactive substances in the bloodstream. It is important that we get the facts straight in these cases.

4.15 pm

Lord Bates: The fact that it is present in the death of a young person is an absolute tragedy. The Government cannot stand idly by and have an interesting debate about general drug policy when that is happening on the streets. The Local Government Association—

Baroness Meacher: The scientists who are advising me say that all the deaths have possibly been a result of banned substances which may be psychoactive or controlled. Four or five may possibly have been due to legal substances that had not yet been banned. A ban is not the way forward on that issue.

Lord Bates: These substances are available. For example, a grandmother told me about the death of her grandchild, although it was not directly related to this. She expressed absolute despair that across the road from a school in Canterbury, 100 yards away from it, was a head shop selling "legal highs". She believes that they are lethal highs. They are allowed be traded, on the high street, to children way below any age of consent. There are no restrictions, as there are with alcohol and tobacco. Anyone can go in there with cash and come out with a brightly coloured package which actually says "not fit for human consumption" or "plant food". Are we supposed to stand idly by when the Local Government Association is telling us that and when the police are telling us that they lack the powers to act? The Republic of Ireland has closed these shops down altogether. We need to get a clear and important message to young people that these drugs are not without risk.

Lord Howarth of Newport: No one is suggesting that we should stand idly by. No one is suggesting that these new psychoactive substances do not carry hideous dangers. No one is suggesting that urgent action is not needed. The question at issue is whether the policies in this legislation are well framed and well designed to address what is undoubtedly a very grave and serious problem.

Lord Bates: That is not exactly what the amendment says and we see a risk there to the prospects for the Bill, which carries the support of the Official Opposition and was in their manifesto. It was in the Conservative manifesto that we would bring forward this legislation. Norman Baker, who was the Liberal Democrat Minister in the Home Office, wrote to the Advisory Council on the Misuse of Drugs in the following terms:

> "As our response makes clear, we will explore the feasibility of a UK wide new offence(s) by which the distribution for human consumption of non-controlled NPS is prohibited, based on the approach taken by the Republic of Ireland in 2010. This would give law enforcement greater powers to tackle NPS in general, rather than on a substance by substance basis. The international experience shows that it would have the most impact on the open availability of non-controlled NPS in high street 'headshops' and on UK domain websites, placing downward pressure on NPS related harms".

That was from a Liberal Democrat Minister in the Home Office, not in history but in August 2014. Lynne Featherstone, who was then the Minister at the time, said on 11 March:

> "I will be working right up until the dissolution of Parliament to ensure we have done as much as we possibly can to pave the way for a general ban. This will mean the next government can act quickly to clamp down on this reckless trade".

Those are not the comments of some distant academic but the words of another former Liberal Democrat Minister in Her Majesty's Government.

Action needs to be taken urgently to tackle new psychoactive substances, but we have not acted in a knee-jerk way, as has been suggested. The Advisory Council on the Misuse of Drugs looked at this in 2011 and issued a report saying that we should explore legislation to introduce a ban because it was clear that temporary banning orders were not working on an individual case-by-case basis. We then said that we would set up, in addition to that, an expert panel to take a broader range of views, including from law enforcement. That expert panel came to the view that there should be a ban on new psychoactive substances. That view was supported by the Home Affairs Select Committee and by the other committees in Scotland and Wales that the noble Lord, Lord Rosser, referred to. It was also of course endorsed by action by the Government in the Republic of Ireland. This is not a knee-jerk response: it has been gathering pace over a period of some three to four years. We have been steadily building up and testing the case, listening to the police and local government, and finding out what is working and what is not working. This is what they have recommended that they want to see.

This is not the end of the matter. In the wider debate, there is no reason there cannot be ongoing exploration of the effectiveness of the Misuse of Drugs Act. The All-Party Drug Misuse Group frequently produces excellent and thorough reports looking at the effectiveness of that overall policy. The Home Affairs Select Committee has the ability to look at this, and has done so. I think that there have even been specific reviews of the Misuse of Drugs Act; for example, in 2001 under the Labour Government. I am going from memory there rather than the official note, so I have to be very careful, but I think it might have been Dame Ruth Runciman who led a review of that nature. This is about timing, and if we need something further, there are many excellent avenues through which that exploration can take place.

The Government's response is that we have a piece of legislation—the Misuse of Drugs Act—and we have a cross-government policy, which involves health,

education and law enforcement. We listened to that advisory committee, took further evidence from the expert panel and recommended the course of action which we are now taking and which this amendment would delay coming into effect. That is why we do not want this amendment to be agreed and why I urge the noble Lord to withdraw it. We have made our case and built the evidence, and we have a mandate from the electorate on the manifesto to act in such a way—as did the noble Lord's colleagues who served in the previous Government.

Baroness Hamwee (LD): My Lords, a few minutes ago in his speech, the Minister distinguished between the issue of new psychoactive substances—the substance, if I can use the word, of the Bill—and the review of the Misuse of Drugs Act. My noble friend will deal with the fact that those are linked but distinct and the fact that we are not seeking to wreck the Bill, as some have suggested.

I wanted to intervene because of the reference to the report of the expert panel. We will come on to some of these issues in later groups of amendments, but one of its recommendations was about exploring,

"the feasibility of an approach to control NPS",

and referred to,

"taking into account the need for … a robust definition in the legislation"—

an issue we are clearly going to come to. It also referred to,

"monitoring … possible adverse implications and unintended consequences",

which we will come to as well.

In the next recommendation it also refers to "robust" definitions and needing to build,

"on learning and evidence from countries that have already taken this approach".

It is not quite as simplistic and narrow as perhaps some noble Lords might be thinking from the debate all round the Committee.

Lord Bates: I certainly agree with the noble Baroness that the wider issue is not narrow, it is very broad, but what we are trying to do here with this Bill is very narrow. It is very focused and based on the evidence. The noble Baroness says that the two amendments are linked but distinct. Now she is a lawyer and I am not, but to me if they are linked then they cannot be distinct. They are linked in the sense that if they are both moved together, then one effect will be to have a review which will delay action being taken on this menace—or mischief, as the noble Lord, Lord Condon, said—which is happening up and down this country and through which people are suffering and dying. We need to take action and we are doing that on the basis of medical evidence, law enforcement evidence and evidence from the Local Government Association.

Lord Paddick: My Lords, the debate this afternoon has been passionate on both sides, and both sides of the argument seem to be equally committed to believing that their side is right. If ever there was an example of why we need an independent, evidence-based review, the debate this afternoon is it because everybody who has spoken in the Chamber this afternoon cannot possibly be right. We might agree to a review of the Misuse of Drugs Act, but people will then ask why we would want to link it to this piece of legislation. The noble Lord, Lord Condon, for whom I have a great deal of respect, raised this as an issue.

The fact is that somebody said that the definition of madness is to carry on doing exactly the same thing while expecting a different result. Some people brought forward evidence in this argument that prohibition and criminalisation of drugs do not work, which the Minister has countered. One of the campaigning organisations called Release, which no doubt has sent information to noble Lords, claims that the UK has the highest lifetime amphetamine and ecstasy use, the second highest cocaine use and the fourth-highest lifetime cannabis use in Europe. Not everybody can be right on this and my real concern—there is some evidence which we will come to in future amendments when we consider the Irish situation—is that this Bill, or this approach of prohibition and criminalisation, actually makes things worse. It makes people less safe. It makes more people die. It gets more people addicted. What I am concerned about is, if we make even more drugs illegal, it will have completely the reverse effect to the one wanted by everybody in this House, which is to make it safer, to have fewer deaths and fewer people addicted. That is why this amendment is here. That is why this amendment is linked to this Bill and that is why I wish to test the opinion of the House.

4.29 pm

Division on Amendment 1

Contents 98; Not-Contents 316.

Amendment 1 disagreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Afshar, B.
Andrews, B.
Ashdown of Norton-sub-Hamdon, L.
Bakewell, B.
Barker, B.
Benjamin, B.
Bonham-Carter of Yarnbury, B.
Bradshaw, L.
Bragg, L.
Brinton, B.
Brown of Eaton-under-Heywood, L.
Clancarty, E.
Clinton-Davis, L.
Cotter, L.
Coussins, B.
Desai, L.
Dholakia, L.
Doocey, B.
Dubs, L.
Dykes, L.
Elder, L.
Erroll, E.
Falkner of Margravine, B.
Fearn, L.
Garden of Frognal, B.
German, L.
Hamwee, B.
Harris of Richmond, B.
Haworth, L.
Hayman, B.
Howie of Troon, L.
Humphreys, B. [Teller]
Hussain, L.
Hussein-Ece, B.
Hylton, L.
Janke, B.
Jolly, B.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kidron, B.
Kinnock, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Layard, L.
Lee of Trafford, L.
Lester of Herne Hill, L.
Loomba, L.
Low of Dalston, L.
Ludford, B.
Maclennan of Rogart, L.
Maddock, B.
Maxton, L.
Meacher, B.
Miller of Chilthorne Domer, B.
Newby, L. [Teller]
Northover, B.

O'Loan, B.
O'Neill of Bengarve, B.
Paddick, L.
Palmer of Childs Hill, L.
Palumbo of Southwark, L.
Pannick, L.
Parminter, B.
Pinnock, B.
Purvis of Tweed, L.
Randerson, B.
Rea, L.
Redesdale, L.
Rees of Ludlow, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Sandwich, E.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sharp of Guildford, B.
Shipley, L.
Smith of Newnham, B.
Stephen, L.
Stern, B.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Taylor of Goss Moor, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tope, L.
Truscott, L.
Turnberg, L.
Tyler of Enfield, B.
Wallace of Tankerness, L.
Walmsley, B.

NOT CONTENTS

Adams of Craigielea, B.
Ahmad of Wimbledon, L.
Ahmed, L.
Altmann, B.
Alton of Liverpool, L.
Anelay of St Johns, B.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Bach, L.
Baker of Dorking, L.
Bassam of Brighton, L.
Bates, L.
Beecham, L.
Berridge, B.
Bew, L.
Bichard, L.
Bilimoria, L.
Billingham, B.
Birt, L.
Black of Brentwood, L.
Blair of Boughton, L.
Blencathra, L.
Boateng, L.
Boothroyd, B.
Borrie, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bradley, L.
Bridgeman, V.
Bridges of Headley, L.
Bristol, Bp.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Byford, B.
Caithness, E.
Callanan, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carrington of Fulham, L.
Cashman, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chandos, V.
Chisholm of Owlpen, B.
Christopher, L.
Clarke of Hampstead, L.
Collins of Highbury, L.
Colwyn, L.
Condon, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Cox, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Crawley, B.
Crickhowell, L.
Cunningham of Felling, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Dear, L.
Deben, L.
Deech, B.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Donaghy, B.
Eccles, V.
Edmiston, L.
Elton, L.
Elystan-Morgan, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Watford, L.
Farmer, L.
Farrington of Ribbleton, B.
Fellowes, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foulkes of Cumnock, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gale, B.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Giddens, L.
Glenarthur, L.
Glendonbrook, L.
Glentoran, L.
Golding, B.
Goodlad, L.
Gordon of Strathblane, L.
Goschen, V.
Green of Hurstpierpoint, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hamilton of Epsom, L.
Hannay of Chiswick, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Peckham, L.
Harrison, L.
Hart of Chilton, L.
Haskel, L.
Hay of Ballyore, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henley, L.
Heyhoe Flint, B.
Higgins, L.
Hilton of Eggardon, B.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hollick, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howarth of Breckland, B.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Howells of St Davids, B.
Hoyle, L.
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hunt of Wirral, L.
Hurd of Westwell, L.
Inglewood, L.
Irvine of Lairg, L.
James of Blackheath, L.
Janvrin, L.
Jay of Ewelme, L.
Jay of Paddington, B.
Jenkin of Kennington, B.
Jones, L.
Jones of Whitchurch, B.
Judge, L.
Keen of Elie, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kilclooney, L.
King of Bow, B.
King of Bridgwater, L.
Kinnoull, E.
Kirkhill, L.
Knight of Weymouth, L.
Laming, L.
Lawson of Blaby, L.
Lea of Crondall, L.
Leach of Fairford, L.
Leigh of Hurley, L.
Leitch, L.
Lennie, L.
Levy, L.
Lexden, L.
Liddell of Coatdyke, B.
Lindsay, E.
Lingfield, L.
Listowel, E.
Liverpool, E.
Livingston of Parkhead, L.
Lyell, L.
McAvoy, L.
McColl of Dulwich, L.
McDonagh, B.
Macdonald of Tradeston, L.
MacGregor of Pulham Market, L.
McIntosh of Hudnall, B.
Mackay of Clashfern, L.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Magan of Castletown, L.
Mar, C.
Marland, L.
Marlesford, L.
Masham of Ilton, B.
Massey of Darwen, B.
Maude of Horsham, L.
Mawhinney, L.
Mawson, L.
Mobarik, B.
Monks, L.
Montrose, D.
Morgan of Ely, B.
Morris of Bolton, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Newlove, B.
Northbrook, L.
O'Cathain, B.
O'Neill of Clackmannan, L.
O'Neill of Gatley, L.
Oppenheim-Barnes, B.
Ouseley, L.
Oxburgh, L.
Palmer, L.
Palumbo, L.
Parekh, L.
Patel of Blackburn, L.
Patel of Bradford, L.
Perry of Southwark, B.
Peterborough, Bp.
Pitkeathley, B.
Popat, L.
Prior of Brampton, L.
Prosser, B.
Ramsay of Cartvale, B.
Ramsbotham, L.
Rawlings, B.
Rebuck, B.
Reid of Cardowan, L.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Rogan, L.
Rosser, L.
Rowe-Beddoe, L.
Ryder of Wensum, L.
St John of Bletso, L.
Sanderson of Bowden, L.
Sassoon, L.
Seccombe, B.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shrewsbury, E.
Simon, V.

Singh of Wimbledon, L.
Slim, V.
Smith of Basildon, B.
Smith of Finsbury, L.
Somerset, D.
Stedman-Scott, B.
Stevens of Kirkwhelpington, L.
Stevens of Ludgate, L.
Stirrup, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Sutherland of Houndwood, L.
Swinfen, L.
Taylor of Blackburn, L.
Taylor of Holbeach, L. [Teller]
Temple-Morris, L.
Thomas of Swynnerton, L.
Thornton, B.
Touhig, L.
Trees, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Trumpington, B.
Tugendhat, L.
Tunnicliffe, L.
Turner of Camden, B.
Uddin, B.
Ullswater, V.
Waldegrave of North Hill, L.
Wall of New Barnet, B.
Walpole, L.
Warner, L.
Warsi, B.
Warwick of Undercliffe, B.
Wasserman, L.
Watson of Invergowrie, L.
Wei, L.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Wilcox, B.
Williams of Elvel, L.
Williams of Trafford, B.
Willoughby de Broke, L.
Wills, L.
Woolmer of Leeds, L.
Young of Norwood Green, L.
Younger of Leckie, V.

4.47 pm

Amendment 2

Moved by ***Baroness Hamwee***

2: Clause 1, page 1, line 7, at end insert—

"( ) Section (Control of Cannabis) provides for legal possession and supply of cannabis prescribed by a doctor."

Baroness Hamwee: My Lords, this amendment is also in the name of my noble friend Lord Paddick, and I will speak to our Amendments 50 and 110. Amendment 50 is the substantive amendment and is about the use of cannabis for medical purposes, which was trailed in the previous debate by the noble Baroness, Lady Meacher.

I cannot pretend to be an expert on the scientific and medical details of this issue, but politicians are not expected to be experts. We are generalists, here to represent strands of opinion and concern. As I cannot pretend to be an expert, it may therefore be that I will not understand the response from the Minister, except that I will almost certainly understand what will come as a no, judging by his Answer to the Oral Question asked by the noble Baroness, Lady Meacher, last Wednesday. On that occasion, the Minister said that the steps that she was inquiring about and that I am proposing in this amendment would,

"undermine … efforts to reduce drug harms".—[*Official Report*, 17/6/15; col. 1158.]

But our concern is to enable cannabis and cannabis resin to be used for good and to reduce the danger of harm—we have many other amendments aimed at harm reduction. The matter was considered in 1998 by the House's Select Committee on Science and Technology, which noted that it was rejected by the then Government on the day of publication. There have been other reports since, and very recently a report for the All-Party Parliamentary Group for Drug Policy Reform by Val Curran, professor of pharmacology at University College, London, and Frank Warburton. I am very grateful for such a readable report. It is so readable that I was tempted to read the whole of it out because it is quite short, but I will not. I will spare your Lordships that and attempt to pick out the points that I think are particularly salient.

Professor Curran writes that the problem of,

"a significant number of people",

who,

"are not authorised to receive medication which they believe will alleviate their condition … are compounded by: An inflexible legal framework … A stranglehold on research into cannabis",

and, as she puts it:

"A determination when considering medical licensing to equate cannabis, a well known substance in terms of its effects on humans and used medically for around 4000 years … with an entirely new chemical introduced by a pharmaceutical company".

Therefore, Professor Curran and this amendment propose that these substances should be moved from Schedule 1 to the Misuse of Drugs Regulations 2001, which deals with substances perceived as having no recognised medicinal use, to Schedule 2, which would allow a doctor to prescribe them. They would be in the same class as heroin or diamorphine. I understand that there is no evidence of significant diversion of heroin from medical supplies to the illicit market—to anticipate one possible argument. They would be subject to strict controls via medical regulation, so the diversion to recreational use would be unlikely—to anticipate another possible argument.

Medicinal herbal cannabis is available in the Netherlands, in 23 states of the USA, in Canada and in Israel. Its most-established uses include the relief of pain and muscle spasms or cramps associated with many diseases and conditions, including multiple sclerosis and spinal cord damage, nausea and other responses during treatment for cancer and AIDS; and to deal with nausea and vomiting associated with chemotherapy and radiotherapy used for that treatment. The particular cannabis substances are being imported from the Netherlands to eight other European states, including Germany and Switzerland.

In the exchanges on the Oral Question asked by the noble Baroness, Lady Meacher, last week, the Minister referred to the drug Sativex having been licensed here. Indeed it has been, but it is very expensive and NICE recommends that it is not used to treat spasticity in multiple sclerosis sufferers because it is not cost effective. However, specialist prescribers can and do make individual funding requests, which has led to wide variations across England, and in Wales its use is approved.

It is no wonder that, given no access to legal cannabis-based treatment in a practical sense and no access to herbal cannabis legally, an estimated 30,000 people in the UK find their own sources, with the concomitant risks of severe side-effects, greater potential harm, and no benefit because most street cannabis is skunk with a different make-up from Sativex and from the drug that is manufactured and exported from the Netherlands and elsewhere.

In the Netherlands there has been a genetic alteration to maximise the benign substance, CBD. There is no THC in the drug that is produced there. Professor Curran also reports on a "Stranglehold on research", as she puts it, and that Schedule 2 status for cannabis

[Baroness Hamwee]
and cannabis resin would "greatly facilitate research". In her report, Professor Curran talks about the "costly obstacle course" and the delay taken by licence applications for use in research. She refers to practical problems such as the need to import cannabis, with import licences being granted for 12 weeks and expiring before all the arrangements for the import licence to be implemented can be made. She said at a meeting that I attended a couple of weeks ago that it is,

"a shame not to allow talent to fly".

I could have suggested a more caveated amendment—for instance, starting with clinical trials—but I wanted at this stage to get to the heart of the matter. This is about facilitating and stimulating research in the UK into the drug and its constituents, above all by allowing the import of a drug that is widely used—and much less expensive—in the Netherlands, to enable patients to access it without breaking the law and without risking the harms of an unlawful drug without medical supervision or quality control. I beg to move.

Baroness Meacher: My Lords, I shall speak briefly to this amendment because the noble Baroness has said most of what I was going to say. The aim, of course, is to decriminalise the 30,000 patients in this country who currently take cannabis not because they want some sort of high—they do not—but because cannabis, they say, is the best drug for their particular pain, seizures or discomfort. It seems to me that that is important.

The types of illnesses that can be helped have already been stated: multiple sclerosis, Parkinson's disease, Crohn's disease, epilepsy, chronic pain, glaucoma, and nausea and loss of appetite caused by chemotherapy. That is a lot of illnesses—disturbing and distressing illnesses—the symptoms of which can be alleviated by cannabis, so it does seem strange that there is such a resistance to reschedule cannabis from Schedule 1 to Schedule 2. Any substance from Schedule 1 has no recognised medicinal use. I just do not understand this, but maybe the Minister can comment on how any Government—it is not this Government; it is every Government—can continue to maintain that cannabis has no recognised medicinal use when Germany and Italy make sure that people with these illnesses can gain access to it. Germany and Italy and many countries across the world know that this is important for their populations. It would be really helpful if the Minister would consider that point.

I also want to draw the attention of the Minister and your Lordships to the extraordinary case of a little seven year-old boy called Jayden. Jayden suffers with Dravet syndrome—an extremely severe form of epilepsy—where he has at least 500 fits a day. He was on 22 pills a day including benzodiazepines. These medications plus the seizures resulting from the illness were giving him hallucinations and terrors. The poor child would scream for literally eight hours at a stretch until he was exhausted and presumably would fall asleep. His mother left home because she could not take it, so he was being looked after by his father.

When the child was four and a half, the father was told that he probably would not live another week. The father asked whether he should try medicinal cannabis. The doctor said that he should try anything, and so he did. The day after the child was given cannabis that the father had found in a chemist's—this was in the United States; it could not happen here—the child suffered no fits, and then no fits on the following day. Since then he has had a small number, but nothing like before. He is now being painfully weaned off all the drugs that he had been taking, including the benzodiazepines. Anyone who knows anything about those drugs—I do not, actually—will say that it is excruciating to come off them. The poor boy has been put through all this, but he does now smile, walk and play in the water. But, of course, after all those seizures, I imagine that his brain is very damaged.

I have a five-minute clip, and I would ask the Minister to take five minutes of his precious time to look at it. I know that that is a lot of time in a Minister's day, but even if one child is spared from going through the hell of that illness, I would suggest that that is well worth five minutes. This is a slightly cheeky request to make of a Minister, but it may be an important piece of work that the Minister could do.

5 pm

Lord Ribeiro (Con): My Lords, the noble Baroness, Lady Meacher, has demonstrated why anecdote is no substitute for good research. I heard that word used, so it is important to ensure that any use of cannabis for medicinal purposes, for which I have some sympathy, has to be on the basis of clinical research which has been properly carried out and peer reviewed. NICE is a good organisation and I am sure that it would be prepared to take that on board.

In response to a question put by the noble Baroness, Lady Meacher, last Wednesday, I did make the point that there is evidence from America that troops coming back from Afghanistan suffering from post-traumatic stress disorder resulting in terrible nightmares about their battle experiences have improved using cannabis. However, it is still something which needs to be subject to properly controlled clinical trials.

Something that is often done during a clinical trial is to put the drug out to people on a named-patient basis. Once the clinical trials have been done, one way to institute this is to put in place legislation whereby medication can be given on a named-patient basis. However, I cannot accept it as a blanket way of dealing with these problems.

Baroness Meacher: I should like to make one simple point, which is that I agree absolutely with the noble Lord that what we need are clinical trials on medicinal cannabis. The problem is that researchers do not want to go into this area because the substance is illegal. Getting cannabis in is a tremendous problem because it takes a long time to get the licences. I do not know, but there are problems which the noble Lord may know more about than I. However, if adults and children in particular who are in severe pain and distress could be prescribed medicinal cannabis on a named-patient basis, that would be a good option. But certainly we need to get on with a lot of work on clinical trials.

Lord Rea (Lab): My Lords, like the noble Lord, Lord Walton, who spoke last week during the supplementaries on the Question for Oral Answer

tabled by the noble Baroness, Lady Meacher, on this topic, I served on the Select Committee which looked into the medicinal use of cannabis. One of the central recommendations was exactly what the noble Lord, Lord Ribeiro, has suggested. We need controlled trials. The noble Baroness has just backed up that suggestion as well. But it is very difficult to get these trials going. As she has said, because cannabis is an illegal substance, it is difficult to get people to agree to do the work. One or two trials have been carried out which resulted in the production of Sativex, but only one firm is producing it. As the noble Baroness said, it is terribly expensive and can be prescribed only on a named basis; it is very difficult for doctors to prescribe it to patients who have been shown to benefit from cannabis by getting it illegally.

One of the problems with getting cannabis illegally is that you do not know the ratio of the different cannabinoids in the illegal drug. It has been shown—this was told to us in our committee—that there is a huge range of effects from different cannabinoids. The one that gives the psychoactive effect, tetrahydrocannabinol—THC—is something that people who take cannabis for medicinal purposes do not like. But it is very difficult to find an illegal version of cannabis that contains a good ratio with more cannabidiol—CBD—which is the calming one that reduces spasms. Sometimes people have thought that it does not stimulate psychotic results but prevents them; it is an antipsychotic drug.

So there are real reasons why it should be made legal for researchers to concentrate on doing proper, controlled clinical trials to work out what cannabis can do, and what components or mixtures of cannabis components are most effective. This is crying out to be done, but as things are, it is very difficult to get scientists to agree to do it because of the illegality of the substance.

Lord Blencathra: My Lords, I have no idea whether cannabis is relevant and effective in dealing with nausea or spasms caused by motor neurone disease or other diseases, but I have a wee bit of experience of multiple sclerosis, and I say to the House that I do not want to be used as an excuse to legalise cannabis, because it is not necessary for treating the spasms that come from multiple sclerosis; there is already a fairly large range of drugs on the market that deal with that.

The spasms are difficult to describe and usually happen at night. The main muscles of the body—the torso, the legs and the chest—just spasm, and it is difficult to get a bit of sleep when that happens. In my case, when it started getting bad, my consultant said, "In that case, we must give you a drug that will deal with the spasms". At the top of the list is baclofen, which is dirt cheap and highly effective. The maximum prescribed dose is 50 milligrams. I take 10 milligrams in the morning and 20 milligrams at night and have had no more body spasms because of it.

Okay, I cannot speak for all multiple sclerosis sufferers. When I was a constituency Member of Parliament, I had constituents come to me who said that they wanted cannabis legalised so that they could deal with their MS. I said that there were clinical trials under way that resulted in the drug Sativex, but they were not so keen to take a pill; they wanted to smoke a joint because it made them feel better in many other ways. Well, it could, but I do not want people who wish to smoke cannabis to get high to use the excuse that it is essential for multiple sclerosis sufferers in order to remove their pain and spasms.

If baclofen does not work—it seems to work for about 95% of people—doctors usually try tizanidine: I will give the Minister the spellings later. Following that, going down the list, is gabapentin. It is not usually prescribed because the other two drugs are usually much more effective. At the bottom of the list is Sativex, which is the cannabis derivative. The problem here, as has been stated already, is that NICE reviewed it and concluded that it was not cost effective. Unfortunately, that is absolutely right, because it costs 10 times as much as baclofen, which I have in my pocket at this precise moment.

I therefore think that the solution is: patients should be prescribed baclofen. If that does not work, they can go on to tizanidine, and if that does not work they can try the next legal drug, gabapentin. If those three do not work, then people can be prescribed Sativex. I suggest that my noble friend the Minister should say to the Department of Health and NICE that in those priority corridors it should be permissible to use it throughout the whole of the United Kingdom. Wales overruled NICE and has allowed Sativex to be prescribed. It is not prescribed, except by private prescription, in England, Scotland and Northern Ireland. I think that that is wrong. It should be allowed to be used by doctors but not as the first port of call.

There is merit in rejecting the amendment as far as multiple sclerosis is concerned. It may be beneficial for other illnesses when people suffer spasms but it is not necessary to deal with the problems that occur with multiple sclerosis. I wish to put my liberal credentials—or near liberal credentials—on the table. A part of me takes the view that if people want to smoke a cannabis joint and get high, okay, let them but do not expect the taxpayer to pick up the bill for the cancers and other illnesses they may get later. Similarly, a part of me thinks that if people want to eat themselves through gluttony into obesity and sit on their backsides, taking no exercise, let them, provided the NHS does not have to pay for that.

As the taxpayer has to pay for these things and for the dangers which smoking cannabis can cause, the taxpayer and the Government must be in a position to say, "No, I'm sorry. You're not allowed to smoke that because there are alternatives that can deal with the alleged problem".

Lord Howarth of Newport: May I say how welcome it is to see the noble Baroness, Lady Chisholm of Owlpen, on the Front Bench alongside her colleague from the Home Office? I hope that she will report this debate to her colleagues in the Department of Health. It is excellent that the two departments are represented on the Front Bench for this important debate.

The noble Lords, Lord Rea and Lord Ribeiro, spoke with all the authority of their medical expertise, and the noble Lord, Lord Blencathra, spoke with the authority that comes from his own unfortunate experience. I follow the noble Baronesses, Lady Hamwee and Lady Meacher, in commending to the Committee, and very much to the two departments represented on the

[Lord Howarth of Newport]
Front Bench, the report just recently published under the auspices of the All Party Parliamentary Group for Drug Policy Reform by Professor Val Curran and Mr Frank Warburton, entitled *Regulating Cannabis for Medical Use in the UK*. Had they heard the presentation of this report by Professor Curran from University College London, they would have been persuaded that the arguments put forward are eminently reasonable.

She talked about the severe constraints applied to the progress of medical research by the Government of the United Kingdom's persistence in listing cannabis in Schedule 1. She told us that it costs a minimum of some £5,000 to achieve the licence and to pay for the secure conditions to enable the pursuit of research into the medical properties and potential benefits of cannabis. That is a severe discouragement, particularly in the stringent climate of funding for academic research. She estimated that research on cannabis costs some 10 times as much as research on other drugs. It is a serious constraint, yet a significant body of evidence strongly suggests that cannabis-based medications can be beneficial for a whole series of conditions, many of which have been itemised by previous speakers.

The noble Lord, Lord Ribeiro, drew attention to the tentative evidence that may be emerging of benefits in relation to post-traumatic stress disorder. That is certainly a pressing and important issue for us in this country, as well as in America. Professor Curran also told us that there are suggestions that cannabis could be beneficial in the treatment of schizophrenia. It would seem perverse in the extreme to continue to deny ourselves the opportunity effectively to pursue research on the medical benefits of cannabis when patients suffering from such a range of diseases could be assisted.

5.15 pm

The noble Lord, Lord Blencathra, feared that this could the beginning of a wholesale loosening, and that if we were to license cannabis for medical research and medical use it might lead to widespread abuse and widespread additional recreational use. I do not think he need entertain that fear. Heroin has been in Schedule 2 for many years and there is no evidence of leakage of heroin, or diamorphine, from properly protected medical situations into the recreational market. No one is suggesting that facilitating further research and development of cannabis-based medications should imply any easing of security and protection and a loosening of the regime, such that the consumption of illegal drugs could be widely facilitated. Important evidence that that need not be so is presented in another recent report, in the name of Professor Deborah Hasin and her team, at the Department of Epidemiology at Columbia University. They looked back at the evidence over 24 years, across a population of 1 million adolescents, to see whether, in the American states where cannabis use for medical purposes is legal, there has been any correlation with additional consumption of cannabis in those states and indeed in contiguous states. She found that there is no higher incidence of cannabis consumption in that group of adolescents than in the rest of the relevant population. I hope that somewhat allays the fears very naturally put forward by the noble Lord, Lord Blencathra.

The legal regime in this country at the moment seems substantially confused. It seems wrong in principle and very hard on individuals that a consistent policy is not applied across the country. This is because the guidance is uneven and the effects of the guidance certainly are very variously interpreted. I am aware of one person who has been prescribed Bedrocan because nothing else is as effective in assisting her in dealing with chronic severe pain. She has to go to Holland on something like a monthly basis to collect her medication, as I mentioned in the short discussion last week. It is a very harsh requirement to make of a person who is in great difficulties because of her pain and who does not have large resources of cash to cover the cost of travel and of buying such medication. Bediol, one of the cannabis-based medications available in the Netherlands is in many ways comparable in its benefits to Sativex and costs a fraction of the price. Dronabinol is in Schedule 2 under our system but it has not been approved by the Medicines and Healthcare Products Regulatory Agency. The system seems riddled with inconsistencies and needs a proper look to tidy it up and ensure that some principles are being applied and applied consistently.

I also echo the point made by the noble Baroness, Lady Meacher, that it is wrong not to have a more humane understanding of the predicament of those 30,000 or so people who it is estimated are providing their own cannabis in this country illegally—because nothing else works so well for them—and of course risking prosecution. I understand that the Court of Appeal ruled out the defence of necessity in 2005. We do not seem to have a well-considered, consistent, sensible and humane set of policies.

I believe that cannabis should be listed in Schedule 2. The Government's own *Drugs: International Comparators* report told them that the relative severity of different regimes makes no difference to the incidence of recreational usage. The fears that are associated with allowing, or facilitating, the medical use of cannabis are overstated and inappropriate. People should be prescribed cannabis-based medications, when appropriate, on a consistent basis across the United Kingdom.

Lord Mackay of Clashfern: My Lords, as far as I am concerned, the issues that have been raised in this debate are certainly ones that Ministers in the two departments would be well advised to consider. However, I wonder about the procedure that is proposed here for carrying out this amendment.

Amendment 50 states:

"Within six months of the passing of this Act, the Secretary of State shall make regulations to amend the Misuse of Drugs Regulations 2001",

and so on. The procedure for that is already laid down. I doubt whether it is correct for another Act of Parliament, as it were, to overrule the arrangements made in relation to that. That is rather technical but it is perfectly reasonable that the matter should be looked at by the Ministers.

Lord Rosser: As has already been said, one assumes—though life is full of surprises—that the Government's response will be in line with the Answer that was given in this Chamber on 17 June to an Oral Question from the noble Baroness, Lady Meacher.

This Bill deals with a particular issue—psychoactive substances—on which there is surely a need for specific separate legislation. The amendment we are discussing appears to be a considerable extension of the Bill, and an extension of the prescription of cannabis, which can be very harmful. One would not have thought that one would want to go down that road without clinical evidence and trials indicating that it was the right road to take and, if so, in what circumstances, for what drugs, and based on whose advice. No doubt I will be corrected if I am wrong, but I understand that at present the approach suggested in the amendment does not, for example, have the support of the Advisory Council on the Misuse of Drugs. Nevertheless, I await the Government's response with interest.

Lord Bates: My Lords, first, I thank the noble Baroness, Lady Meacher, for giving us the opportunity to have this debate. In some senses, it is a rehearsal of our discussion following the Oral Question she asked in your Lordships' House last week.

The Government's position is that we have no plans to reschedule cannabis. There is clear scientific evidence that cannabis is a harmful drug which can damage people's mental and physical health, and which can have a pernicious effect on communities.

Let me deal with a couple of the points that were raised in the debate. In responding to these amendments, I remind the Committee that cannabis is a controlled drug under the Misuse of Drugs Act 1971, and listed in Schedule 1 to the Misuse of Drugs Regulations 2001. The 1971 Act will continue to regulate the availability of controlled drugs, and Schedule 1 to the Bill specifically excludes drugs controlled under the 1971 Act.

To move herbal cannabis and cannabis resin to Schedule 2 to the 2001 regulations, and thereby enable their prescribing, would amount to a circumvention of the established evidence-based regulatory process that successive Governments have had in place to ensure that products made available in the UK as medicines are as safe and effective as possible. My noble friend Lord Ribeiro made the point about the importance of rigorous clinical trials.

Lord Howarth of Newport: How, then, does the Minister explain that heroin, which is a far more dangerous drug, is in Schedule 2?

Lord Bates: I shall come to that a little further on. The point made by the noble Lord about diamorphine, which is prescribed in this country, is perfectly fair. Interestingly, in some other countries it is not prescribed. There will be a difference of view. That is one reason why, from a government and policy point of view, it is important that we have the best possible scientific advice and give due regard to it. The advisory council is specifically charged with that under the Misuse of Drugs Act 1971; that categorisation is its view. Should there be derivatives—I shall answer my noble friend Lord Blencathra's point on that in a minute—we have the Medicines and Healthcare Products Regulatory Agency, which can offer some advice as well. Beyond that, the National Institute for Health and Clinical Excellence can decide on the deployment.

That is not a case of policymakers passing the buck but of their basing policy on the evidence that comes before them. The Government's position, based on the advice of the Advisory Council on the Misuse of Drugs, is that cannabis in its raw form is a harmful drug and its use should not be encouraged. The advisory council has reported that there is clear evidence that cannabis has a number of acute and chronic health effects, and that prolonged use can induce dependence. Even occasional use of the drug can pose significant dangers for people with mental-health problems.

Baroness Meacher: The Minister refers to cannabis causing severe problems for people with mental health problems. I hope he agrees that Professor Curran is the top expert on cannabis in this country. She has done a lot of research on cannabis with a balance between CBD and THC, and on CBD with little or virtually no THC. She found that that form of cannabis is an anti-psychotic. She believes that it is likely to be able to be used as an alternative to some of the anti-psychotics currently used, which we know have really unpleasant side-effects. There is the prospect of an effective anti-psychotic based on the CBD element in cannabis, but we want that research to be encouraged, supporting the point that we need clinical trials. Professor Curran is very keen for this research to go ahead, particularly in the field of psychiatry. It is she who wants the rescheduling of cannabis from Schedule 1 to Schedule 2 in order to facilitate the research. That is the issue we want to crack today if possible.

Lord Bates: The Institute of Psychiatry, Psychology and Neuroscience has not taken a position. As we found out last week, medical opinions, as with legal opinions, fly effortlessly across the Chamber.

I want to make sure for the record that I have got something absolutely correct, as it is an important issue. I spoke about diamorphine in response to an intervention by the noble Lord, Lord Howarth of Newport. Diamorphine heroin has internationally recognised medical uses in UN drug conventions and has UK marketing authority. I was therefore not too far off the mark in what I said, in the sense that it underscored the point that there is a process which we go through and there are conventions to help us.

5.30 pm

The noble Baroness raised some specific cases. As a politician, I often find individual stories and experiences compelling. As a Member of the other place, along with my noble friend Lord Blencathra, I would often hear policymakers telling me one thing and then see people coming into my surgeries who were telling me something very different, so I find anecdotes a great help in understanding broader issues. I cannot find in my notes the name of the young boy with Dravet syndrome whom she mentioned.

Baroness Meacher: Jayden.

Lord Bates: There was a video, which I would be keen to see. Perhaps the noble Baroness could send me the link or I will happily sit down and watch it with her. During the Bill's passage, we have tried to have meetings with all interested Peers. We have a meeting

[LORD BATES]
on health and education on I think 7 July. Notices will be put out to all parties, but that would be a good opportunity for people to come forward. I am thinking particularly of my noble friend Lord Blencathra, who gave us his personal experience of living with multiple sclerosis and its effects. The point about the alternatives might usefully be made at that meeting if he can attend, as I hope he will. As I say, details will be on their way.

The advisory council has reported that there is clear evidence that cannabis has a number of acute and chronic health effects, which prolonged use can bring about. That is why the trials are important and why Sativex went through that process. The position is that it can be prescribed by a doctor, after the Medicines and Healthcare Products Regulatory Agency issued a marketing authorisation.

I do not know whether I have failed the test but the noble Lord, Lord Rosser, and the noble Baroness, Lady Hamwee, set a pretty low hurdle as to whether the Government's position had changed since last Wednesday. Policy used to change pretty quickly under the previous coalition Government, but now it is a little more set out. Our position is our position but generally, as matter of policy, we have to remain alert and open to the medical evidence being brought forward. The correct channel for that is though the advisory council, which obviously draws on a broad body of research and evidence. I am grateful to the noble Baroness for giving us the opportunity to explore that issue again and, with that additional assurance of a meeting specifically on health matters to give Members of the House an opportunity to talk to those making the decisions, I ask her to consider withdrawing her amendment.

Baroness Hamwee: My Lords, I cannot be disappointed because my expectations were not high. The Minister has been very generous, particularly on the Modern Slavery Bill, in holding meetings that included people from outside the House. I wonder whether we could bring into that meeting some who can speak much more coherently on these issues than I can. I do not ask the Minister to commit himself to that now, but perhaps I could put it in his mind.

I am grateful for the support for the underlying issue from the noble and learned Lord. I have often been asked about the high points of my career in this House and I have said that perhaps the highest of them—this shows what a rotten politician I am—was when, on a Bill on family law reform, the noble and learned Lord said from the Dispatch Box of one of my amendments to his Bill, "The noble Baroness's drafting is better than mine". That really was the pinnacle of my achievements in your Lordships' House.

I am delighted that the noble Lord, Lord Blencathra, has found a drug which suits him but, as I think he recognised, these are personal matters. I am quite puzzled as to the apparent differences between the physiologies of Britons—we are by no means a homogenous race—and those of people living in other parts of Europe. Clinical research is of course important and that is very much at the heart of this proposal, as the noble Baroness, Lady Meacher, said. I may have used this phrase already but Professor Curran said that research involving Schedule 1 drugs is "a massive uphill struggle", for the reasons of time, cost and practicality mentioned in her report. Yes, Sativex is recognised but its expense, not its effectiveness, is the issue. The noble Lord, Lord Howarth, mentioned Bediol, which I think is about 10% of the cost of Sativex. Perhaps this goes against my street credibility but it is important to say that I have in mind boring pills, not getting high from a joint. I want to make that quite clear.

The issue comes down to what is harmful. Skunk is harmful and I do not want to see people continuing to be driven to it, or having to find ways of getting the drug that helps them from outside this country. As I said, my expectations were not high but I am very grateful to noble Lords for contributing as usefully as they have, and at greater length than we did previously. I certainly look forward to discussing the matter with the Minister and his colleagues from the Department of Health pretty soon because whatever happens with an amendment to the Bill, the issue has to go forward. Having said that, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 1 agreed.

Amendment 3

Moved by ***Baroness Meacher***

3: After Clause 1, insert the following new Clause—

"Republic of Ireland: impact assessment

(1) The Secretary of State must conduct an impact assessment of the Republic of Ireland's Criminal Justice (Psychoactive Substances) Act 2010.

(2) The Secretary of State must publish a report setting out whether or not the impact assessment under subsection (1) justifies the commencement of this Act in its current form."

Baroness Meacher: My Lords, I shall also speak to Amendments 109 and 114, which propose that the Bill should be implemented only if an impact assessment of a very similar ban introduced into the Irish Republic in 2011 is undertaken, and a report is issued setting out whether the assessment justifies the commencement of this Bill. The objective against which the Irish Act should be assessed must surely be a reduction in the use of dangerous psychoactive substances and the harms caused by them to the Irish population. I am sure that the Government's aims in introducing this Bill are along those lines, or something similar, but perhaps the Minister could confirm that point. I hope that will not be a problem.

I certainly believe that the Government's motives in proposing the Bill are entirely honourable. I have no doubt about that. Ministers want to see a reduction in deaths and injuries to young people resulting from the use of psychoactive substances. I am absolutely on the Government's side in terms of these aims. I would support the Bill wholeheartedly if the evidence showed that the ban would work as intended. I therefore hope that this proposed new clause will be regarded as entirely uncontroversial, and I propose it as a helpful contribution and not as some wrecking amendment. We are very fortunate to have what must be regarded as a pilot for the Bill right next door in Ireland, where an Act has been in place and operational for four

years. They have had four years of experience since their Act became operational. I therefore propose this clause as a helpful contribution.

The BBC has produced firm evidence that the Irish ban is not working. The EMCDDA also has concerns about the situation in Ireland. It talks about the levels of use of legal highs among young people. The average across the EU for 15 to 24 year-olds increased from 5% to 8% from 2011 to 2014, but the figures for Ireland are 16% in 2011 and 22% in 2014—the highest rate in Europe, despite the blanket ban introduced in 2011. I understand that there is a degree of uncertainty about the precision of those figures, but it would be sensible to be absolutely clear what has happened to use of and damage from these psychoactive substances in Ireland before we move ahead.

The other point is what has happened to the levels or numbers of deaths and serious injuries in Ireland following the introduction of that Act. Whatever the figures, we need to take very seriously the comments of the deputy head of the Drugs and Organised Crime Bureau in Ireland who, as I understand it, has said that the ban has failed and that they have not been able to operationalise it because of definitional problems. They have not got off the starting blocks, let alone explored whether the ban might work in other respects. As I mentioned at Second Reading, the experience in Poland of a blanket ban on psychoactive substances has coincided with an increase, rather than a decrease, in the harm to young people. A concern in Ireland, identified by the BBC, has been about whether they can determine if a particular substance is psychoactive or not. The noble Baroness, Lady Bakewell, mentioned this earlier. As a result of that problem, it seems that Ireland is considering moving back to its Misuse of Drugs Act. I find that profoundly distressing because of my absolute lack of respect for our Misuse of Drugs Act, particularly in relation to consumption by children and young people and their criminalisation.

The Bill also seems to have definitional problems which could undermine it catastrophically. For example, Clause 2(1) defines a psychoactive substance as one that is "not an exempted substance". For the latter, we turn to Clause 3 and Schedule 1. We see that alcohol, nicotine products and caffeine are exempted, but only if they do not contain a psychoactive substance. However, these are psychoactive substances; how can they not contain a psychoactive substance? Maybe the Bill intends to say that substances such as alcohol should not have any other psychoactive substance within them. If so, the Bill needs to make that clear. How on earth can we justify exempting a substance such as alcohol, which is profoundly psychoactive and dangerous, just because it might have some relatively marginal other psychoactive substance within it?

This confusion perhaps illustrates the utter nonsense—a word which I use very carefully, having thought about it for a long time first—which runs through our drug laws generally, of exempting dangerous psychoactive substances while banning much safer ones. Some noble Lords have referred to cannabis as a dangerous substance. I would completely agree that skunk, high THC cannabis, is dangerous but there are other forms which are absolutely not. Professor Curran is clear about that and certain forms of cannabis can, indeed, be good for you.

Another definitional problem relates to food. Apparently, a food is a substance which is, "ordinarily consumed as food" and would be exempt. However, what about a food containing a psychoactive substance which is only consumed by rich people or an ethnic minority and not ordinarily consumed as food? Rudi Fortson QC raised this and many other issues with me and questioned how a court could decide on whether a food was a food or not, depending on who ate it. There is a genuine problem there. From paragraph 10 of Schedule 1, it seems that a food is exempt if it contains a psychoactive substance which occurs naturally in the product and which is authorised by an EU instrument. Have the Government thought through all the foods in which a psychoactive substance—using the Government's sweeping definition—naturally subsists but which might not be covered by an EU instrument? There may well be eastern, or other different, foods which would not be covered. For example, do flavourings and spices, which are obtained by a process of extraction and widely used in food, satisfy the expression "naturally occurring" in the substance?

5.45 pm

Mr Fortson argues that the definition of a psychoactive substance in Clause 2(2) is far too wide. It includes all substances which affect the person's mental functioning or emotional state. We know that Ireland has been unable to apply its blanket ban because of definitional problems. Will the Minister take this issue back and explore the potential for problems in the Bill? Mr Fortson provides other examples of such problems but I do not want to test the patience of the House too much so I will send some of them to the Minister for his consideration. I have, perhaps, said enough to justify asking the Minister whether he will revisit the issue of the definition of a psychoactive substance.

On a separate issue, we have evidence that banning substances does not generally lead to a drop in their use. I am grateful to Release and Transform for their briefing which pointed out that, in the year following the ban on the NPS mephedrone, use of the drug increased from 27% to 41%. Use of mephedrone only began to decrease once the availability and purity of cocaine and ecstasy were restored. In other words, the overall use of comparable drugs is not, apparently, affected by bans and changes in circumstances. Young people simply switched from one to another depending on purity and availability.

There is no reason to believe that this ban will lead to an overall drop in the use of dangerous psychoactive substances. I am sure the Minister and noble Lords would agree that is the essence of what we are trying to drive at. The Home Affairs Select Committee concluded, following their review of the drug policies of 11 countries, including pretty severe ones such as Sweden and more relaxed ones such as the Netherlands, that the toughness of drug policy does not appear to have a significant influence over the use of controlled drugs. Policy needs to be guided by this fundamental, evidence-based truth.

[Baroness Meacher]

The EMCDDA has warned that a blanket ban will push NPS into the grey marketplace, that is, online and on to the darknet—whatever that is; I do not fully appreciate these things. The ban will also drive young people back to the drug dealers where they will buy traditional controlled drugs. I am sure the Minister will agree that both drug dealers and the darknet are even more dangerous sources of drugs than head shops. I would be grateful if the Minister will comment on this point in his response. He referred earlier to the dangers of people going to head shops to get drugs. We will talk about this later, but I want to make the point that head shops are businesses which want to make profits. Therefore, they are going to sell psychoactive substances but not dangerous ones. The web and back-street dealers are where the dangerous stuff is purchased. Much as we do not like head shops, they can be licensed and controlled by trading standards and the police. If that is done, and done well, I hope the Minister might think about whether there is some way to retain the market which exists in visible premises rather than driving it into the back streets and on to the web. I sincerely believe that would be a very dangerous move.

I end by referring to the European Commission's regulation on new psychoactive substances, which was proposed on 17 September 2013 and passed by the European Parliament on 17 April. We need to learn from the work done by the European Commission in producing that regulation. In proposing this new clause, I am not suggesting we should have no legislative response to new psychoactive substances—I would not take that view at all—but we need evidence-based policy designed to reduce the harms caused by the risk-taking behaviour of too many young people. After all, as I say, these young people do not want to kill themselves or harm themselves. If we give them the right environment and the right information, we can keep them a lot safer than we are doing today or than we will do under the Bill. I beg to move.

Lord Howarth of Newport: My Lords, I find it baffling that the Government, presented with the evidence from the two laboratory experiments that have taken place in recent years, in Ireland and in Poland, have none the less persisted in their approach of introducing a blanket ban on the supply of new psychoactive substances. As the noble Baroness, Lady Meacher, has just told the Committee, in the four years since the ban was introduced in Ireland, following an initial dip in the use of psychoactive substances and a rapid disappearance of head shops, consumption of new psychoactive substances actually rose to higher levels than before. The Irish, it is reported, are the largest consumers of new psychoactive substances in Europe. That has followed the implementation of a ban essentially the same as the Government are now proposing to introduce in this country.

Similarly in Poland, three years after the ban was introduced, the number of what the Poles call "poisonings" has risen to above the level before the ban. The evidence is that, in the face of a ban and of the closing down of the sources of supply that users were previously availing themselves of, users have resorted to more obscure and more dangerous suppliers online. The European Monitoring Centre for Drugs and Drug Addiction has confirmed that. It also seems highly likely that, with the greater difficulty of obtaining new psychoactive substances, more people taking drugs will have resorted to taking controlled substances and, indeed, may have become poly-drug users.

There seems to be some very significant evidence available from the experiences of bans in these two countries to indicate that the Government's approach is fundamentally misconceived. The Minister has insisted that the approach of the Home Office is always to base its policy on good science, good evidence and expert advice. How come then that, in the face of this evidence, it is persisting with the policy that it is presenting to the House in this Bill?

Baroness Hamwee: My Lords, I very much support what has been said on this amendment and, indeed, the amendment itself, in particular because we want to avoid driving those human beings who will go on using drugs underground. One small point I want to mention, before I forget about it, is that the impact in Northern Ireland should be looked at, because I wonder what has been happening across the border. The report by Mark Easton yesterday, to which the noble Baroness, Lady Bakewell, referred, revealed the difficulty that the police have in proving that a substance has a psychoactive effect. That seems to me to be very much at the heart of this, with only four successful prosecutions in five years.

The expert panel talked about "robust" definitions and the Constitution Committee of your Lordships' House reported, I think yesterday, on the need for certainty. The Joint Committee on Human Rights probably does not have its full membership yet, but no doubt it would have taken points on the importance of certainty in legislation—it did so for other legislation, particularly the recent anti-social behaviour Bill. The Constitution Committee said:

> "The Bill inevitably exists in tension (at least to some extent) with the principle of legal certainty since its *raison d'être* is the regulation of activities in respect of substances that may not currently exist and whose nature and composition cannot readily be prescribed in advance with any accuracy".

I thought that was very honest of it. However, it then went on to comment about not making,

> "unacceptably broad inroads into the principle of legal certainty".

We may come on to some of the detail of that on later amendments, but it seems to me to be very relevant to the point that the noble Baroness, Lady Meacher, has made with this amendment.

A proper, independent assessment would mean that we had advice that was not from those defending their own scheme, which can sometimes happen. I hope that we can hear sympathetically from the Minister on this, because I have absolutely no doubt that the noble Baroness will pursue this matter throughout the passage of the Bill and she will certainly have support from these Benches when—not if—she does that.

Lord Tunnicliffe (Lab): My Lords, somebody has to give the Government some support on this. Amendment 3 talks in the first proposed subsection about an impact assessment and it being used to justify the commencement of the Act. I do not understand Amendment 109, but

Amendment 114 is clearly about delaying the commencement of some provisions of the Act until the report of that assessment has been considered. Amendments 3 and 114 between them would delay the commencement of the Act.

Although the balance was a little uncomfortable, we had a very good Second Reading, in which it was clear that the central debate was about whether you believed banning produces a benign effect or not. That was the essence of the debate, as it has been of the debates we have had today. The position of the Government is that effective bans are benign in their effect; the position of Her Majesty's Opposition is that effective bans will have a benign effect; and the position of the Liberal Democrats was—at least until the election, we thought—that effective bans had a benign effect.

Baroness Hamwee: My Lords, I wonder whether I can quickly try to squash this. A clamp-down on new psychoactive substances, which was in our manifesto, is not the same as a complete ban.

Lord Tunnicliffe: I thank the noble Baroness for that clarification. As I say, we are divided between those who believe that banning has a benign effect and those who do not.

This is a simple, fairly narrow Bill to close a loophole in the 1971 Act which is growing exponentially. We believe that it is appropriate that this loophole should be closed urgently and that there is sufficient evidence to proceed to close it with this Bill, which we believe should be introduced as soon as reasonably possible. We believe new psychoactive substances are not safe and we want them to be illegal as soon as reasonably possible.

6 pm

Lord Bates: I thank the noble Baroness for introducing this amendment. I am conscious that if I had had the opportunity it would be have been impolite to have sought the advice of my noble and learned friend Lord Mackay on the amendment because, of course, it has the heading "Republic of Ireland: impact assessment", and goes on to tie us to a piece of legislation. The problem with that is thinking back through the history lessons and what the Anglo-Irish treaty and the creation of the Irish Free State in 1921 might have made of that strong connection. It is probably more uncomfortable for the Irish than for us, but it is an interesting tool to link their legislation with ours because we are two sovereign countries and two different systems. We approach a common problem but understandably, as we do on many different things, may choose to do so in different ways—not so, of course, when it came to this piece of legislation.

I will set out the legislation in the Republic of Ireland a little because in the headline of this debate we are invited to say what assessment Her Majesty's Government have made of the effect of introducing a ban in the Republic of Ireland. That assessment was set out in the expert panel's review last year since the ban in Ireland came into force in 2011 following the 2010 Act. The expert panel went away and evaluated that. I have a long section in my speaking notes which I will try to avoid reading out and I will just cite it. Page 38 of the expert panel's report sets out the basis by which it concluded that there was evidence that this was the model which should be followed. In addition to that on page 38 there was also the Scottish Government's—

Baroness Meacher: It may be relevant to note on the record that when the BBC journalist began interviewing a very senior official, that official said, "Oh yes, the ban has been going well", and it was only through rather expert probing by the BBC journalist that gradually the truth came out that the ban was not working at all as anticipated. So in terms of an expert panel from Britain going over, I think we need to be aware that the Government need to do more work on Ireland.

Lord Bates: I will come to that in just a minute because it is a specific point which the noble Baroness, Lady Bakewell, raised in the earlier debate on the issue of the "Newsnight" report, of which I have read a transcript although I did not actually catch it last night. I want to address some of the points in there. What I am going through is the methodology by which we arrived where we were. Taking the amendment at its word, we are effectively deciding whether we should delay the progress of the UK introducing the new psychoactive substances legislation and the blanket ban in order to undertake an assessment of how effective the 2010 Act has been in the Republic of Ireland. Our view on that is no, because that assessment has already taken place in the expert panel review and—

Lord Howarth of Newport: The Minister invited us to look at page 38 of the expert panel's report, where it recognised that there were some risks. It said that:

"A precautionary principle would now be used rather than one of acting proportionately in response to evidence of harm",

and went on to suggest that very significant difficulties would attach to this approach. It was by no means unambiguous in its recommendation of the blanket ban.

Lord Bates: Let me try to avoid the ambiguity in it. The expert panel recommended that there should be a blanket ban. A blanket ban in the Republic of Ireland had been operating for three years, so it had had an opportunity to look at that. It looked at New Zealand and what had been happening there as another example. I can also point to the report in March from the Health and Social Care Committee of the National Assembly for Wales, in which recommendation 13 of its inquiry said:

"The Committee welcomes the Home Office's expert panel's recommendation of a ban on the supply of NPS in the UK, similar to the approach introduced in Ireland".

I also have a quote from paragraph 4.23 of the report from the similar expert group set up by the Scottish Government:

"The Group agreed that there are a number of benefits to the Irish model, which could strengthen the tools that are currently available and being used by agencies to tackle NPS supply in Scotland".

What I am doing here is piecing together the information to show that we did not whistle this out of thin air.

[LORD BATES]
Some serious people—whether you agree or disagree with them—looked at what was happening in Ireland, and this was their conclusion on which they based their recommendation.

To the next point, I am very much with the noble Baroness. I happen to think that one of the things with which we got close to this, mentioned by the noble Baroness, Lady Hamwee, was the Modern Slavery Act. It is without doubt the piece of legislation in either place with which I am most proud to be associated. One reason why was because of the process in which it actually engaged. It listened to the people who were on the ground, it talked to people, it talked to the experts, it framed legislation, it had pre-legislative scrutiny and there was an ongoing system of monitoring. Also, the Government committed themselves to proper post-legislative scrutiny; we will need to look at that. Should your Lordships and Parliament determine that the Bill gets on to the statute book, in our plans, although there is no set time for it, in a period of three to five years and certainly within the lifetime of this Parliament there will be some post-legislative scrutiny.

The other point which I make in passing here is that, if our friends in the Republic of Ireland were to undertake an impact assessment of our politicking to tackle this, it might not look so sharp. They would say, "Well, what has the UK been doing popping around with temporary banning orders, and every time they tweak one molecule the perpetrators and the traffickers simply change the packaging and change the molecule? What a ridiculous system that is". In a sense it can go both ways and we must be conscious of that critique of us.

Lord Tunnicliffe: Can the Minister go back to his point on post-legislative scrutiny? I think the House at a subsequent stage may feel much more comfortable with this Bill if he were able to make some time commitment about when that would take place. Clearly he cannot now but I would be grateful if he would consult colleagues and see if he can be a little more specific at a future stage.

Lord Bates: I am very happy to do that. We are in Committee and this is where the Government listen to the arguments—

Lord Howarth of Newport: Should the Irish Government take post-legislative scrutiny of their legislation, will the Minister take that into account?

Lord Bates: Of course we will take it into account, but should we necessarily stop taking our own advice and implement what has been recommended to us until that time happens? Of course this is a fast-moving world in which there are very devious forces—"ingenious forces" is the correct term—using their dark methods to perpetrate these drugs, which are blighting the lives of communities. That was a key message that came out of the "Newsnight" documentary. Here was a community that was absolutely blighted. Unless I actually misread the transcript that I saw, the people there certainly were not saying, "Hey, listen, let us just have a free-for-all". They were saying, "Where are the Gardai? Where are the police? We want them to come down, because these drugs are running rife in our community".

Of course, there will always be chancers—we will come up with one answer to this, then people will come up with something in response, whether it is on the dark web or elsewhere. One of the wonderful things about this House is that the noble Baroness, Lady Meacher, who is an acknowledged expert in drug policy, mentioned the dark web, while behind her sits the noble Baroness, Lady Lane-Fox, who can offer her a tutorial on the dark web if required. The point is that we are all moving in the same direction.

I am conscious of the figures that have been put out in the Eurobarometer poll, which talked about the level of usage. This figure should be viewed with caution, because: the sample for each member state is relatively low, at 500 respondents; the questions used have changed over the years, making comparisons over time less reliable; and the Eurobarometer survey tends to overestimate usage when compared to more robust surveys.

As I touched upon earlier, we can say categorically that prior to the introduction of the Irish legislation in 2010, 102 head shops were operating in Ireland. After the legislation came into force, the trade virtually disappeared, and the Garda drugs unit told the BBC just last week that the head-shop trade has gone. Furthermore, no Irish-domain web pages selling NPS are still in operation. Those are examples of concrete progress. They may not address all the points, but I hope that they might demonstrate to the noble Baroness that the Government have considered this.

Baroness Meacher: One has to think about whether the demolition of the head shops is a positive or a negative when you consider that the young people will have moved from the head shops, which do not sell very dangerous substances, into the dark web and the back streets, where they will buy very dangerous substances that are completely unknown to them, which probably do not have any kind of labelling at all.

Lord Bates: We can debate what benefit labelling that says "Plant food" or "Not for human consumption" is. The fact is that the head shops are absolutely at the heart of this problem. I, for one, will be very happy if they are removed from our high streets, as will the Local Government Association and countless parents who are worried about the availability of drugs—earlier I gave an example from Canterbury. On that basis, I hope that the noble Baroness will consider withdrawing her amendment.

Baroness Meacher: I thank the Minister for his reply. Obviously, like the noble Baroness, Lady Hamwee, my expectations are not massively high at this stage of proceedings, but I look forward to discussions with the Minister between now and Report on some of these issues. I have a great regard for the Minister with regard to his willingness to listen and certainly to learn from professionals who, with any luck, will be able to come to a meeting with us. On that basis, I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Baroness Meacher***

4: After Clause 1, insert the following new Clause—

"Monitoring

Following the commencement of this Act, the Secretary of State must publish a report annually setting out the impact of this Act, including on deaths and other harms caused by all controlled and banned substances."

Baroness Meacher: My Lords, Amendments 4 and 6 seek to ensure that following commencement of the Act, the Government will undertake an annual impact assessment of the Act—as the Minister has indicated he might be willing to do anyway—including an assessment of,

"deaths and other harms caused by all controlled or banned substances".

The important points in that sentence are "all controlled", under the Misuse of Drugs Act, and "banned substances" under the Bill. Of course there is always an interrelationship between those two groups of substances, as I mentioned in an earlier debate. In addition, the Government would have to,

"publish a report annually setting out the impact of this Act"—

again, including information about the impact on the number of deaths and other harms caused by all these controlled and banned substances.

The point behind these amendments is that, as I mentioned earlier, we do not have two separate markets: one for substances controlled under the Misuse of Drugs Act 1971 and another quite separate one for psychoactive substances that will be controlled under this legislation. The reality is that once substances are illegal, they join a single market and are purchased from the same illegal drug barons or from the web. This is an absolutely crucial point, which runs through a number of these amendments. Social media are also absolutely vital in this. It is through social media that young people immediately communicate about a banned psychoactive substance or something new arriving from somewhere, or that a traditional drug such as ecstasy has suddenly become more pure, and the young people will all rush into that area of the market rather than moving from one market to another.

6.15 pm

For those of us with a substantial concern about the unintended consequences of drug policies in this country and across the globe, this is a profoundly important amendment. The point is for the Government to begin to move towards a rational, evidence-based drug policy. If they do that, it will be the first time in 50 years that any Government will have done it. That is a fairly remarkable point for anyone in this House to make, but it happens to be true. In that sense, how can the Government not do what this amendment suggests? It is interesting that the Minister indicated that perhaps this is one area where the Government might be willing to move towards us. Let us hope that that happens.

It may be that in view of that offer from the Minister, I do not need to continue with this speech. I was going to give examples of how these things happen, but if we are going to have a dialogue about a genuine impact assessment of the Bill when it becomes law, I hope that we are all on the same page at this point. On that basis, I beg to move.

Lord Mackay of Clashfern: My Lords, I just wonder whether it would be for the Secretary of State to monitor this. I would have thought that the importance of this topic, particularly in the light of the concerns that the noble Baroness has expressed, would merit post-legislative scrutiny by a committee—usually a Joint Committee of both Houses—rather than by the Secretary of State. There is room for that sort of consideration to be kept in mind. I think that the Minister has given at least some encouragement to that and I certainly think that that would be a good thing to do, rather than have the Secretary of State in a sense being his own monitor in this area. It is better that it should be independent, in the sense of being done by Parliament.

Lord Howarth of Newport: My Lords, I suggest that post-legislative scrutiny would be assisted if the Home Secretary, on behalf of the Government as a whole, were to make an annual report to Parliament along the lines that the noble Baroness, Lady Meacher, has suggested. I propose that an annual report from the Government as a whole should cover the three principal strands in the drug strategy introduced by the coalition Government in 2010: reducing demand, restricting supply and building recovery.

I hope that the annual report would begin with a presentation of the facts, in so far as they had been ascertained by the Government, and that it would cover developments in the usage of drugs of all sorts: controlled drugs, psychoactive substances under the terms of the Bill, exempted substances under the terms of the Bill, and prescription drugs of which there is abuse. I would also want to see a breakdown by age groups and by regions. We need to know about consumption patterns—whether the consumption of one drug is being displaced by consumption of another; what new drugs are available to consumers in this country; what the most popular ones are, and the ones about which there is the greatest cause for anxiety. We need to know about developments in purity, potency and toxicity.

I hope that the Government would advise Parliament on the development of markets in drugs and tell us what us has happened to the head shops, year by year. Maybe they will all close down quickly, as in Ireland. If so, I hope that the Government would then tell us where people are finding their drugs—perhaps from online sources such as the surface web, but perhaps from the grey net or the dark net. All this is usefully discussed in a preliminary way in the latest annual report from the European monitoring centre. But 18 months ago, the European monitoring centre reported that there were 651 websites selling drugs to Europeans. We need to know what the evolution of this online market is and about the shifting locations. The noble Lord, Lord Bates, told us just now that, following the legislation in Ireland, Irish web-based domains were closed down. But we know that at the same time the consumption of new psychoactive substances has risen in Ireland. Where, then, are Irish consumers obtaining their drugs? We would need to have that equivalent

[Lord Howarth of Newport]
information here. We need to know about patterns of social media use relevant to the drugs trade and what is happening in terms of street markets and gangs.

I hope also that the Home Office would report to Parliament on the drugs situation in prisons, which is an extremely disturbing situation, one understands. Which drugs are most in use in prisons? How have they been obtained? The Home Office should report on any issues there may be about corruption in the National Offender Management Service; on the effectiveness, as it believes it to be, of the means it is using to try to reduce drug consumption in prisons; and on the effectiveness of rehabilitation. Very importantly, the Home Office needs to report on the question of continuity. What happens to prisoners when they leave prison? Do they continue to have the benefit of rehabilitation services? What is the relapse rate? The noble Lord, Lord Ramsbotham, told this House, perhaps a couple of years ago, that the Chief Inspector of Prisons had reported that in Her Majesty's Prison Oakwood it was easier to obtain drugs than soap. We need to know what progress the Home Office and the Government as a whole are making with regard to prisons.

We should be advised on the Government's dealings with the Advisory Council on the Misuse of Drugs—what advice they have sought from the council, what advice they have received from the council, what advice they have accepted from the council and what advice they have rejected from the council. In the case of rejection of the council's advice, I hope that the Government would offer a reasoned explanation as to why they have declined to accept the advice that the ACMD has given—as has occurred on a number of occasions in recent years.

We should be told what drugs have been newly controlled under the Misuse of Drugs Act regime and about how, in practice, the relationship between the various relevant regimes—the MDA regime and the regime created under this legislation in respect of psychoactive substances and exempted substances—relate to each other, and whether it is effective co-ordination or the Government see problems in having at least three different systems of regulation operating concurrently. I hope that we would hear about the dealings of the Government with other consultees and partners: people with academic expertise, the voluntary sector, non-governmental organisations and other expert organisations.

We should be provided with information about the state of forensic services, about which the Home Secretary has recently expressed her own personal anxiety. We will come a little later in our proceedings to talk about the possibility of a network of testing centres. Do the Government think that that is desirable? If so, what progress is there in making testing facilities widely available around the country? We will need a report on progress in education and training, but, again, we will have an opportunity to discuss those issues more extensively a little later.

I hope that we would hear about the impact of drug usage of all kinds—controlled drugs, psychoactive substances and the exempted substances—on health, society and the economy. The European monitoring centre has particularly asked the Government to monitor acute drug-related harms. Again, I would expect to see their response to the EMC reflected in the report. Of course we would want to know about the progress of treatment and engagement strategies with different groups of consumers or people at risk.

We should hear a report on enforcement and the strategies of the NCA, the police and Her Majesty's Revenue & Customs. If the online trade is thriving, and if that is becoming the principal source of supply, we should be advised what percentage of postal packages, for example, the system is able to check for drugs. We should also know what percentage of shipping containers the Government are able to inspect.

Surveillance will be another important component of the report. What powers are the Government using to ascertain what is going on in the drugs trade, particularly the online trade? We need to know the statistics on the usage of data-search powers and have an assessment of their effectiveness. Perhaps a little later, the Minister will give us some preliminary thoughts on how the enforcement regime that the Government are proposing to create through this legislation will relate to the new surveillance regime, which we understand the Home Office will introduce later in the year. Undoubtedly, these things will need to be understood in conjunction.

The Bill creates powers of prohibition notices and prohibition orders, and we would want to hear about the incidence and effectiveness of the use of those powers. We would want to know the number of seizures and successes, but also about the challenges that the Government identify. The new stop-and-search powers created in the Bill are another appropriate subject for report and we will debate those towards the end of Committee.

We would need to hear about the Government's progress in dealing with the problems of money laundering and the extent to which the proceeds of the drugs trade are thought to be funding terrorism. We will need to know about the costs of enforcing this regime—not just to the NCA, the police and HMRC but to the Financial Conduct Authority, which I think has lead responsibility for dealing with money laundering; the criminal justice system, which, for example, will incur costs in hearings in the attempt to establish definitions of psychoactive substances; and the Foreign and Commonwealth Office. At Second Reading, the Minister was kind enough to say that he would follow up the point I made previously, that when mephedrone was banned, the Government did seek to come to an understanding with the Chinese authorities so that they would facilitate the effective interdiction of supply. However, it appears that that did not work very well because production shifted to India. We will want to know what part the Foreign Office is playing in assisting the Home Office to make a success of its strategy.

The local government dimension is hugely important. The Minister has explained that the Government are acting in response to pleas from the Local Government Association, and we all understand how very unpleasant and difficult it is for people if they have head shops in their neighbourhoods and the anti-social behaviour that may be associated with that. But there will be

costs for local government in training and maintaining in the field the numbers of trading standards officers that are going to be needed and, I dare say, in prevention, more youth workers. Again, it would be useful to know what is going on there. The Department of Health will have a whole complex story to tell.

I think that the Government would owe it to Parliament to provide in the annual report a cost-benefit analysis of the overall strategy: have they found, with experience, that the policy is working as they hoped? How does it need modification? What do they see as the way forward?

I acknowledge that all this may make for quite a long report, but I think that it would be very interesting and worthwhile and a very useful form of accountability of government to Parliament.

6.30 pm

Lord Blencathra: My Lords, I am sympathetic to the noble Baroness's amendment. Of course, we need some monitoring information and we need information around effectiveness, but I am just not sure that the Home Office or a government department is the right body to produce such independent information. It may be, but I have my doubts.

My main concern about the noble Baroness's amendment is the timescale. Having listened to the noble Lord, Lord Howarth, I am now very concerned about the timescale if the Government, or anyone else, attempted to report on the wide range of things he has suggested. I am not being facetious, but it struck me that compiling a report of the length that the noble Lord wants would probably end up taking longer than the new sexual abuse review by the distinguished New Zealand judge. I do not mean that as a facetious comment or to diminish the work she is doing.

The noble Lord, Lord Howarth, and many others in this Chamber have some experience in government. I think we know that if a government department were to produce a report within 12 months, it would have to be approved by the Cabinet at month 11. This is a territorial Bill and would need to go round all the territorial Governments in months 9 to 11 to be checked by them. It would need to go round the UK government departments in Whitehall, probably in month 8 or 9, to be amended by them, which means that the Minister in the Home Office, or wherever, would need the first draft in about month 6, which would mean that civil servants would start writing it in month 3.

I say to the Minister: if the Government have to produce a report, preparing one within 12 months of the Act would not be sensible. It would be impossible—no, it would not be impossible, but it would not include a fraction of the information that one would want. There may be merit in the Government producing a report, but not of the length that the noble Lord, Lord Howarth, has suggested and certainly not within the 12-month timescale.

Lord Rosser: We have an amendment in this group and it is not about post-legislative scrutiny. It calls for the Secretary of State to publish an annual report on new psychoactive substances and sets out some of the information that must be included in the report.

There is currently a real lack of data collected and published on new psychoactive substances and their impact. For example, the first indication of a new drug tends to come from a hospital admission. If this happens in the United Kingdom, the National Poisons Information Service is informed and it then advises the European Monitoring Centre for Drugs and Drugs Addiction. The EMCDDA tells the National Poisons Information Service of drugs detected elsewhere in Europe. However, the Home Office keeps its own lists, the main one being the forensic early warning system, and, to date, successive Ministers have been unable to explain the relationship between the EMCDDA list and the Home Office list, which suggests that data are not being collected and published in a consistent or helpful way. Similar problems arise with monitoring drug-related deaths and overdoses. No proper data are collected on drug deaths as the data we have rely on examining countless records, which is why they are often incomplete and take years to publish.

There is a significant problem, too, with hospital admissions. The National Poisons Information Service collects new drugs but does not collect data on all drug-related overdoes. We do not know how many hospital admissions result from taking these new substances. Nor do we know in how many cases new psychoactive substances were a factor for those needing to access mental health services. Anecdotal evidence suggests that legal highs are a major factor, especially for adolescent mental health services.

In their response to the expert panel, the Government accepted the importance of information on new psychoactive substances and that it should be shared systematically at both a local and national level in a timely manner. However, the Government did not appear to accept the current inadequacies in the information, including those to which I have referred.

The expert panel said that, with the rise of in the availability of NPSs, coupled with possibilities for NPS market development via the internet, the UK drug scene had become increasingly complex and fractured, and that a number of information issues arose from this. These included,

"the difficulty for any one agency to keep to keep abreast of all the new developments … the acknowledgement that the Misuse of Drugs Act 1971 needs to be supplemented by other legislation has meant that more professional networks require information including trading standards … the current time lags involved between data collection and publication of data obtained by current networks mean these systems cannot be employed in the service of providing more timely early-warning-type information; and … the need to collect, analyse and distribute information in a more systematic and timely fashion to help inform policy and practice at both a national and local level".

Frankly, the Government's response did not address all these issues since there seems to be a view that the forensic early warning system's annual report can fit the bill. In its recommendations, the expert panel says:

"There is a need to establish prevalence, evidence and harms associated with NPS".

It suggests that we should:

"Develop detection and data collection tools across criminal justice and health services, and other relevant settings, for example, schools and universities".

A recommendation refers to developing,

"internet tools to monitor internet activity around NPS",

[LORD ROSSER]
and to the need to:

"Record health and social harms related to NPS by utilising professional networks and other early warning systems … understand local markets, including through headshops, retail outlets, prisons and local police assessment".

On enhancing the share of information on NPSs, the panel said:

"Sharing information at both local and national levels is essential in helping to achieve a reduction in the demand and supply of drugs and in promoting comprehensive and effective interventions".

It is fairly clear from the report of the expert panel that it does not think enough is currently being done in the area of the provision of information. The purpose of this amendment, as I said at the beginning, is to provide for the Secretary of State to publish an annual report on new psychoactive substances. The amendment sets out, in not quite so extensive a list as that of my noble friend Lord Howarth of Newport, some of the information that should be included in that report.

I hope the Minister will reflect further on this issue—the importance of information on NPSs—and the adequacy of the current information and the systems and methods by which it is provided. Our amendment gives the Minister the opportunity to do just that and I hope it is an opportunity she will take.

Lord Paddick: My Lords, I waited until this moment to speak because it seemed unfair to comment on the amendment in the name of the noble Lord, Lord Rosser, without his having spoken to it first. I have some sympathy with what the Labour Party is proposing, but I prefer Amendments 4 and 6 proposed by the noble Baroness, Lady Meacher, for the very reason that she articulated. The market for new psychoactive substances and that for other substances covered by the Misuse of Drugs Act cannot be treated as separate. The whole reason for the existence of new psychoactive substances is the controlling of other drugs. There would be no need for people to develop so-called legal highs if they could get the high legally from controlled drugs. It is essential that the annual report includes exactly what the noble Baroness proposes: an assessment of the impact on health and the social harms brought about by the Misuse of Drugs Act and this Bill.

The noble Lord, Lord Howarth of Newport, gave a long list of things that could be included in the report. If everything he suggested was included, it might not only put the Government off producing the report but put me off reading it or trying to wade through it. I agree with the noble and learned Lord, Lord Mackay of Clashfern, that post-legislative scrutiny of a Bill such as this by a Joint Committee of both Houses would be appropriate, but it should not mean that there should not also be an annual report, because things are changing so quickly. We have heard from other noble Lords about how different drugs come into mode and out again. We therefore need an annual assessment of whether the legislation is still fit for purpose.

Baroness Chisholm of Owlpen (Con): I am grateful to the noble Baroness, Lady Meacher, and the noble Lords, Lord Rosser and Lord Howarth, for setting out the case for their respective new clauses. In one way or another, these all require an annual report on the impact of the Bill, and we have covered a huge amount of ground. Let me say at the outset that good lawmaking absolutely dictates that all new legislation should be reviewed post implementation to consider its effectiveness, and this is no exception. We are committed to post-legislative review of all new primary legislation. I can therefore assure the noble Lords and the noble Baroness that the Government fully intend to carry out a review or reviews of this legislation, once implemented.

Of course, data are hugely important, and it is important that we take in all aspects of the Act. It is right that the evidence required to produce an adequate review of the Act is fully and carefully considered. However, it is really important to remember that, given the time lag of some of the key data sources, it is unlikely that any useful data will be available within the first year of the implementation of the Act. Such a review normally takes place three to five years after Royal Assent to allow for a rich source of data to be collected, particularly if we are going to collect the amount of data that I feel is important, as the noble Lord, Lord Howarth, suggested. Indeed, as my noble friend Lord Blencathra said, it takes time to collect the data. It is important for the departments to conduct a particular review to make sure that they have everything in place. Certainly, in this case, we would not want to wait three years to review this legislation.

Understanding the evidence for and against the different legislative options to tackle the growth of psychoactive substances was central to the terms of reference of the Home Office's New Psychoactive Substances Review Expert Panel, set up by the Liberal Democrat Minister Norman Baker. Alongside the expert panel's report, the Home Office also published an evidence review last autumn. This set out the available evidence at the time on psychoactive substances. The review examined the identification of new psychoactive substances, along with the characteristics of users and their motivations for using these substances. It also examined the market and the evidence of harms. The evidence review provides us with a good basis for understanding the extent of the market, the uses and the problems associated with new psychoactive substances, and for measuring any changes over time.

The noble Lord, Lord Howarth, also mentioned that it was necessary for a wide range of data to be collected on the prevalence of traditional illicit drug use and its related harms. While the evidence on psychoactive substances is less established, there are data on a number of previously unseen substances identified in the UK, as well as on the prevalence of the use of some types of psychoactive substances, related deaths and treatment demand. Of course, the monitoring of data, along with the way they are collected so that they can be strengthened to provide a more complete picture of the use and harms of psychoactive substances, will continue over the period until a full review is done.

6.45 pm

I would expect any such review to include the kind of information outlined in Amendment 105, to the extent that it is available, as well as examining more generally the workings of the Act, the current nature

of the psychoactive substances market and the present harms that we are seeing in the UK. Additionally, the advisory panel will of course be continually monitoring the harms presented by these substances in order to assess whether they need to be made subject to tighter control under the Misuse of Drugs Act.

As I have indicated, it is now an established practice for all new primary legislation to be subject to post-legislative review. Given that such reviews are now routine, I hope that perhaps the noble Baroness, Lady Meacher, and the noble Lords, Lord Tunnicliffe and Lord Howarth, will accept that we do not need to provide for this in the Bill. Even if a case could be made for such a provision, I would have strong reservations about the necessity for an ongoing requirement to publish an annual report, because of the problems that I have already stated. I will happily share with noble Lords our plans for the review of this legislation once they are further developed. Of course, I am more than happy to reflect on the debate between now and Report. With that, I hope the noble Baroness will be content to withdraw her amendment.

Lord Rosser: Before the noble Baroness tells us what she wishes to do with her amendment, I want to say that I do not think that the issues raised in Amendment 105 will need three years. They are about the collection of basic data, where we appear to have a distinct weakness, which was identified by the expert panel and was the subject of recommendations by that panel. Why do we need to wait so long to address an issue of concern to the expert panel; that is, the lack of data?

Baroness Chisholm of Owlpen: The noble Lord is right: I was rather remiss in not saying that I was sympathetic to his views on this issue, and I apologise. We will certainly consider it between now and Report.

Baroness Meacher: I just want to explore the point in Amendments 4 and 6 that, because there is only a single market that incorporates all the controlled drugs under the 1971 Act and psychoactive substances, post-legislative scrutiny will not make any sense unless it looks at the overall impact of this Bill. For example, what we can expect to happen is that if you ban synthetic cannabis, people will move straight over to the cannabis controlled under the Misuse of Drugs Act. If you ban a substitute for cocaine, people will move straight back to the natural cocaine, if you like, that is controlled under the Misuse of Drugs Act. In order to assess the impact of the Bill, it will be essential to look at the overall consumption of illegal, banned drugs and the deaths from those drugs. The deaths may move across from one type of drug to another, as would the harms and so forth. It is essential that the Government begin to look at this as a single, illicit market for banned substances. Does the noble Baroness agree that, therefore, post-legislative scrutiny has to look right across the piece?

Baroness Chisholm of Owlpen: I thank the noble Baroness for her points, and I agree with her. However, it is important that we do not tie the hands of the committee. It is up to it to review, going forward, and we have to let it decide what it feels is right.

Lord Howarth of Newport: I am not sure whether it is fair to ask the Minister this, but perhaps her noble friend sitting beside her will find an opportunity to comment. While I readily accept that it is unrealistic to expect the Home Office within 12 months to produce a report remotely of the range that I suggested, none the less over time the compass of the report should grow so that it does address itself on behalf of the Government as a whole to that range of issues and concerns.

I wonder whether some of the difficulty that the Government may find in producing an annual report on their policies in relation to drugs and how they are proceeding may be because there have been such extensive reductions in staffing in Whitehall that it is very difficult for departments to get this work done. It would be helpful to have some comment on that and on the structure within government whereby the Home Office works in co-ordination with other government departments in the broader strategy to deal with the problem of drugs, to which I understand that Government are committed.

Baroness Chisholm of Owlpen: I thank the noble Lord. I have a lot of sympathy for what he said, and I think that it is right for us to go away and reflect on this and come back at Report. Of course, the Home Office has every intention of reviewing the Bill once it is implemented. We just do not feel we should put such a commitment in primary legislation. It is in our interests to consider the impact of this Bill and how the psychoactive substance market is changing to ensure that both our legislative and non-legislative responses are as effective as possible. Having said that, of course we will go away and think further on this.

Baroness Meacher: My Lords, I thank noble Lords who contributed to this debate, particularly the noble and learned Lord, Lord Mackay of Clashfern, for his helpful proposal that there should be post-legislative scrutiny by a Joint Committee. I hope that that can come about. I agree with the noble Lord, Lord Howarth, that that sort of scrutiny does not detract from the need for the Government's post-legislative scrutiny, so I think that we are all going in roughly the same direction.

I was very pleased with the noble Baroness's response about the recognition of the single market for these illegal drugs, because it would be an enormous step forward if we stop seeing these things as separate and start examining what is going on across the piece. That has all been extremely helpful. The timeframe is an issue: three to five years seems an awfully long time particularly as some of us do not really expect this legislation to work, especially bearing in mind the Irish experience. It is a great pity—Ireland is now four years on and still wondering what to do.

Given all of that, this is Committee and we have had a useful debate on this issue. I look forward to meeting Ministers between now and Report. On that basis, I am more than happy to withdraw the amendment.

Amendment 4 withdrawn.

Amendments 5 and 6 not moved.

Clause 2: Meaning of "psychoactive substance" etc

Amendment 7

Moved by ***Baroness Meacher***

7: Clause 2, page 1, line 14, after "Act"" insert "synthetic"

Baroness Meacher: My Lords, in moving this amendment, I will also speak to Amendment 8. I apologise that these have all come one after another and I was not anticipating that, but I will speak extremely, briefly noble Lords will be pleased to hear.

These amendments seek to limit the scope of the Bill to those substances that are synthetic—produced by chemical synthesis rather than grown naturally. The Government's manifesto commitment, if I understand it, was to ban new psychoactive substances. All such substances identified by the EMCDDA have been of a synthetic nature. To broaden the scope of the ban beyond the limits of substances that are synthetic will create far more unintended consequences than I believe the Government really had in mind.

The point behind this amendment is that the Bill as it stands is disproportionate and will engender an intolerable degree of legal uncertainty for an awful lot of people—researchers, medical people or whoever—who have no interest in consuming these substances but may be involved in handling them. Actually, one should extend that to people who are in the commercial sector trading, producing and so forth who may need to use these substances and really do not want to be questioned by the police.

It would be helpful to know why the Government have extended the scope of the Bill to include natural psychoactive substances. Are the Government aware that there are many natural substances, included in perfumes and other products, for example, which could be caught unintentionally by the Bill as it stands? We had a debate earlier about the whole business of definition and in a sense that comes up here again. Things might be a bit simpler if the Bill were limited to synthetic substances. Will the Minister explain to the House what investigations have taken place to establish the unintended consequences of the extension of this definition to include natural substances? I beg to move.

Baroness Hamwee: My Lords, my noble friend and I have Amendments 9 and 10 in this group. Amendment 9 presents me with a dilemma, given the comments that we have been making about what has been happening in Ireland. Amendment 9 would import into the Bill the Irish definition in terms. Given where we are and given that the definition in the Government's Bill is more telegraphic than the Irish one, I would nevertheless like to hear what the Government have to say about the differences.

I and other members of the Committee will have received from the Minister a response to points made at Second Reading, for which I am grateful. In response to one point that I made, the Minister wrote that,

"we have retained core elements of the Irish definition but sought to refine it so as to make it more concise"—

given the length of most of our legislation, that is not the most persuasive argument that I have heard—

"by removing reference to different substances and behaviour changes, and remove the element of subjectivity inherent in … the word 'significant'".

I understand that the Government do not want this to be read subjectively, but can I add a thought? Different people react differently and they react differently to different drugs. We have heard that. There is something in the connection between that and subjectivity and maybe neither of us is quite right, but there is an issue there. The Minister talked about removing reference to behaviour changes. The point about the Irish definition is the impact on behaviour changes.

The second limb of Amendment 9, which is not an addition to the first because it does not qualify the first, refers to the substance having the capacity, as in the Irish definition, to,

"cause a state of dependence, including physical or psychological addiction".

We are told that that has been removed because the Government have,

"concluded that this was captured as part of affecting a person's mental functioning or emotional state and was unnecessary duplication".

That surprises me. The Irish looked on it as an alternative in their definition. Perhaps the way I can best put it is to ask how the scientists look at this. I would have thought it was completely separate from affecting mental functioning or emotional state and is therefore not an unnecessary duplication.

7 pm

The second of our amendments, Amendment 10, would leave out the term "or allows" from Clause 2(3), where,

"a person consumes a substance if the person causes or allows the substance … to enter a person's body".

Would the Minister expand a little on that in particular? I think he is aware of this specific question—whether it somehow goes further than, or is different from, what is brought into the Bill by the element of recklessness in the offences clauses. Is allowing something to enter the body different from being reckless as to its consumption?

Lord Howarth of Newport: My Lords, the definition of a psychoactive substance in the Bill does indeed seem to me rather vague. We should be grateful to both noble Baronesses who have so far spoken in this debate for pressing the Government to tighten the definition and to give us some clarification. It would be helpful if the Minister would explain to the House the basis upon which he was able to give us an assurance—I thought he gave it rather tentatively and with less than full confidence—at Second Reading, that if he were to send a bouquet of flowers for the gratification of Lady Bates, he would not be in breach of the law. I see that it is suggested that incense might be caught under the law. How can he be sure that all kinds of substances and activities that, on a common-sense view, people would regard as innocent may not in fact be caught?

I would also like clarification—if this is not leaping ahead too far—as to what is, in Schedule 1, a traditional herbal remedy. The term is terribly loose. I fancy that it is going to be quite difficult for police officers or

courts to be very clear what the term "traditional" in a legally binding context means. How in practice does he foresee psychoactive substances are going to be identified? Will there have to be tests in court? That would seem to be expensive and disproportionate. Will there have to be a large number of placebo-based comparative scientific trails? Again, that would seem expensive, disproportionate and impractical. I think he owes it to us to clarify a little further than the drafting of the Bill does what he means by psychoactive substance.

Lord Blencathra: My Lords, I would be interested in hearing the Minister's response to the noble Baroness, Lady Meacher. She seems to have a fairly good point—to me as an amateur anyway.

I wish to make my remarks mainly about Amendment 9. This may be heretical to noble and learned Lords and parliamentary draftsmen, but why can we not have the Government's definition and the definition in Amendment 9? Definitions are going to be the big problem with this Bill—everybody recognises that—and I see no merit in brevity of definition if it makes for confusion. On the other hand, we do not want it to be tautological and we do not want too big a definition which is contradictory. I am sure that noble and learned Lords and parliamentary draughtsmen will ensure that that does not happen. I ask the Minister to keep an open mind on this and be relaxed about extending the definition or picking up bits of Amendment 9 if it helps to bring more clarity, irrespective of the length of the definition.

Lord Tunnicliffe: My Lords, I shall comment briefly on this group. I hear the debate on Amendments 7 and 8 and will be interested in the Minister's response. On Amendment 10, similarly, we will be interested in the Minister's response.

On Amendment 9, I see this Bill—and I will be grateful if the Minister can flesh out whether he sees it in the same way—as a very narrow Bill. Broadly speaking, everything is illegal except the things that are defined as legal. Bringing in the word "significant" seems to me to be getting into significant bad and not significant good, and therefore we are into the area of legal challenges et cetera. The idea of the Bill, I think, is to be free from legal challenge and that is why it is formed in that way. The Minister will no doubt enlighten me.

The point of the noble Lord, Lord Howarth, on the process—of how the judgment will be made that a substance is psychoactive—is a good one. I would be grateful if either now, or perhaps in writing, the Minister could spell out how the Government envisage determining whether a substance is indeed a psychoactive substance.

Lord Bates: My Lords, these amendments seek to reframe the definition of a psychoactive substance for the purposes of the Bill. This Bill is designed to capture substances supplied for human consumption that have psychoactive effects. Its aim is to capture substances that are not currently controlled under the Misuse of Drugs Act 1971, but, as with all drugs when misused, carry health risks.

Subsection (2) provides that,

"a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state".

We accept that this definition has been drawn purposefully wide. The nature of this market and of experience to date shows that producers of the substances are constantly and actively looking for loopholes to exploit, thereby fuelling this reckless trade. This learning has been central to how we have designed this Bill and in particular our definition.

By using a definition based on a substance's effects rather than the chemical composition of substances, this legislation will avoid the issues that we have continued to face with the Misuse of Drugs Act 1971. Many new psychoactive substances are still legal due to the speed at which they are produced, with manufacturers inventing new substances by tweaking chemical formulas in order to avoid the existing controls. The need to capture such a wide range of substances, and any that might be invented in the future, necessitated a broad definition. The definition is in two parts: the trigger and the effects. The main effect of psychoactive substances is on a person's brain, the major part of the central nervous system. By speeding up or slowing down activity here, psychoactive substances cause an alteration in an individual's state of consciousness.

Amendments 7 and 8 in the name of the noble Baroness, Lady Meacher, seek to restrict the definition of a psychoactive substance so that it captures only synthetic substances. The nature of this market and of experience to date shows that producers of new psychoactive substances are constantly looking for loopholes to exploit, thereby fuelling their reckless trade. There are any number of natural products—such as fly agaric mushrooms and salvia divinorum—that are openly on sale in head shops and elsewhere which are far from safe though they are not banned under the Misuse of Drugs Act 1971. The Bill should give us a proportionate way of dealing with these substances as well.

Amendment 9 seeks to import the definition of a psychoactive substance—

Lord Harris of Haringey (Lab): I am grateful to the noble Lord for giving way. I would like to understand—maybe if I had heard some of the other amendments I would have understood, but I am not sure I would have done given the comments that have been made—how, if the police, for example, have seized a product which may or may not be a psychoactive substance, they assess whether it is going to have these effects on somebody's brain. Do they feed it to a tame police officer, or to a young person whose brain may be less developed? How is this going to happen? Is that something that then has to be replicated in a court room? What is the process going to be for saying, "This is definitely a psychoactive substance"? How will they tell?

Lord Bates: That is a good point. There are a number of ways. Perhaps I may make the point that I have been trying to set out the terms so that a future reader of the *Official Report* may actually be able to deduce—I will be careful here—what the Government intended when they set out the definition in this particular way. The noble Lord's intervention is entirely appropriate

[LORD BATES]
and I do have an answer which I will give to him, but I want to make sure that we do not lose the flow of what underlies this, which is the rationale behind the definition.

There are a number of ways, and these include data based on a human user's experience, argument by analogy and in vitro neurochemical profiling. Working with the Centre for Applied Science and Technology at the Home Office, we will identify and build the capability in the UK to meet the demand for this new forensic requirement, as well as working with the Office of the Forensic Science Regulator to ensure that the high standard of quality that forensic evidence meets is maintained.

The Home Secretary has written to the Advisory Council on the Misuse of Drugs seeking its views on how we can strengthen the UK's forensic capacity and capability to support the implementation of the legislation. We remain ready to consider carefully any recommendations the council may have about other aspects of the Bill. We will continue with the forensic early warning system, which has enabled forensic providers more easily to identify new psychoactive substances coming on to the UK market through the provision of reference standards and establishing a new psychoactive substances community. I am sure that that has entirely answered the noble Lord's point.

Lord Rosser: It seems to me that this is a fairly crucial part of the Bill because the argument, quite rightly under the present procedure, is the length of time it takes to ban a psychoactive substance. I have listened with interest to what the Minister has said, and I suspect he has listened with interest to what he has been reading out—I am not trying to be rude; I mean that. But what is really needed is an indication of how long it is going to take to ban one of these substances as compared with the current procedure. What the Minister has said does not help me form a view on how long it will take to ban such a substance in the future, compared with the current situation, and that surely is the key aim of the Bill: being able to ban these substances with a degree of rapidity.

Lord Bates: That is so, and many a true word is often spoken in jest—such as when the noble Lord talked about my going through the answer which has been provided. I accept that the key point here, which the noble Lord, Lord Harris, was getting at, is to look at how a police officer would actually start the process of gauging whether a person was being disorderly, search them in the belief that they are in the possession of a new psychoactive substance, and then, if they find something, how it will be determined whether that substance is banned. I am going through the process whereby the substance will have to be sent to the lab, where it will be tested for certain chemical compounds which might be on a list or subject to a temporary banning order.

What we are saying is that a different approach will be taken in the future. We are setting up a very broad definition in order to avoid the constant race to hybrids and changes which officers are facing on the street. We arrive at a definition which is set on one day, but the substance has miraculously morphed into something else the next day and gets through the loophole. What we are dealing with here is a definition of the effect which a substance has or is intended to have on the person who is in receipt of it.

If I make a little more progress on my brief, the position might become clearer. The nature of this point is our experience of the loophole, which I have covered. There are any number of natural products, which takes me to Amendment 9. The amendment seeks to import the definition of a psychoactive substance used by the Republic of Ireland in its Criminal Justice (Psychoactive Substances) Act 2010. Indeed, we used the same definition as a starting point. As the Committee might imagine, during the drafting of the Bill we discussed the definition with counterparts in Ireland, and in Australia and New Zealand, and with scientific and law enforcement experts. Following this advice, we have retained the core elements of the Irish definition, but have sought to refine it to make it more concise.

7.15 pm

On the first limb of the Irish definition, we judge that a more general description of the effect of the stimulation or depression of a person's central nervous system is preferable to what could be an incomplete list of different behavioural changes. On the second limb—that the substance causes "a state of dependence" —we concluded that this was captured as part of affecting a person's mental functioning or emotional state and was an unnecessary duplication. We have also removed the element of subjectivity inherent in the use of the word "significant". Substances that might have a mild psychoactive effect, such as food, are of course exempted under Schedule 1.

The focus of the Bill is the production and distribution of psychoactive substances for human consumption only. It is therefore important that the Bill address how a substance might be consumed. Clause 2(3) provides for this and makes it clear that an individual consumes a substance if they cause or allow the substance, or fumes given off by the substance, to enter their body in any way. This will include injecting, snorting, inhaling and smoking, as well as eating or drinking.

Amendment 10 seeks to narrow this definition so that the circumstances in which a person allows but does not cause the substance to be consumed are taken out of the scope of the Bill. We are mindful of the need comprehensively to capture all methods of taking a substance into the body and not allow any loopholes which will give the suppliers of these substances a "get-out". I recognise the concern expressed at Second Reading that, under the definition we are proposing, any number of products may be inadvertently swept up. I recall the example of flowers, although my recollection is that they were flowers for my noble friend Lady Browning, which may have caused even more concern to Lady Bates.

Lord Howarth of Newport: The noble Baroness explained that she was a chocolate addict. However, chocolate is exempted in Schedule 1 and she need not have worried. I am worried that Lady Bates is not going to have the pleasure of floral tributes from her husband.

Lord Bates: I will send her chocolates.

I can assure noble Lords that we are dealing here with the trade in new psychoactive substances. In looking at the workings of the Bill it is necessary to consider the definition of a psychoactive substance alongside the elements of the offences in Clauses 4 to 8, which we will come to shortly. It is not correct to equate the effect of a scent wafting through the air with the direct inhalation of fumes, such as from a solvent, and the offences apply only where a substance is likely to be consumed for its psychoactive effect. We may all appreciate the sight and smell of a fine bouquet of flowers, but we are not consuming the flowers or their scent for their psychoactive effect.

The noble Baroness asked whether the reference to "allows" in Clause 2(3) goes further than the recklessness test in the offence clauses. The noble Baroness is, I fear, seeking to compare apples and pears. In Clause 2 we are not dealing with the mental elements of criminal offences. The phraseology in Clause 2 is designed for a wholly separate purpose compared with that used to determine the mens rea of the various offences, so the question whether "allows" is a higher or lower test than recklessness does not arise.

I shall respond to the point made by the noble Lord, Lord Rosser. The ban will come into effect as soon as the Bill is brought into force. What we are debating here is the quality of evidence required to pursue a successful prosecution. As I have said, we have asked the Advisory Council on the Misuse of Drugs to provide advice on how we can strengthen our forensic capacity to this end. It goes without saying, therefore—given that we are consulting widely on this— that the opinions and views of your Lordships' House will also be helpful at arriving at that definition of minimal harm.

Lord Harris of Haringey: For the avoidance of doubt, I think that something should be done in this area and I am concerned that the Government's proposals may not work.

I understood what the Minister read to us, in terms of the guidance on how you would test. It seems to me that the case rests on this: you have a substance that you think is psychoactive and you need to test it, because you need to establish whether it raises or depresses someone's mental state. Does this mean that it has to be tested on a human being? If so, what are the arrangements for doing it? What are the safety provisions, given that some of these substances are extremely dangerous? Is there, therefore, a process that we can use when we think something is a psychoactive substance but the only way to find out is by finding a human being and testing it on them?

If that is not the case and the intention is to look at whether a substance is chemically similar to something else, you are back in the same routine of demonstrating that this is a small variant on something seen before. That is what I am trying to establish—the practicalities. Here is something. We have found it. We think it is psychoactive. Can we do something about it? Most Members of this House—there are a number of exceptions —think that something should be done. How do we know that something is psychoactive?

Lord Bates: That is a fair point, in that it is asking how this will be tested. We will come to those points because we are going to deal, to some degree, with medical testing and how it is possible to license some of these drugs so that they can continue to be tested. We were talking earlier about how universities and research institutions can continue testing on drugs such as cannabis. That is a key point: that testing will go on. I will make sure about that before Report.

Lord Tunnicliffe: May I take that as a commitment to write to noble Lords before Report? This has raised a very big question mark. Trying to hammer it out in words is too difficult; hammering it out on a piece of paper may give us much more confidence.

Lord Bates: I am happy to do that—let us set the matter out in writing. However, I want to state two basic principles that I hope that the noble Baroness in particular may just accept and will enable her to withdraw her amendment. First—going back to the first point—is that what is being sold in our streets and in head shops has never been tested on anything or anyone, yet is consumed by people in this country. That is the basis on which we are taking action. Secondly, we are mindful that the skilled perpetrators, manufacturers and distributors of this drug are in the sights of this legislation because we want to target them rather than the individual user. When they see a written definition they then go and find a potential loophole, something else appears on the market and the Bill becomes ineffective. We want to avoid that. Those are the two principles in play.

In the context of those two principles I am very happy to write with more detail on the mechanics of how that might be done, and perhaps a little more—looking at the Bill team—about the process we went through in consulting, to arrive at this definition. I hope that that will be helpful to the House and I undertake to do it before Report.

Lord Mackay of Clashfern: My Lords, when we talk about "banning", we mean the substance being used to commit an offence under the Bill. There are two ways of reaching that conclusion. If you see someone taking a tablet or a substance and suddenly his mental state has been altered, cause and effect is likely to be demonstrated. The second way is that if you know the nature and qualities of substances, when you analyse the substance you may be able to do it that way too.

The important thing, however, is that it is not a question of the substance not being banned until you discover it: the definition applies right from the beginning. As the Minister said, when the Bill becomes law, substances with that character become the possible ways of committing the offence. The question of whether a particular substance is of that character can, I think, be approached in these two different ways, according to what is convenient in the circumstances of the individual case.

Baroness Hamwee: My Lords, before the noble Baroness responds, may I ask a question? It will display the depths of my ignorance, which will gratify the noble Lord, Lord Harris, who can never resist teasing me. If one has a herbal product and it is genetically modified, does that make the outcome synthetic, or does it remain herbal?

Lord Bates: I am not sure at whom that question is directed. I could, of course, easily answer but I am sure that the author of the amendment would want to deal with it personally.

Baroness Meacher: I thank the Minister. I also thank all noble Lords who have contributed to this debate. I spoke extremely briefly but it has proved a very illuminating debate. We have drawn out a number of issues, and I am grateful to the Minister for his reply and for agreeing to write to us about these matters. I hope that in that letter he may be able to answer the question of the noble Baroness, Lady Hamwee, about herbal remedies that are genetically modified, because I would not presume to take the place of a Minister in these matters.

Could the Minister also clarify whether, in tweaking the Irish definition of psychoactive substance, the Government have gone back to the Irish and to their experts to seek their opinion on whether this adjustment to the definition will overcome the apparently insuperable problems that the Irish have encountered? It is incredibly important that we accept and acknowledge that the ban in Ireland has failed and that we make sure, before this Bill is through, that it is adjusted as necessary to become a useful tool in the armoury of government drug policy. With that I am content to withdraw the amendment.

Amendment 7 withdrawn.

Amendments 8 to 10 not moved.

Clause 2 agreed.

House resumed. Committee to begin again not before 8.28 pm.

Welsh Assembly Elections 2016

Question for Short Debate

7.29 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what steps they plan to take to ensure that the 2016 Welsh Assembly elections provide an opportunity to reflect recent and planned changes to the Welsh devolution settlement.

Baroness Randerson (LD): My Lords, I start by saying how pleased I am that the noble Lord, Lord Bourne, is the Minister replying to the debate today. I was delighted when I heard of his appointment to the Wales Office. I believe that we worked well together during the previous Government and I know that his understanding of Welsh devolution is unparalleled. Indeed, as he is a former member of the Silk commission I look upon him as the fount of all wisdom on such issues.

My purpose in tabling this debate today is twofold. First, I wish to press the new Government on progress and preparations for the new Wales Bill. I welcomed the inclusion of the Bill in the gracious Speech and I am mindful of the Chancellor of the Exchequer's promise, made when he was campaigning in Wales, that a new Bill would be brought forward within 100 days. So I hope that the Minister will take this opportunity to update us on progress. My second reason for wanting this debate is unashamedly to press the Government to think more widely and to be bolder than I fear is currently their thinking.

There are very good reasons why we need this Bill as soon as possible. Assembly elections will be held in May next year and it is important that electors know the extent of the Assembly and Welsh Government powers when they go to vote. More than that, the political parties need to know about that when they write their manifestos. I would argue that we need to move on from a Welsh politics which is defined by an endless refrain demanding more powers; we need instead a political campaign which debates what should be done with those powers.

The St David's Day agreement gave us some clues as to what is likely to be in the Bill. For example, it said that the Assembly should have control over its size, the system and timing of elections, and ways of working. Now this will be a pretty fundamental change if and when it happens. The forthcoming Assembly elections should be an opportunity to debate, for example, how many Assembly Members are needed and how they are to be elected, rather than focusing on whether those powers will actually be devolved. The St David's Day agreement also confirmed the intention to move to a reserved powers model of devolution. This is very welcome and I realise that it is a complex issue, but since the Supreme Court judgment on agricultural wages it is also an urgent issue, so I would like to ask the Minister to update us on progress there, too.

In response to the debate tabled by the noble Lord, Lord Wigley, last week the Minister, the noble Lord, Lord Dunlop, said:

> "The Government intend to discuss an early draft of the reserved powers model we are preparing with the Welsh Government in the coming months"—

so far, so good. He goes on to say,

> "before publishing a draft Wales Bill for pre-legislative scrutiny in the autumn".—[*Official Report,* 18/6/15; col. GC 67.]

Do I understand from this that we are no longer looking at a Wales Bill itself this Session, and instead only at a draft Bill?

The St David's Day agreement also committed the Government to the introduction of a Barnett floor. The Prime Minister has said that this is in the "expectation" that the Welsh Government will call a referendum on income tax powers. Is it still the Government's view that these two should be explicitly linked?

Like the Minister, I am keen for the Assembly to have greater fiscal responsibility, but I doubt the enthusiasm of the Labour Party for this. I fear that the Labour Welsh Government will not be keen to call a referendum. The need for a referendum was enshrined in the Wales Act 2014, and based on a Silk recommendation. It has been controversial from the start, not least in the Minister's own party. We all know that the Silk reports have been overtaken by events in a number of respects. The Minister knows above all of us that there were elements of compromise in the Silk reports. What seemed bold in 2012 does not necessarily seem bold now. So I will be interested to hear whether the Government still feel that a referendum is needed.

Returning now to the commitment made by the coalition Government to introduce a Barnett floor, do the Government intend to entrench and define this in the Bill? If not, how will it be incorporated into the funding structure in a way that gives us confidence that it cannot be dismantled simply at the behest of new occupants in the Treasury? We need detail on this and we need certainty. The noble Lord, Lord Dunlop, said last week that there was no need to update Holtham as Wales is not currently underfunded. I accept that Wales is not currently underfunded. Government funding is at a rate of £116 in Wales for every £100 in England, which is clearly within the region that Holtham identified as fair. However, there was a past history of underfunding under the Labour Government. Labour failed to admit to this, or to address the issue, of course, until it was no longer in power in 2010.

These two factors mean that the presumption of underfunding is still out there, even among politicians. The First Minister, for example, continues to refer to unfair funding. I believe that the Government need to provide absolute clarity on funding, even if Holtham's calculations still have validity today. The issue of funding has had a corrosive effect on Welsh politics. The perception of unfairness in funding for Wales strikes a much stronger political chord with electors than the issue of more Assembly powers, for example. If the Government are sensible, they will address this issue head on by entrenching it in the Bill.

I want to encourage the Government to broaden the scope of the Bill. I was pleased to hear from the noble Lord, Lord Dunlop, that the Government are considering other non-fiscal elements of the Smith agreement. There are, of course, other powers already and long since devolved to Scotland and recommended in Silk, but not included in the St David's Day agreement, such as, for example, policing. The Government appear to have set their face resolutely against devolution of policing, despite there being very good arguments for devolving it. In this financial year, the Welsh Government are providing just short of 40% of total police funding. They therefore have a big financial stake in it.

This Government have proudly boasted of their decentralising credentials that local decisions are best made locally. We agree with them, and I would suggest to the noble Lord that policing is just the sort of service which varies most according to the problems in each locality. The police work closely with many partner organisations that are devolved—for example, health services and local government services such as education and social services. Therefore, it is highly logical that it should be devolved. Policing is already devolved not just in Scotland but in Northern Ireland. If it can work successfully in a sensitive situation such as Northern Ireland, which has the added complication of a land border with a separate state, then I am sure it can be made to work in Wales.

There are other powers that the Liberal Democrats would like to see devolved—for example, an investigation into a separate legal jurisdiction and the devolution of youth justice. These seem such modest steps beside the giant leap that Scotland is taking. Although we welcome additional energy powers, we believe that more can be done.

The establishment of the Silk commission in 2010 seemed a great leap forward. It was a great step forward, as was the referendum on full lawmaking powers for the Assembly. The Silk recommendations on fiscal responsibility were another really big step, enshrined in the Wales Act 2014. However, there is a long way to go before we can have any hope that the political debate in Wales will settle down to a discussion of what we do with those powers instead of what powers they should be.

May I remind the Minister that, despite the coalition Government's excellent and progressive record on devolution, time and again their plans were overtaken by enthusiasm for reclaiming power, both in Scotland and in Wales? The St David's Day agreement has already been overtaken by the success of the SNP in the general election. The baton has already passed over the Government's head. What suits Scotland does not necessarily suit Wales. The history and geography of the two nations is very different and it means that their paths will diverge. There has been no rise of nationalism in Wales as there has been in Scotland, with only 3% support for independence. However, I would say to the Minister that Scottish devolution has not developed in a vacuum. People in Wales look north and they will draw lessons from what happens there.

7.41 pm

Lord Wigley (PC): My Lords, I am delighted to have the opportunity to follow the speech of the noble Baroness, Lady Randerson. It was the other way round last week—we seem to be a rotating show. I thank her for facilitating this debate and keeping a focus on matters that are important to all of us from Wales across party boundaries.

I will come back to some of noble Baroness's comments but I welcome the noble Lord, Lord Bourne, to his position on the Government Front Bench. He is there at an interesting time. The noble Baroness, Lady Randerson, perhaps has been the keeper who has turned back to be poacher—and I am delighted to see her in that role—the noble Lord, Lord Bourne, is a poacher who has turned keeper. I remember well the way he campaigned in the National Assembly. It is good that he brings experience to the Front Bench and he knows the way in which a compromise was reached on the Silk commission with a lot of give and take by all parties.

If one has all parties buying into a process—as has been emphasised in the context of Smith in Scotland—then there is a reasonable expectation that the recommendations of such a commission should be enacted in full. All the parties in this Chamber and the other place were represented on the Silk commission. That was their opportunity, if they were unhappy with some of the compromises made, to draw a line. The ultimate report of the Silk commission was a unanimous one, as the noble Lord, Lord Bourne, well knows. Therefore, it is not unreasonable that, having made the compromises in reaching that report, there should be an expectation that all parties here fulfil those recommendations. To have come to a compromise in drawing up that report and then to have got to a position where it is second-guessed by the parties running into a general election frankly brings a degree of cynicism that undermines the integrity of the system.

[LORD WIGLEY]
It is bound to lead to questions, if there are future such commissions, as to whether parties should be buying in as sincerely and genuinely as they did to the Silk report. I would be very grateful if the noble Lord, Lord Bourne, perhaps pondered a little on that as the Government consider how and when to bring forward the new powers. However, I am delighted that he is on the Front Bench and no doubt we will have many occasions to argue these matters.

I am also delighted to see the noble Lord, Lord Elystan-Morgan, back in his place after a bout of ill health. He looks fighting fit now. There is slightly less of him now than there was a few weeks ago but no doubt the quality makes up for the loss in quantity. We look forward to his contribution not only to this debate but whenever the interests of Wales arise.

Last Thursday in introducing the debate on similar matters I concentrated on the UK dimension—the need to ensure that there is some compatibility and an understanding of a balanced type of devolution taking place. Otherwise, as the noble Baroness, Lady Randerson, said a moment ago, people will start asking why things are happening in Scotland. Is it merely because of a knee-jerk reaction to the vote for the SNP? That will feed an agenda that could help my party but I am not sure if that is the incoherent way in which things should happen to get a better government for Wales. There needs to a balanced settlement but I will not repeat the arguments, except to say that I hope that that is an element in the thinking of the Wales Office as it addresses these issues.

As the noble Baroness, Lady Randerson, said in introducing this debate, the political parties and candidates in the coming election need to know exactly where they stand. In Wales, perhaps even more than in Scotland, we have had a shuffling type of devolution going on all down the 15 years since the Assembly was set up. There has been change upon change upon change. There now needs to be adequate powers and finances and the job needs to be got on with, particularly when one thinks of the challenges in the health service and education facing the next Government in Wales. We need the powers to be cleared up, so they know what to do and get on with doing it.

Picking up the point made by the noble Baroness, Lady Randerson, on the police service, there needs to be a rounding off of the devolution process by bringing the police into the purview of the National Assembly. Many of the associated services, such as the local government parts—not only funding, but social services' co-operation with the police, the transport responsibilities that come under the National Assembly—interface with the police and should logically and coherently be devolved. Having the police devolved to the National Assembly would bring a balance with the powers of Northern Ireland and Scotland. I accept what was said: that what happens in Scotland does not always necessarily reflect the priority in Wales. Of course not—but I am sure that Members on the Liberal Benches tonight will be only too aware of their commitment to a federal approach. The principle of a federal approach was that there would be balanced devolution, not least so that the people in the centre at the federal level know exactly what powers they are dealing with at other levels. I hope that will be given further thought.

With the Cities and Local Government Devolution Bill currently going through Parliament, we have the odd situation whereby it is quite likely that powers relating to the police commissioners will be devolved to mayors in England—but what happens in Wales? We were told from the Government Front Bench last week that that Bill has nothing whatever to do with Wales, so Wales could be the only area with the existing commissioners. The National Assembly, which I am sure would like to do something about this, will not have the powers to do so. That really needs to be sorted and some clear thinking brought in.

On finances, whatever may be said about how Holtham might be reinterpreted in today's circumstances, the reality is that the resources are not there to provide the services that Wales needs. Of course, the resources can be spent better. There is always a way of spending money better, but we really are cutting to the bone and next year we are going to see services eroded. There may well be places in England with equal problems that need more resources as well, but I am not willing to accept that, because there has been a cutting back of public expenditure and a reversal in the Barnett squeeze effect, that justifies not trying to bridge the gap. Wales has been underfunded probably to the order of £6 billion or £7 billion since 1999 and it is time for that to be made up. Given the formula that Scotland gets, I cannot for the life of me understand why Wales has to get that much less. Is it a bonus paid to Scotland because it threatens to go independent at any point? Surely we do not have government policy based on that sort of thesis? I hope that we have a more logical approach to funding.

Reference was made last week to the referendum on tax powers. If we do not have a greater funding commitment to Wales, I wonder whether we are going to get any enthusiasm for that referendum. I am not convinced that a referendum is needed at all. We see all these other powers, including new taxation powers, going to Scotland, and yet we do not get them for Wales without a referendum. The time has come for Governments to make decisions and stand by them. If the commitment is that we need to get answerability through income tax powers, then let us get on with it rather than hiding behind a referendum. If we cannot get the capital that is needed for projects—we heard about the discussion concerning the M4 relief road at Newport only this morning—how on earth will we be able to meet our requirements without new sources of taxation?

I should like to make many other points but I know that time is squeezed. I will be grateful to hear the Minister's response.

7.50 pm

Lord Roberts of Llandudno (LD): My Lords, it is a pleasure to take part in this debate, although I feel a little bit of an intruder because three of the six speakers were all leading Members of the Assembly in Cardiff. It is a delight to see our noble friend Lord Elystan-Morgan back in his place.

I would like to consider dangers to democracy and the democratic decisions of the Assembly and of Parliament itself. We celebrate the Magna Carta, yet the ordinary man and woman at that time had no voice at all in determining the laws that they were called to obey. It was only very slowly that people obtained a voice in their own destinies. Democracy has struggled to be born.

In Wales we saw the great advances of the middle and latter part of the 19th century. Those who had no vote objected to paying tithes. Why should non-conformist farmers and smallholders finance what was often an oppressive established church? So we saw the protests and evictions of the tithe wars. We saw the massive expansion of education from primary level to the establishment of the University of Wales, and the struggle for the disestablishment of the Church of England to shake off the shackles of the established church in Wales.

At the same time, throughout Great Britain there arose the demand for the right to vote. At last, people were gaining influence over the laws and decisions that shaped their lives. It was a slow progress from the Great Reform Act of 1832 to the universal franchise that we enjoy today, but it can never be static. Democracy can never be static; otherwise, it stagnates. Democracy, to be valid, must evolve, as we see in the campaign to enable 16 year-olds to be enrolled on the voting register.

Looking at the past, in the general elections of the 19th century, the Whigs challenged the Tories—two parties—and then the Liberals challenged the Conservatives. They were straight fights, with first past the post. In a time of just two parties, there was in each constituency a clear winner, although the nationwide picture was not quite so fair. For instance, in 1885 in Wales, the Liberals polled 58% and won 29 constituencies, whereas the Conservatives polled 39% and won just four constituencies. It was unfair, yes, but in every constituency the candidate with most votes won. Even in 1997, 30 of Wales's 40 MPs were elected with more than 50% of the vote in their constituencies. Overall, Labour won 55% of the vote and had 34 MPs, whereas the Conservatives won 20% yet had no MPs at all.

The same distortion continues throughout the UK. At the last election, a Tory majority Government were elected with 37% support from those who voted but only the votes of 24% of the total electorate. There are other examples of which we are all aware—for instance, the result in Scotland, with the SNP winning 56 of the 59 seats on half the votes cast. I agree with nothing that UKIP proposes, but it gained only one seat after polling millions of votes. I suggest that something is seriously wrong.

The Chancellor of the Exchequer said last week at the Mansion House that people had voted for £12 billion-worth of cuts, when 63% who voted voted against them. Only 37% supported the Conservative candidates. Legislation will be rushed through backed by only a minority. We are in a very serious situation indeed. Can it be justified? Is it democratic for 37% to overrule 63%? Is it fair that 37% of the electorate hold the whip-hand over 63%? Does the fact that 37% dictates to 63% represent the opinion of the people? Is our electoral system fit for purpose? If such results were obtained in the Division Lobbies of the House of Lords, we would have a riot on our hands.

The constitutional convention proposed by the noble Lord, Lord Purvis, includes Wales. When the Assembly was elected, it saw the shortcomings of relying solely on a first-past-the-post system. There are 40 constituency Members and an additional 20 Members to make good the lack of representation of the parties which are not forming a Government there. Twenty additional Members ensure that each of the five regions have fairer representation. Why did the Tory and Labour Parties support this top-up scheme in Wales? It was unfair, yet they are unwilling to look at the situation that we are in now where the unfairness is absolutely obvious.

At the last Assembly elections, the additional vote system gave the Labour Party half the seats for 37% of the votes. Other parties were more fairly treated because of the top-up system. The Conservatives won 23% of the seats for 22% of the votes—you cannot complain about that—Plaid won 18% of the seats for 18% of the votes, and my poor Lib Dems won 8% of the seats for 8% of the votes. But at least there is a fairness there, which is not to be seen in the Westminster elections. Only Labour is overrepresented. I am not starting a campaign yet to look again at the electoral system in Wales which distorts the results in this way. In spite of some attempts to try to change this to 40 constituencies each with two Members—that would destroy proportionality, although an Assembly of 80 Members would of course enable our AMs to be far more effective—any suggestion that you would have 40 constituencies electing two Members each on a first-past-the-post system would be totally out of proportion.

In addition, should we delay boundary changes in Wales at council and parliamentary level until we have an electoral system that is more representative than the one we have at present? We must not abandon the better representation of the Cynulliad or Assembly system for the much less fair system we have in Westminster elections. There is a far clearer mandate in Wales than there is here in Westminster. Is there a single Member of this House who would say that the present system is fair—that the 37% figure should provide a Government with a majority of 12? So our electoral system clearly needs total reform. I do not think anybody here would say that that is not the case. We are not sure what the reform will be but we certainly need a convention to discuss these matters. The opinions of a majority—this time 63% of those who voted—are ignored. We cannot accept that sort of system. There is no genuine mandate. It is not a matter of party advantage but of the very value of each person in Wales and in the United Kingdom.

7.59 pm

Lord Elystan-Morgan (CB): My Lords, I express my gratitude to all the noble Lords who referred so kindly to me. It is a great delight to be back here once again. The House is very much in the debt of the noble Baroness, Lady Randerson, as far as this Question is concerned. My few remarks will be confined to the issue of reserved powers, a matter about which one will hear a great deal over the next few months and years.

[Lord Elystan-Morgan]

Over the years, particularly during the period from when devolution developed in Wales, from 1964, and the formation of the Welsh Office, there has been the belief that devolution really fitted into one of two mutually exclusive categories: either a reserved powers system, whereby there was a presumption that all other powers had been devolved, saving in so far as they were specifically reserved and excluded, or, on the other hand, a conferred or incremental system, whereby matters were devolved bit by bit, almost like confetti, and the devolution was valid only if they were specifically referred to—if there was an absence of reference to them, there was no devolution.

That was regarded as being the system up to July of last year, when, as the noble Baroness, Lady Randerson, has mentioned, there was the decision by the Supreme Court in relation to the Agricultural Sector (Wales) Act 2014 of the Welsh Assembly. The effect of that was that the Supreme Court, the highest court in the land, had to face this issue head on. The case for the Cardiff Assembly was that there had been, under Section 108 of, and Schedule 7 to, the Government of Wales Act 2006, a transfer of,

"Agriculture. Horticulture. Forestry. Fisheries and fishing",

and that therefore one should not interpret "agriculture" in a narrow way at all; it should be something much more than the mere pursuit of husbandry. It should include agricultural wages as well. That was the Welsh case. The case put forward by the Attorney-General on behalf of Westminster was, "What you say is true, but it is very limited. Agriculture is one thing; agricultural wages are another. Agricultural wages belong to the realm of employment and employment has not been devolved; ergo, it is outside your powers". The Supreme Court was faced with the choice of either a narrow interpretation of "agriculture" or a wider, more liberal understanding of the whole situation. To its eternal credit, the Supreme Court took the latter course.

The consequence is utterly historic as far as Welsh devolution is concerned. It means that even though there is no specific reference in the 20 categories of devolution that we have under the 2006 Act, if there is a general intention to transfer authority to Wales, matters that are consistent with and closely attached to that—which might be referred to as the silent matters—will also be transferred. What does that mean? In Wales it means that we are in a situation not very different from that French gentleman of fiction who in middle age realised that he had been talking prose all his life. We have had powers that we never appreciated were within our grasp.

The situation causes possibilities and problems. I have some sympathy with the Secretary of State for Wales. In a speech in March at Aberystwyth, a place well known to the Minister and me, he said this:

"the UK Government's defeat over Agricultural Wages last July, blew wide open the true nature of the Welsh devolution settlement … vague, silent on many key subject areas, unstable, not built to last—a payday for lawyers".

Maybe it was a pay day for lawyers, but it was probably a legislative precipice at the same time.

Where do we go from here? We go in one direction only: that devolution, whatever is defined by the Government, should never be less than what exists at the present moment. It would be ironic if we ended up with a reform of the system that greatly reduced the totality of the powers, legislated under the Executive, that have been transferred to Wales already. I appreciate that the Government face problems. What is their attitude towards these? They have set them out in the White Paper published in February this year. They say that we will certainly have a system of reserved powers, which they had flirted with for a long time. They are accepting Silk 2, to which the Minister has made a distinguished contribution.

However, I find the way in which they go about it extremely upsetting. This is what they say: they set out in Annex B to the White Paper a list of subjects that they regard as proper to reserve and accept. How many are there? I make the number to be 103. However, it does not end there, as they have this sentence in relation to Annex B.

"The list is not exhaustive, and reservations would also be needed in other areas".

It reminded one of that line in *Macbeth*, speaking of Banquo's issue—of the shades of many more.

I appreciate that these decisions are not of necessity in any way the Minister's. He is a man of great wisdom, legal expertise and statesmanship. However, I ask respectfully of him: when is a reserved powers model not a reserved powers model? I suggest that the answer is that when the matters that have been reserved are so massive and all encroaching they make the concept of a general devolution a nonsense. My advice to the Government is, therefore, in the words of Corporal Jones, "Don't panic". Some people flirt with the idea that devolution should prove itself. One or two remarks made by the current Secretary of State might suggest that. I do not accept that for a moment. That would be to turn the issue of devolution on its head. The entire lifeblood of devolution is that it is for the other side to prove the case against it, if it possibly can. Devolution is the birthright of this nation.

8.08 pm

Baroness Morgan of Ely (Lab): My Lords, I, too, welcome the Minister to his post. I do not think that anybody in Wales—certainly not in the Conservative Party—understands the journey of devolution better than he does. There were those heady days when we both worked together on the advisory group, setting up the standing orders of the Welsh Assembly. It has been very interesting to watch the development of the Minister to where he sits today. I should perhaps introduce my remarks to this debate by declaring an interest, because today I have announced my intentions to the Labour Party: I shall be seeking selection and election as an Assembly Member in next year's election. I know that I can rely on many Members of this House to give me some great tips on what to expect in that chamber, if I am lucky enough to be selected and then elected. Your Lordships can rest assured now that any changes to the Assembly's powers and responsibilities will be watched by me like a hawk—as if I was not doing that before.

This debate follows a similar debate that we held in the Lords last week, where I acknowledged that there was an increasingly positive attitude towards devolution in Wales but that we were far from having the kind of

appetite for devolution demonstrated by the Smith commission. So on devolution, for Wales do not read Scotland. Wales has to establish its own path to devolution and the gradualist approach to it is one with which the Labour Party wholeheartedly agrees. This is not a never-ending process; there are limits to how far we are prepared to go in the devolution of power, as a party absolutely committed to the future of the union.

Many aspects of the first Wales Bill, which reflected to a large extent the views of the Silk commission, on which the Minister served, will be implemented in time for the Welsh Assembly elections next year. While there are experts in universities and political institutions—and, dare I say it, this House—who are fascinated by issues of constitutional settlement, it is worth remembering that the vast majority of the public who will cast their votes in next year's elections will be determining their choice on the basis of who best stands up for Welsh public services and who can best deliver jobs and growth. It is of course the Labour Party. I do not know whether I am allowed to say that in the Lords, but there we have it. The constitutional debates remind me of some sailors I see when I visit the lovely harbours around Wales. There are always people fixing or painting their boats, or repairing their sails. At some point, it would be nice to see them actually sail somewhere; well, the Welsh Government are going somewhere. They have, through intervening and not letting the markets determine everything, created 17,000 job opportunities through the Jobs Growth Wales fund and 500 police support officers to mitigate against police cuts. They have funded free breakfasts for schools, making sure that children from the poorest homes are able to concentrate in their classes. But as this House excels in constitutional debates, I shall return to that theme now.

Following the passing of the Act, for the first time the Welsh Government will have the power to raise their own taxes. The consultation on the collection and management of stamp duty and landfill tax is well under way. In addition, an immense amount of work has already been undertaken to establish a Welsh revenue authority. Funding is of course an issue that still needs to be addressed. I do not buy into this idea that we are at the right place on funding at the moment. However, today I want to focus my comments on other aspects of devolution and to look at Silk 2, which made 61 recommendations. Many of these have been taken up by the St David's Day agreement that was the precursor to the Wales Bill. Perhaps the Minister could let us know what we can expect on the timing, as he has suggested. Is it a full Bill or a draft Bill and what is the timetable, so that I might know whether I will be here or not?

One of the key issues that was recommended, and which thankfully has been taken up by the St David's Day agreement, was the proposal to move towards the reserve power of government. The pros and cons of this system have been well rehearsed in this Chamber but I return to the theme that I alluded to in the debate last week since we now have the right Minister in place, who might understand the issues better. It is about whether in the process of drawing up the reserved powers list, the Minister can give a categorical assurance that there will be no grab for power by Whitehall of powers that have already been devolved.

I gave the example last week of the fact that in Annex B of the St David's Day agreement, civil law and procedure is a subject listed as a reserved matter but the Human Transplantation (Wales) Act is legislation which has amended civil law. Will civil law be reserved or devolved? If it is reserved, as suggested in Annex B, will there be an attempt to pull back powers such as those in the Human Transplantation (Wales) Act? It would be good to hear what the thinking is here. I will give another example. Aspects of equality legislation have already been devolved but others have not. Will we therefore see all aspects of equality law being devolved or will they all be reserved? I have to warn that any attempt to haul back powers to the centre will be fiercely resisted.

A further concern is the implication of the Supreme Court's decision against the introduction of an asbestos Bill for Wales and how that reflects judicial attitudes towards devolution. I am aware that I could get into some hot water, with my learned friend on the Cross Benches, the noble Lord, Lord Elystan-Morgan, being such an expert. I am so pleased to see him back in his place. However, it is worth considering the implications of the judgment for the devolved settlement in Wales and the constitution of the UK as a whole. The asbestos Bill was an attempt by the Welsh Government to recover medical costs from past employers, and their insurers, whose staff or members had contracted asbestosis in order to compensate the NHS in Wales for treatment. This was knocked down by the Supreme Court, by a judgment of three to two. The court decided that the Bill was outside the subject matter competence of the Government of Wales Act.

On the issue of competence, the question was whether the Bill related to organisation and funding of the National Health Service, which is one of the subjects in Schedule 7G. The noble and learned Lord, Lord Mance, and the majority of the Supreme Court interpreted the meaning of the subject under consideration by reference to the other subjects under the same heading. If the same approach were adopted in respect of other headings, it could result in a substantial clawing back of the Assembly's competence. It is worth contrasting this view with the minority view expressed by the noble and learned Lord, Lord Thomas. In his view, the Bill had two objectives. The first was to,

"withdraw the requirement that the Welsh NHS continue the delivery of the benefit to employers and their insurers of not having to meet the cost of medical treatment and care of an employee where the employers are responsible for causing asbestos diseases as tortfeasors".

I am sure my learned friend could tell us what that means, but I looked it up and it means:

"A civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act".

Secondly, it created a mechanism to collect the costs.

The noble and learned Lord, Lord Thomas, argued that these were clearly within the subject matter competence. The more worrying aspect for the Assembly of the judgment of the noble and learned Lord, Lord Mance, is that it appears to suggest that it is legitimate for the court to investigate the extent to which Assembly legislation is in the public interest, and also to investigate

[Baroness Morgan of Ely]
the sufficiency of the consideration given to legislation by the Assembly before it is passed. This approach does not hold true for England. The noble and learned Lord, Lord Thomas, powerfully suggested that each democratically elected body must be entitled to form its own judgment about public interest and social justice under the structure of devolution, and there is no logical justification for treating the views of one such body differently from others.

The asbestos case had implications of a commercial nature—who knows whether this might have had a bearing on the judgment? Will the Minister respond to that judgment and tell the House whether it will be a consideration when formulating the Wales Bill that we can expect in this place?

8.19 pm

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I stand here as a poacher turned gamekeeper, as has been said. This has been an excellent debate and I will try to do justice to the contributions that have been made forcefully and with great grace. First, I thank the noble Baroness, Lady Randerson, for securing this evening's debate, and pay testament to the considerable work she has done in the Wales Office. Her great and continuing commitment to public life in Wales is appreciated much more widely than in her own party. It is a tonic to see the noble Lord, Lord Elystan-Morgan, back in his place. Like many others, I have missed his smiling presence and wisdom. I am sure he will be giving us both of those for many years yet.

I will say a little bit about the Wales Bill. Without wishing to pre-empt the will either of Parliament or the National Assembly for Wales, next year's Assembly elections may well be the last in their current form. The Government will publish a draft Wales Bill in the autumn for pre-legislative scrutiny and will introduce a Bill in the Commons—the correct place for Bills of a constitutional nature that are as far-reaching as this one—early next year, to implement the legislative commitments made in the St David's Day agreement to make the Welsh devolution settlement clearer, stronger and fairer. This work was begun before I entered the Wales Office and was pushed forward by the Secretary of State and the noble Baroness so effectively.

The Bill will provide for a clearer settlement, founded on a reserved powers model, to clarify the division of powers between Parliament and the Assembly. I will try to answer the points made in different subject areas if I can. The first of these is reserved powers, a point made forcibly by the noble Baroness, Lady Randerson. We are moving to a reserved powers model. I accept the point made by the noble Lord, Lord Elystan-Morgan, that it is important to get this right and not panic. We will not. There will be no attempt at a power grab but, as has been demonstrated during the debate, it is not a straightforward issue and we want to get it right. The debate has been interesting in that, much as we all want to move on to look at health, education, the economy and transport, they barely surfaced this evening. They were touched on cursorily here and there but we are still, perhaps understandably, looking at the constitutional settlement. It is important that we get that right and we will.

We need a stronger settlement with important new powers devolved to the Assembly—as they will be—over energy, transport and elections. I will come back to elections separately. Understandably, some mention was made of policing. It is quite true that this was a recommendation for devolution from the Silk commission which was not taken up in the St David's Day agreement. However, let us not become too pessimistic about this. We have come a long way in devolution, under the previous Government and this one. There have been previous commissions which have not seen the light of day, although they should have. The noble Lord, Lord Richard, who I see in his place, will perhaps understand my point. The Silk commission has been substantially taken forward in a way that we can see in the forthcoming Wales Bill.

I understand the points made by the noble Lord, Lord Wigley, and some of his frustration, but he himself went on to suggest that we drop the referendum on tax-raising powers, something that was in the Silk commission. Let us remember that we are driving this forward considerably in the Wales Bill and there will be a chance for scrutiny and discussion of that as it proceeds through both Houses. Legal jurisdiction was not something that was recommended to be subject to devolution under Silk. It is right that we should look at Scotland but, as all noble Lords have said, we should not be hidebound by what happens there. Scotland is very different from Wales, not least on the funding basis, to which I will come back in a while.

I will say at this juncture that I would happily run the noble Baroness's campaign to get into the Welsh Assembly—we go back a long way. This will probably not do her too much good, but I hope they have the sense to pick her, and I am sure that they will. I had better say no more in case it does the noble Baroness more damage than is sensible.

A central issue raised by noble Lords was tax and funding. This is important and we want to get it right. The Finance Minister in the Assembly, Jane Hutt, and the First Minister, Carwyn Jones, are very much aware of the Government's view that the funding floor needs to go hand in hand with some commitment to a referendum. A referendum has been accepted as central to Silk, for reasons we can understand. I agree that there has been historic underfunding of Wales, certainly under the Labour Party, which has continued for some time. We need to get that right. The noble Baroness talked about putting this on a statutory basis in order for it to be lasting. The Barnett formula, goodness knows, has lasted well for many years without being on a statutory basis, so I am not convinced that is the case, but we have certainly not closed our minds to that. If we have some agreement going forward, it may be something that could be looked at, but I am not sure that it is absolutely necessary.

In terms of elections, the noble Lord, Lord Roberts of Llandudno, spoke very passionately about the democratic processes and pressures that exist. Although I can understand the frustration that is felt by the Liberal Democrats and other parties about the electoral

system, I gently remind him that we did of course have a referendum in the previous Parliament on electoral reform and that the fairly clear result was to retain the present system, certainly against the choice that was offered. I reassure the noble Lord that all these powers over the electoral system, the elections and the number of Members will be devolved to the National Assembly, as is appropriate. I think that will be subject to a supermajority again, as has been the case in Scotland, but they will no longer be a concern for us. Instead, they will be a concern, quite rightly, for the National Assembly for Wales.

I hope I have addressed the significant points raised in the debate. As I say, it was a very good debate and will certainly inform our thinking on the Wales Bill and the way forward. We anticipate the publication of a draft Bill which will be subject to pre-legislative scrutiny. This is an important piece of legislation and we want to see it on the statute book next year. Then I hope that we can move in a way that we all want so that we can consider the issues that truly matter to people in Wales. As we well know from the recent general election—and as we will see, I am sure, in the Assembly election in the same way—nobody on the doorsteps talks about reserved powers or the Barnett formula. They certainly talk about funding for Wales, but the issues that they really talk about and that really matter to them, as they matter to us, are education, health, the economy, transport, agriculture, tourism and so on.

Lastly, I come back to the final theme that emerged, which is Scotland. We certainly have to be aware of what is happening in Scotland—we do not exist in isolation—but at the same time, we have to recognise that Wales is very different from Scotland, not just in the way it votes, which clearly was the case and which is a relevant consideration, but in many other respects. For example, our legal history is very different and we have a much more porous border. Very few people live near the Scottish-English border, while a heck of a lot of people live near the English-Welsh border, on both sides of it. That makes a difference to many of the things that we want to do. We must ensure that what we do is for the good of the people of Wales within the United Kingdom. That is what this Government are determined to do.

I thank your Lordships once again for an excellent debate. We will take away all these comments and study them very closely to inform progress on the Bill.

Psychoactive Substances Bill [HL]

Committee (1st Day) (Continued)

8.29 pm

Relevant documents: 1st Report from the Delegated Powers Committee

Amendment 11

Moved by ***Lord Howarth of Newport***

11: After Clause 2, insert the following new Clause—

"Guidance

The Secretary of State must issue guidance, before this Act comes into force and regularly updated thereafter, as to how users, enforcement authorities and others can identify individual psychoactive substances, the degree of the psychoactivity, their safe uses and their relative harms."

Lord Howarth of Newport (Lab): My Lords, the new clause proposed in Amendment 11 follows very closely on the debate which we held just before the dinner break. In their proposals in this Bill the Government are setting a very complex and difficult task for police officers, customs officers and others. The definition of a psychoactive substance is quite deliberately broad and, some would say, vague. Powders and pills look much alike and the question is, how is an officer to know, first, if a substance is indeed a psychoactive one and, secondly, what is in the mind of the person in possession of that substance? How are they to determine the intention? That is essential in the establishment of whether or not a criminal offence is being committed. I would also be grateful if the Minister told us whether he envisages that there will be a de minimis level of psychoactivity and below that level, enforcement officers will not be worrying and will not seek to enforce the regime that the Bill creates. Or, are the Government saying that any substance which is at any level psychoactive is to be controlled, in the sense that this particular legislation will control it?

As we have also acknowledged in earlier debates, there is a shortage of forensic facilities in this country. That is why the Home Secretary belatedly, just before the Bill was tabled in Parliament, wrote to the Advisory Council on the Misuse of Drugs to ask,

"how best we can establish a comprehensive scientific approach for determining psychoactivity for evidential purposes".

That suggests that the Home Secretary is rushing into enacting legislation before she has any clear idea as to how it would work. What we know is that significant additional burdens will be laid upon police whose numbers and resources have been diminishing and may well continue to do so. These measures, as the noble Baroness, Lady Meacher, has already put to the House, may further inhibit research in important respects and create multiple new possibilities for the criminalisation of people who are in some way involved with new psychoactive substances.

I propose that the Government owe it to consumers, businesses, research institutions and those responsible for enforcement to explain exactly what they intend, and to advise them all on how this legislation would work. The Minister kindly undertook to write to us, the Peers who have been involved in consideration of this Bill between Committee and Report. I suggest that in due course the Government should write to a much wider range of readers—people who will have responsibilities created under this legislation, who will need to understand the definition of and the practicalities of identifying a psychoactive substance, and what is in the minds of people they apprehend who may be contemplating purposes that the Government wish to discourage and would make a criminal offence. That is the burden of the new clause proposed in Amendment 11. The Secretary of State must issue guidance before this Bill comes into force and keep it regularly updated thereafter as to how users, enforcement authorities and others can identify individual psychoactive substances, the degree of their psychoactivity, their safe uses and their relative harms.

I now move to the new clause proposed in Amendment 12, in the same group. If people are to look after themselves and others—their children, friends

[LORD HOWARTH OF NEWPORT]
and people whose interests they care about—they are going to need full and reliable information about psychoactive substances. We have heard much about how the internet can be a force for bad, but it can also be a force for good in its ability to disseminate information that may be extremely valuable and helpful in enabling people's safety to be preserved. It is the Government's responsibility to use the means at their disposal to provide the fullest information they can. The previous Government, I think, relaunched the FRANK website, the earlier version of which was considerably criticised, but I praise them for doing this because it is a genuine effort to provide fairly full and certainly honest information about psychoactive substances.

The difficulty about the Talk to FRANK website is that its official provenance and rather starchy tone mean that it will not be the go-to website for young people who want to find out about drugs. While it is important that the Government maintain a website of this kind and amplify the information that it provides, they should recognise that the work they do in preparing and maintaining such a website is complementary to other, unofficial sites that are created and maintained by experienced people, whose motive is good, because they want to share information about the realities of psychoactive substances and protect people from coming to harm by their use of such substances. I have in mind websites created by organisations such as DrugScope, Bluelight, Urban75, SafeOrScam and PillReports, which are examples of some of the websites to which people can go to learn about psychoactive substances. Those websites are maintained with very good intentions with regard to the public good—public safety and health—and I therefore hope that the Government see their work as complementary.

At all events, we need to capture as much evidence as we can about the substances, so that we better understand the harms we are trying to prevent, the ills we need to cure and the effectiveness of the measures taken to prevent people coming to harm, and to remedy—so far as is possible—the harms that people experience. We should learn as much as we can from collaboration with other countries; the European Monitoring Centre for Drugs and Drug Addiction is an excellent model of international information sharing and co-operation. However, we cannot expect the people of this country habitually to turn to the website of the EMCDDA; they need to have something that is designed for them, and more appropriate and accessible for them.

My second proposal, in subsection (b) of the proposed new clause in Amendment 12, is that the Secretary of State should provide,

"a network of testing centres, readily accessible at no charge to users and others, at which they can be informed about the identity, composition, toxicity and potential harms to human health of any substances brought in by them which there is reason to think may be psychoactive".

As I understand it, that service is available in the Netherlands. It appears that they have a fuller range of forensic resources and facilities for the identification and testing of substances, and that access to those facilities is freely available to the public at large as well as to officials and enforcement authorities. We should seek to construct such a model in this country, not least because an early alert to a bad consignment of drugs, which is very dangerous, could save lives. I beg to move.

Baroness Meacher (CB): My Lords, I support the noble Lord, Lord Howarth, on both those amendments. We talked a lot about legislation earlier on today, but we know, both internationally and from the Home Affairs Select Committee and others, that legislation does not make very much difference at all to the key issues relating to drugs, whether traditional drugs or new psychoactive substances. The important job the Government have concerns information. I have said it before and will say it again: young people do not want to kill themselves, believe it or not, and they do not even want to harm themselves and finish up in hospital. Why do they kill themselves and finish up in hospital? Because they do not have the information they need to keep themselves safe. Why do they not have the information? Because far too many substances are banned in a rather simplistic way. Countries such as the Netherlands, which have coffee shops where people can get cannabis, have very little problem with heroin, for example. There are other ways of keeping people safe. But the most important way, as the noble Lord, Lord Howarth, says, is information. I agree with his ideas about how this should be done—it cannot be typical government information. It really is important. If we stopped focusing on legislation quite so much and focused on some of these other issues, we might actually make some progress.

I want also to support the noble Lord, Lord Howarth, in relation to the testing centres. Testing centres would be a very important adjunct if we were to have a more proportionate system where low-harm substances would be regulated, labelled and so on, as recommended by the European Commission and approved by the European Parliament. If we had a proportionate system like that, and had testing centres, a young person could go into a testing centre and ask whether a substance was low harm and okay to take. With a combination of a proportionate legal system, testing centres and really good information, we would begin to have a really good drugs policy. Would that not be wonderful? We could lead the world with such a policy.

Many Latin American countries talk about these things. They know just how bad the war on drugs can be. They know just how important it is for the demand end of the drugs market to be managed effectively in order to save them from tens of thousands of deaths a year, corruption, government failure and all the rest of it. It is absolutely disastrous across the Atlantic. In my view, we have a responsibility to ourselves and our young people but also to Latin America and central American countries.

I very strongly support what the noble Lord, Lord Howarth, said. I really hope that Ministers will take it very seriously and somehow link it with a proportionate, rational system of drug control.

Lord Paddick (LD): My Lords, I support these amendments. However, I have some concerns. The first is, as has been previously mentioned, the limited forensic capacity that the Government and police have.

Already the police service has to make rationing decisions as to what cases it refers to forensic laboratories. This Bill could create a massive increase in the amount of work that forensic laboratories would have to do.

Before we had new psychoactive substances and this proposed Bill, the idea of websites that advised what was a safe dose of an illegal drug seemed somewhat contradictory, and there would have been some fairly stiff arguments against providing testing stations for drugs that are illegal to possess. However, as noble Lords will know, this Bill does not criminalise possession, and therefore does not make it illegal to take these substances. Therefore, the case for public information about safe dosage and having testing centres appears absolutely necessary if the Government are to continue to pursue this idea that simple possession for personal consumption of new psychoactive substances should remain legal.

8.45 pm

Lord Norton of Louth (Con): My Lords, I rise briefly to support the amendments proposed by the noble Lord, Lord Howarth, and to reinforce the point made by the noble Baroness, Lady Meacher, looking particularly at information—in this instance, under Amendment 11, information directed at users. That struck me as the key point in the amendment because the Bill is concerned primarily—necessarily so—with those who produce the substances. The danger is leaving out those who might then consume them. They are not doing anything illegal, but we should not leave them out of the discussion about them being better informed about the effects of the substances.

We will come on to education in Amendment 13. That might be useful in deterring people who want to take substances in the first place. It might be a bit optimistic, but I think that is eminently sensible. But what about those who are users and making sure they are at least informed as a consequence of what we are talking about? I am a little concerned if we focus solely on production and what we do about that, without thinking about those who are still prone to consume these substances. I am not particularly wedded to the particular amendments the noble Lord proposes, but I am very much at one with him in the intent and in what he is calling attention to: making sure we do not lose sight of that dimension. I will be very keen to hear the Minister's response. If we are not deterring them—my hope would be that we would—I cannot see what the difficulty would be in having some regime for providing that sort of information.

Lord Tunnicliffe (Lab): My Lords, there are effectively three amendments here. One is Amendment 11, whose essence is guidance. All three may have some merit and we would be very interested in the Minister's reply. The first one on guidance would seem to be very important for potential users. Also, of course, it would meet a concern which we were lobbied about regarding the retail sector, which clearly is going to have problems given this Act. It is going to need some guidance and it may have to try and generate its own if the Government do not help. I would be very interested about what the Government have to say on that.

Paragraph (a) in Amendment 12 and the availability of information on the internet also seems sensible to me. It does not mean we are softening our general position on the Bill. Good information provided by government has to be a good thing. I would be very interested in the Government's response to the proposal relating to testing centres. At first sight, it looks rather over the top, but on the other hand the Government are committed I believe—and it is very important how carefully this response comes across—to a much more comprehensive approach to testing, to support the Act. That will give us some tangible evidence that the Act will work. I hope the Government will take these three areas seriously and, depending on their response, we may take this further with the noble Lord, Lord Howarth, on Report.

Baroness Chisholm of Owlpen (Con): I am grateful to the noble Lord, Lord Howarth, for his explanation on these amendments. Before I start, I was very rude earlier when I did not thank him for the kind words he said at the beginning of this debate and I feel very honoured to be taking part. I agree that a joined-up approach in departments is a very useful point. Also, I feel extremely privileged to be able to learn from my noble friend Lord Bates about how these things are conducted. The noble Lord has asked that, before this Act comes into force, the Home Secretary must issue guidance on how users, enforcement authorities and others can identify individual psychoactive substances, the degree of the psychoactivity, their safe uses and their relative harms.

I can certainly understand the sentiment underpinning at least part of Amendment 11. I acknowledge the importance of the effective implementation of the provisions in the Bill by enforcement agencies and the crucial role played by the Home Secretary in ensuring that this takes place.

I emphasise that we are working closely with enforcement agencies—the police, the Border Force, the National Crime Agency and the Local Government Association—to ensure the successful implementation of the Bill. All the agencies, supported by the Home Office, will produce guidance for their own officers that will address issues such as those raised by the noble Lord. For example, it seems sensible that the College of Policing, with the national policing lead on drugs policy, is best placed to produce the guidance for police officers, along with our input, as I have said. Similarly, the Local Government Association is well placed to produce tailored guidance for local authorities.

We are also working with other bodies, including the British Retail Consortium and the Association of Convenience Stores, to produce targeted guidance for their members. It is also important to discuss with the Welsh and Scottish Governments and with Northern Ireland's Department of Justice what guidance is needed to address their national needs. Any guidance for prosecutors in England and Wales is a matter for the Director of Public Prosecutions.

However, I have grave concerns about issuing guidance to users of psychoactive substances on how they might identify such substances, along with their degree of psychoactivity, their safe uses and their relative harms.

[Baroness Chisholm of Owlpen]
I have the same concerns about Amendment 12, which states that the Government must establish a network of centres where drug users can get their illegal drugs tested. Although this is doubtless well intentioned, I fear that such approaches could have the opposite effect to that intended. Such initiatives could actually serve to promote the availability of psychoactive substances and encourage their use, which is clearly contrary to the purpose of the Bill. A better approach is to highlight the harms of such substances, alongside wider efforts at prevention.

Baroness Meacher: The Minister referred to testing centres possibly having the opposite effect to that intended. In the Netherlands, where such centres have been in operation for some time, they are actually rather successful. For example, there have been, I believe, no deaths resulting from psychoactive substances. Rather than worry about whether they might have the opposite effect to that intended, I suggest that the Government check with the Netherlands how those centres are working, because they would find that they were working well.

Baroness Chisholm of Owlpen: I will certainly take that forward. However, with regard to testing centres, the Dutch model sits within a more tolerant drugs policy that the Netherlands has. Our key message is that there is no safe dose of these drugs, and they should not be taken. Any move towards such a scheme would undermine that message and could encourage drug use, contrary to government policy. This proposal would also cover drugs controlled under the Misuse of Drugs Act, not just those covered by this Bill. That would undermine our intentional obligations as a signatory to the UN conventions, and no clear public protection case has yet emerged for such a testing centre.

There is a well-established system for issuing a national alert. Any intelligence that Public Health England receives alerting it to identifiable problems, such as a batch of drugs likely to cause significant risk in England, is acted on.

Lord Tunnicliffe: There is more common ground than the Minister allows. I can see her aversion to saying that there are safe levels and safe doses, and I am quite sympathetic to this. But there can always be the inverse—there can be "dangerous", "very dangerous" and "fatal", which is the reciprocal way of putting it. I ask the Government to look into whether there is some common ground in this area because the provision of information and alerting people to the dangers of these substances—we share the Government's enthusiasm for banning them—by these various amendments must have a generally benign effect.

Baroness Chisholm of Owlpen: I thank the noble Lord for that, but there is a well-established system for issuing a national alert. Any intelligence that Public Health England receives alerting it to the identifiable problem of a batch of drugs likely to cause a significant risk in England is acted on. There was an example earlier this year. There was a warning from Madrid that Superman pills sold as ecstasy containing PMMA were found in Spain. This followed the tragic deaths in England over the Christmas period caused by similar Superman pills. PHE took immediate action and issued a warning that these highly dangerous drugs may still be in circulation. Public Health England is working with partners to accelerate the review already under way on how drug alert systems in the UK can be improved, including how they join up with intelligence from Europe.

Lord Norton of Louth: I agree with what was said by the noble Lord, Lord Tunnicliffe—you start from the basis that it is harmful and ascend in order of degree of harm. I take what my noble friend said about there being a mechanism for identifying them already and for disseminating that, but could she say a little more about the dissemination? How far does it go? The concern is whether it actually reaches the users or stops at an earlier point in trying to prevent the dissemination of the drugs. How much is there a greater awareness of and sensitivity to those who are in danger of consuming these substances?

Baroness Chisholm of Owlpen: I thank my noble friend Lord Norton for that. That is probably covered by FRANK, which is an element of our broad approach to prevention. We are investing in a range of programmes that have a positive impact on young people and adults, giving them the confidence, resilience and risk-management skills to resist drug use. It has been a valuable resource for young people, parents and teachers, especially when used for wider resilience-building and behaviour change. It continues to be updated to reflect new and emerging patterns of drug use and to evolve to remain in line with young people's media habits and to strengthen advice and support. Since its launch it has been visited by more than 35 million people, and millions have called the helpline to speak to specially trained advisers.

I hope that explanation has gone at least some way to satisfying the noble Lord, Lord Howarth, and that on that basis he will be content to withdraw his amendment.

Lord Howarth of Newport: My Lords, I am grateful to the noble Baroness, Lady Meacher, the noble Lords, Lord Paddick and Lord Norton, and particularly my noble friend Lord Tunnicliffe on the Front Bench. He saw some merit in what I said. This illustrates the virtue of the Committee process. The dialectic helps us all to learn. My noble friend Lady Meacher was right to say that information is at the very least as important as legislation, because we have all this evidence that prohibition has not worked. In that case, it is much better that people should be helped to understand what they do.

The noble Lord, Lord Paddick, was concerned that my recommendation of a network of testing centres would lay impossible demands on the existing resources of laboratories and forensic facilities. Of course, he is right: with our existing resources we could not possibly construct such a network that would be accessible in all regions of the country. My proposition is that we should aim to achieve that. We know that this legislation will in any case require an expansion of forensic facilities. It seems to me that you can achieve both purposes simultaneously: to enable those whose responsibility it is to enforce the law to have speedy

access to the information they need, but to also assist vulnerable consumers. I am grateful to the noble Lord, Lord Norton, for his endorsement of the value and importance of providing reliable, trustworthy and up-to-date information to all concerned.

9 pm

I am most grateful to the noble Baroness, Lady Chisholm, for the kind words that she spoke. She had absolutely no reason to apologise to me. I particularly appreciated the kind words, however, that she spoke about her noble friend the Minister. Every member of the Committee greatly appreciates the thoroughness and care with which he—and add my thanks to the officials—seeks to assist the Committee in our inquiries and in our concerns. The noble Baroness did not answer my question about whether there would be a de minimis threshold—such a low level of psychoactivity that in practice people would be advised that they do not need to concern themselves about it, whatever the technical letter of the law might say. I think that is quite an important practical consideration. Perhaps in due course we could have a response on that.

I was encouraged, of course, to hear how the Government are working closely with a whole range of agencies. I recognise that they have to work with devolved institutions across the UK as a whole, and also that the guidance that the DPP issues needs to be independent of government. All those points I take. I was a little confused—my fault, no doubt—by what she had to say about guidance to consumers. She rather deprecated the provision of guidance to consumers; on the other hand, a little later on, she became quite lyrical about Talk to FRANK, and explained what a marvellous thing it had been and what large numbers of people it had helped. So I am left a little uncertain about the Government's view on that particular point.

The noble Baroness raised a very serious objection to my amendment in that establishing a network of testing centres might be seen as sending the signal that the Government approve of the taking of drugs. I do not think it would. It is a very sad and worrying reality, but the reality is that people are going to use these substances. The task then is to recognise that and see how we can best protect them. I also acknowledge the valid point she made that provision in Holland is in the context of a rather different regime. But perhaps she will go on a fact-finding mission to Holland and she will investigate the testing centres and form her own view as to whether they are a good thing or not and whether we ought to do something similar—

Baroness Hamwee: I am sorry to interrupt the noble Lord when he is in full flow, but I think he might be coming to the end. If he is considering bringing this back, I wonder if I could raise one thing that has been troubling me during this debate, concerning the advice as to harm or danger. If it is advice as to whether something is or is or not harmful, perhaps before the next stage, he might think about duties of care and liability and all those things. If it is advice as to whether a substance is dangerous, very dangerous or fatal, does he share my concern? I am not seeking to pick holes; I genuinely want to explore the subject. My concern is that if there are those categories, the lowest category would be interpreted as meaning "not harmful"; in other words, it would be reduced to people thinking, "Well, it's not fatal and it's not very dangerous, so it must be okay". I do not know if there is a way through all this.

Lord Howarth of Newport: The noble Baroness, Lady Hamwee, makes a very important point, and I think that it was strongly suggested by the noble Baroness, Lady Chisholm, as well. We have to convey that there is no such thing as a safe dose. We are dealing with relative harms. We are helping individuals who are possibly ignorant, gullible and vulnerable—they may be very knowledgeable—to navigate their way through what is very treacherous territory indeed. The Government, in partnership with other well-intended agencies, NGOs and the voluntary sector, should be quite systematic about trying to ensure that the best information is available to people who are going to take risks and may come to appalling harm. In this policy-making process, we are looking for the least bad solution. We are not dealing with an ideal world—there is not going to be a drugs-free world; some would contend that that is not even an ideal. At any rate, the practical reality is that people will always use drugs, so our responsibility as good citizens and the responsibility of the Front Bench opposite on behalf of the Government is to minimise harm and danger.

Finally, the Minister talked about the value of the European early warning system, which is an important component of the array of policies to try to protect people from harm. But as the noble Lord, Lord Norton, inquired, we need to know how the Government intend to make sure that those early warnings are widely circulated and reach the people who are perhaps most in need of them. Earlier this year there was a spate of stories about people being killed by taking new psychoactive substances, which seem to have arrived somewhere in East Anglia and were spreading quite rapidly across the country. Whether or not there had been an early warning from an official European system, the fact is that people did not get the advice they needed in time. We have to think of all the best practical ways we can in order to help spare people that kind of fate. In the mean time, I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

Amendment 13

Moved by ***Lord Howarth of Newport***

13: After Clause 2, insert the following new Clause—

"Education

(1) The Secretary of State shall require that all children of secondary school age receive education designed to teach them about the realities of psychoactive substances (whether controlled or otherwise) and develop them as persons who are informed, risk-aware, resilient and responsible in relation to psychoactive substances.

(2) Ofsted and equivalent agencies in Scotland, Wales and Northern Ireland shall, in the course of their normal inspections of secondary schools of all kinds, inspect the performance of individual schools in drug education and include their findings on this in the reports which they issue on those schools.

[LORD HOWARTH OF NEWPORT]

(3) Ofsted and equivalent agencies in Scotland, Wales and Northern Ireland shall publish an annual report on the state of drug education in schools in each nation of the UK, together with recommendations.

(4) The Secretary of State shall monitor the programmes and resources available to schools to support their teaching about psychoactive substances of all sorts (including both controlled and exempted substances)."

Lord Howarth of Newport: I apologise that the Committee has to put up with an inordinate amount of talk from me, but I will be as brief as I can on what is a subject of major importance: how we strengthen education in relation to drugs. In introducing this proposed new clause, I congratulate my noble friends on the Front Bench on their excellent new clause set out in Amendment 104, which is grouped with this one.

The coalition's strategy as enunciated in 2010 included reducing demand, and in that, education is or should be key. I would like to see the Secretaries of State for the Home Office, for Education, for BIS and for Health jointly reporting as proposed in the new clause set out in Amendment 104. My noble friends have called for an annual report on the subject of education, but it should be one that emanates from the Government as a whole, and particularly those departments.

The situation as it stands is that schools are required to provide drug education programmes and information about drugs in the science national curriculum. But not all schools, indeed a diminishing number, are required to deliver the national curriculum, and even in those that are, the evidence is that this fairly minimal requirement does not prove to be particularly effective in educating people about the realities of drugs. After much anguished debate, the last Government decided that PSHE should be a non-statutory subject in the national curriculum. It is fair to say that the last Government provided funding for early intervention to support children at risk, and I assume that the troubled families programme has something to offer in this connection.

I have read that the Government are spending some £7 million annually on drug education as a whole. On the other hand, the Minister of State at the Home Office, Mike Penning, told the House of Commons in a Written Answer on 2 June that the total spend on education and prevention campaigns in relation to new psychoactive substances from 2013 to 2015 had been only £180,556. That seems extraordinarily little. It would be helpful if the Minister provided the House with correct figures so that we know what the Government are spending on various aspects of drug education. Whatever it is, however, I would contend that it is inadequate.

The Home Affairs Select Committee of the House of Commons, in its 2012 report *Breaking the Cycle*, was scathing about the efforts being made at that time by the Government to promote education about drugs. It quoted the charity Mentor, which complained angrily:

"We are spending the vast majority of the money we do spend on drug education on programmes that don't work".

The committee found that most schools provide drug education once a year or less. I have no doubt that there are schools that do very well, but the Home Affairs Select Committee was talking about the generality of schools. It reported that the Department for Education, with, one might say, a shrug of its institutional shoulders, had said that it does not monitor the programmes and resources that schools use to support their teaching. That is why, in subsection (4) of new Clause 13, I have proposed that the Secretary of State,

"shall monitor the programmes and resources available to schools to support their teaching".

It seems to me a dreadful dereliction of responsibility if that is not happening.

Education strategy in the fight against drugs must be transformed. When the public health campaign about tobacco got serious, it worked. The Secretary of State must insist that all secondary schools take seriously their responsibility to educate children about drugs. It may well be argued—and it may well be right—that education should start before children reach the secondary level; certainly it should apply in every secondary school.

Effective techniques exist to teach young people resilience and the capacity to make their own considered decisions. As the noble Baroness, Lady Meacher, said, we must act on the demand at that point—legislation is not going to do it on its own. We must bring about a society in which fewer people want to use these substances. The way to make a very good start on that is to get serious about education.

I have made specific proposals about the role of Ofsted and the equivalent agencies in Scotland, Wales and Northern Ireland. School inspections should routinely examine what is happening with drug education in schools, and Ofsted's findings should go into its reports on each school. Ofsted should also publish an annual report on the state of drug education in schools in each nation of the United Kingdom and make recommendations about necessary improvements. That way, not only would the message get out to all schools but all schools would be invigilated and monitored on the way they acquit themselves of this responsibility.

More broadly, it is not just specific drug education that matters: it is the quality of education overall. The propensity to use drugs correlates with poor educational standards and is found more widely in communities where, as things stand, the standard of education offered in local schools is not what we would wish. Deficient education is among the pathologies that incubate drug abuse. It is a broader question.

The same vigour needs to be brought to the approach in further and higher education. The funding councils should make it a condition of publicly provided support for the universities that they demonstrate that they have programmes to help people understand the realities of drugs and that they report on what they are doing every year. Universities UK ought to promote best practice, not only in relation to new psychoactive substances but to prescription drugs that are being widely misused by students in universities, as I have mentioned before.

Drug users of all ages need help to become properly informed, properly risk aware and properly capable of taking their own sensible, responsible decisions. I hope that the Minister, in responding, will also tell us how his department, which has lead responsibility in government, plans to work with other government

departments, particularly with the Department for Education, and to ensure that we have a coherent strategy that tackles this problem at the roots and does not simply try to patch things up when they have gone wrong. I beg to move.

9.15 pm

Lord Blencathra (Con): I am not deliberately trying to oppose every amendment that the noble Lord, Lord Howarth of Newport, has proposed in Committee tonight. Indeed, if his amendment had simply said that all head teachers shall once per annum bring in an appropriate person to talk about the dangers of drugs, I would have supported it. Indeed, I wish I had thought of it myself.

The point that I am seeking to make is: who is an appropriate person? I discovered in the 1990s in the Home Office that there is not a single Member of your Lordships' House, not a single Member of the other place, not a single policeman—no matter how young or old—and not a single teacher who would be regarded by young people and children as a legitimate person to preach about the dangers of drugs. I discovered rather late on in my term of office at the Home Office—I wish I had had more time or thought of it earlier, before the 1997 election—that the things that seemed to work were when a school got another teenager who would come in and say, "I am a drug addict, or I used to be a drug addict and look at me now. I can't pick up boys or girls; half my nose has rotted off. I'm as skinny as a rat. I've been thrown out of my house by my parents and I have all these problems". It was only with other teenagers who looked and sounded like them and came from the same area, rather than men or women in suits, that they believed in the dangers of drugs.

I worry that the noble Lord's amendment is too state-oriented. It is maybe too bureaucratic. I am certain that if it were carried we would be spending more than £7 million on drug education. I am afraid that it would be snapped up by the Ofsteds, quangos and education bureaucrats who have wonderful programmes that sound good. They would be like the adverts that I thought we had prepared at the Home Office, with men in suits lecturing about the evils of drugs. Like those adverts, they will be completely ineffective. I say to the noble Lord and to my noble friend the Minister that I am very sympathetic to education in schools but it has to be kept simple and appropriate. If kids were cynical at my time in the Home Office in 1994 to 1996 they are a dashed sight more cynical now about being lectured by anyone who is older or outside their own cultural circle. I hope that the Minister will be able to respond to that if he cannot accept the amendment moved by the noble Lord, Lord Howarth.

Baroness Meacher: My Lords, I support very strongly the idea behind the amendment moved by the noble Lord, Lord Howarth, and the importance of education. However, I agree with the noble Lord, Lord Blencathra, that the type of education is absolutely all-important. He said that teenagers do not want someone coming in preaching about drugs. Absolutely—we know from all the research, most of which has been carried out in the US, that lecturing and didactic teaching does not work in the sphere of drugs. We know that. I was going to suggest that we need the words "evidence-based" in the amendment. We know from the evidence that peer involvement—certainly group work with youngsters who have already had or are now having terrible problems with drugs—is the method of education that works. Whether one wants to call it education or whatever, it ideally needs to go on in schools. It does not seem inappropriate therefore to use the word "education". We all have to be clear what we mean by education but, as for the term "evidence-based", the evidence points exactly in that direction.

Before you get to that sort of education and imparting —or whatever you call it—of information, there is work already being done in a number of schools up and down the country to improve the resilience of youngsters who are particularly vulnerable to drug addiction. An example is children who are not functioning well at school or have very difficult home lives. There are all sorts of reasons why those children lack resilience. There are very good programmes of resilience-building in schools and for me they are utterly central to the whole business of prevention of drug addiction. This sort of work is far more important even than all the stuff we were talking about earlier about legislation, passionate though I feel about having the right framework in which all these things occur. I would support at least some variant of the amendment from the noble Lord, Lord Howarth, because it is fundamentally important, but let us see if we can come up with something really good for Report. Even better, the Minister could take this away and bring back a well-framed amendment to cover this vital issue.

Lord Norton of Louth: My Lords, like the noble Baroness, Lady Meacher, I have added my name to the amendment because I think the noble Lord, Lord Howarth, is spot on in terms of the principle of the amendment, which is about education, because it completely shifts the focus. This Bill is essentially reactive. It is getting at what it wants to ban. The great thing about the amendment is that it is proactive. It explains to people why they should not take drugs in the first place. The route is education because we want to ensure that people are aware of the risks so they do not wish to take them in the first place. Otherwise, what we are doing is downstream once they have started taking the substances.

How then do you deliver the education? I take the point that my noble friend Lord Blencathra made about those who should be informing others, because young people listen to other young people and those who have had the experiences. It is absolutely right. They would be the most appropriate people. If somehow one could link a reduction in drug use to school league tables I can assure you that head teachers would be bringing in those appropriate people like a shot to affect outcomes. However, the crucial point here is that what the noble Lord, Lord Howarth, is getting at with this amendment is worth while in its own right and would be worth pursuing anyway even if the rest of the Bill were not there.

I think we are all agreed that it does not actually have to be precisely in the form in which the noble Lord has brought it forward but there is a general welcome for the principle involved. I regard it as extraordinarily

[Lord Norton of Louth]
important because if we can stop people wanting to take synthetic substances in the first place then a lot of what we are discussing becomes unnecessary. We really ought to be thinking in those terms and the noble Lord has done a fantastic service by bringing forward this amendment. I hope it will engage my noble friend's attention to thinking how we educate people about this in the first place. It might be difficult. We might not achieve it, but it is inherently a desirable goal. It is, if you like, a public good.

Lord Kirkwood of Kirkhope (LD): Can I make a short intervention to support Amendment 13 in the name of the noble Lord, Lord Howarth of Newport? I agree absolutely with the noble Lord, Lord Blencathra, that you need reformed addicts and the like to be effective in these circumstances. I have some experience working with the Wise Group in Glasgow, where Routes out of Prison takes reformed prisoners—people who have been on the inside—and meets prisoners coming out. There is no doubt that the vital connection between those who have been in that bad place and traded themselves out of it, and the totality of both phases, is very compelling and captivates young people of secondary school age in particular in a way that nothing else can, so education of that kind is essential in my view. However, there are not enough people with sufficient experience to do it. The voluntary sector is very good in some parts of the country but in others it is patchy. Further, if this is a good idea and there are workable ways of delivering it without men in suits being involved, we need a quantum of money to make it work sensibly. It is astonishing that the last Government fessed up to spending only £180,000 in this area. I think that figure applies only to England. I must check with my Scottish contacts to find out whether they spent a tenth of that, or whatever it was. That really is a de minimis amount of money. Indeed, I think that even £7 million is a de minimis amount of money.

The noble Lord, Lord Norton, is absolutely right to say that this proposed new clause stands on its own but if the Government are really taking a blanket-ban approach—I agree with my noble friends on the Front Bench that that is not the appropriate way to go—I would be consoled if there was an important, big, well-funded and properly constructed education package that went with this approach, because I think it would have an impact. However, you cannot do it for £180,000 a year. As we all know and expect, the impact assessment talks about effects on business, and all these things are important. However, if we are going to make this a reality and make it work, we need to be thinking over the period of the rest of the Parliament of seriously increasing the resources devoted to the measures proposed in this amendment.

My final point concerns the troubled families programme—it is a horrible name—about which I know a little and which was mentioned in passing by the noble Lord, Lord Howarth of Newport. It is also another way into this issue because a lot of the trouble in troubled families comes from youngsters who are out of control. These families contain a lot of single mothers in difficult circumstances and low-income households. These people struggle to access help. They will be the first to identify the problem with their teenage children and will be the first to seek help. Therefore, I think the troubled families programme would be another avenue through which to release resources effectively to confront some of these dangerous substances. If we are thinking about introducing a provision something like what is proposed in the new clause in Amendment 13 at later stages of the Bill, we need to think seriously about how to resource it adequately without being stupid about it. I am not daft; there is obviously an austerity constraint on everyone but we should all think about what constitutes a meaningful annual spend before the later stages of the Bill are completed.

Lord Rosser (Lab): My noble friend Lord Tunnicliffe and I have tabled the second amendment in this group. The first amendment, which we have been discussing, relates to education in secondary schools. Our amendment provides for the Secretary of State to,

"establish a scheme to promote public awareness of new psychoactive substances, including the dangers these substances may pose",

and to provide an annual report to Parliament. The amendment lists some of the issues that must be included in the report.

The expert panel report included recommendations on education and awareness. What is needed is a targeted public awareness campaign for young people and one specifically for parents, an evaluation of current education programmes, investment more generally in drugs education in schools and new psychoactive substances training for front-line staff. A comprehensive prevention campaign should include Public Health England, which should run a targeted campaign to alert people to the dangers of these drugs and to counter the myth that "legal" means "safe". That campaign needs also to include the targeting of young people through social media.

9.30 pm

As has been said, we need proper drugs education in schools. At present 60% of schools spend less than an hour a term on drugs and alcohol education. We need informative education and awareness campaigns that include a harm-reduction message. For example, it needs to be got across that drugs can take hours to take effect, in order to help reduce the incidence of people taking more and then overdosing. People need to know the dangers of these drugs, such as overheating, anxiety and paranoia, and what to do if they encounter such problems. Without programmes of this kind, legislation can never be effective on its own. Yet as my noble friend Lord Howarth of Newport said, a recent Parliamentary Question revealed that between 2013 and 2015 only £180,000 was spent on new psychoactive-substance campaigns.

Accepting the amendments in this group, or similar amendments, and having them in the Bill helps to get across the key message about the importance of education, prevention and public awareness programmes. The requirement for an annual report from the Secretary of State also provides a check that proper and effective programmes are being developed and implemented and, equally importantly, their effectiveness reviewed. This would also provide an opportunity for Parliament to discuss the issue, based on the content of such a report.

I hope that the Minister will recognise the importance of the point being made by the amendments in this group and give a favourable response.

Baroness Hamwee (LD): My Lords, I agree with so much of what has been said and will endeavour not to repeat it, other than just a little.

The point made about the appropriateness and therefore the credibility of the person undertaking the education, as I shall call it for want of a better word, is something about which I feel very strongly. When I was about to leave school—they left it until after our A-levels to give us anything that might now come under the heading of PHSE—there was a short, embarrassed and embarrassing discussion, which was not a discussion because we were talked at, by the member of staff least likely to be identified with by any of the 18 year-old girls present. The talk was about the white slave trade, and none of us could identify with her or with it because it was so unrelated to real life. Therefore, the term in subsection (1) of the amendment referring to "the realities" struck a chord with me. This work has to be trusted and be undertaken by somebody who is saying things that seem sensible to the people listening to them. That may include variations in harm and degrees of harm. If some substances are not harmful, one needs to say so. In subsection (1), I also liked the words,

"informed, risk-aware, resilient and responsible",

which cover an awful lot of important ground.

I would want to see this work done in a wider context. Alcohol, tobacco, coffee and chocolate are I suppose referred to here. I wonder whether one can divorce this kind of education from sex education, for instance, because it is all about recklessness and about kids getting themselves into situations that are difficult and hard to get out of. What is in here is hugely important but it is part of a wider picture and needs to be presented as such.

With regard to Amendment 104, my noble friend and I refer to similar measures as part of our amendment about decriminalisation for possession—in other words, what can be done if someone is found to be in possession but it is not an offence. We have linked drug treatment and awareness. In that context, I should confess to the House, because there are all sorts of awareness courses, that I once had to go on a speed awareness course. Your Lordships can interpret that how you like.

The Minister of State, Home Office (Lord Bates) (Con): I was getting nervous at that point for the noble Baroness, but was it speed as velocity?

Baroness Hamwee: It was, and the police were a bit too fast to prosecute, in my view.

Lord Bates: My Lords, I am grateful as these are important amendments and I pay tribute to the noble Lord for introducing them. When we had our meeting of all interested Peers, he said that it was vital that we spaced our time in Committee to allow in-depth debates on the key themes which run through drug policy. To me one of the key themes, along with enforcement, must be the value and importance of education. The noble Lord has afforded us that opportunity, along with the Official Opposition, and I am grateful for that.

I want to address some specific concerns, but a number of the points that I will raise were touched upon by my noble friend Lady Chisholm. She was good enough to say something about me but, behind the scenes, the great joy which your Lordships cannot see is that when we are having our briefings, because of her distinguished background in nursing and her volunteering within a drug rehabilitation unit, she brings great sensitivity and understanding to this issue. I have drawn on that many times myself and I am grateful for it.

I want to start with the big picture on education. The more that I have looked into it, the more I think that the most difficult thing in winning the battle in education has been the term "legal highs". The fact that we have seen this sort of heading everywhere—it is pervasive, even on the high streets—saying there is somehow a high which is not age restricted, and which you can walk into a shop to get without being prosecuted for it, has been one of the most dangerous things for the policy of education. One of the groups which came to see me and officials at the Home Office in support of the Bill said that, above all, they wished that we could get the message out to young people that these are often not legal highs but lethal highs. Because of the point that the noble Lord, Lord Kirkwood, made at Second Reading about the pharmacology of these drugs, the term used was that people are often playing Russian roulette as to which part of the batch they receive. Added to the fact of their being able to get these substances on the high street through a store, without producing any ID or proof of age whatever, it does immense damage to the education cause to which we are all committed.

As in other parts of the legislation, we have sought to draw upon expert opinion where we can. A number of recommendations were made in the report by the Advisory Council on the Misuse of Drugs, *Prevention of Drug and Alcohol Dependence*. It highlighted the importance of embedding universal drug prevention actions in wider strategies to support healthy development and well-being in general. It also recognised that targeted, drug-specific prevention interventions remain a valid approach to those individuals considered to be at risk of harm. That came on board along with the expert panel's report. When the noble Lord, Lord Rosser, spoke at Second Reading, he really tried to put me on the spot by saying that there was a substantial section in the expert panel's report about education. While that was published under the coalition Government, he wanted to know whether it would remain government policy. I made the point that that was absolutely the case and that we remain committed to it.

I am pretty sure—and I will write on this if I am wrong—that the relatively small amount of £180,000, which was quoted in the Written Answer, will be part of a breakdown of the £7 million. The majority of that is a health lead and we were talking about what the Home Office spends, not on overall drug prevention, but specifically on new psychoactive substances. That is a key element.

I know this may sound strange but the legislative programme has a place in provoking awareness. I know this from my own Twitter account, where I now

[LORD BATES]
have a large number of new followers who do not necessarily agree with the policies of HMG in respect of new psychoactive substances. I am also realising that saying that might also get me trending on social media. I welcome this, because it is part of people engaging with the debate and the legislative process. People are asking, "Should they be banned?", "Should there be a universal ban?", "Should we be having partial bans or temporary banning orders?" and "Should we be widening the debate?". The more young people who engage with the type of debate we have in this House the better.

In a similar vein, my noble friend Lord Blencathra talked about people in suits not being taken seriously when they talk in schools about drug prevention. I must be careful what I say here, given her presence in the Chamber, but the Lord Speaker's schools outreach programme is very effective and I had the privilege to take part in it. People engage with it and talk about legislation and about the fact that legislating is not easy.

Lord Howarth of Newport: My Lords, when the Minister takes part in the Lord Speaker's outreach programme, does he wear a suit?

Lord Bates: That is mandatory, is it not, at least for the male Members? I would certainly not dream of turning up in our ceremonial gowns. They would probably think it was Christmas and misunderstand what was coming.

Education is not just for teachers and it is for all of us, including the media, to ensure positive role models. As a parent and grandparent, I think children often respond best to very clear messages. Ambiguous messages which say, "This might be okay or it might not—take it along to a testing station", or "This might be against the law or it could be legal", spread confusion which is unhelpful to pupils and teachers.

Drug education is part of the national curriculum for science at key stages 2 and 3. My noble friend Lord Norton of Louth said that if we made this a key performance indicator then schools would start taking in seriously. It is already, in a way, because to be judged outstanding by Ofsted you must be able to demonstrate with great clarity that pupils are safe and feel safe at all times and that they understand how to keep themselves and others safe in different situations and settings. We need to explore further whether inspectors follow that in every school but the bones of what is necessary are there.

We have had some excellent contributions and discussions. As I flagged up earlier, we have a further meeting on 7 July. We have invited Public Health England to be represented at that, as well as the Department for Education. That will be a useful opportunity to explore these issues.

Lord Kirkwood of Kirkhope: The Minister is very solicitous of the questions thrown at him. I understand that there is a difficult Budget coming, and that Ministers are in purdah before that, but what expectation would he have of getting a realistic increase, in the course of the next spending review, in the money available for this important educational work in this public policy field?

9.45 pm

Lord Bates: The noble Lord is a very experienced parliamentarian, and tempts me to speak about matters of finance, which is a big challenge. I do not want to dodge the question, but will just put it this way: some clear commitments have been made about what we are doing in the Bill and what we want to achieve through it, and we see education as being a key part of that. Therefore, resources will have to be allocated to ensure that those things happen, and that will be reviewed. That is probably about as far as I can go at present on education, but I am sure we will return to it at later stages of the Bill as it goes through your Lordships' House and following the meeting I referred to. I certainly undertake to communicate the content of this debate to my colleagues in the Department for Education and the Department of Health.

Lord Rosser: In that response, is the Minister ruling out any reference in the Bill to education, training and prevention and a report on what is actually happening in that field in relation to new psychoactive substances? The Minister has accepted—or rather, I am sure it has always been his view—that legislation alone is not enough and that education, training and prevention are vital too. It would seem quite appropriate to have some reference to that in the Bill.

Lord Bates: I understand where the noble Lord is coming from, and we will look at this. The Bill is primarily a law enforcement measure, setting out definitions et cetera, although it is part of a wider context that includes education. As to whether we should have references to education or treatment programmes in the Bill, I personally favour things that are very clear and focused about what they want to do. What we hope to achieve through education is a very important part of the context. I undertake to reflect on that between now and Report.

Lord Howarth of Newport: My Lords, the debate produced a very beautiful meeting of minds between the noble Baroness, Lady Meacher, and the noble Lord, Lord Blencathra, which once again demonstrates the supreme value of Committee proceedings in your Lordships' House. I am extremely grateful to all noble Lords who have spoken, all of whom have emphasised the fundamental importance of education and the critical need to get it right.

I agree with the noble Lord, Lord Blencathra, that children do not take kindly to being preached at. I was suggesting not that they should be preached at but that they should be taught, with real professional skill. I would certainly envisage that appropriate role models—the kind of people who can talk to young people in their own language and whom young people will be able to identify imaginatively with—are of course the sorts of people who will be able to play a very valuable part, if schools have the imagination and skill to find them and bring them into the school playgrounds.

However, there have to be more systematic pressures on schools. I very much agreed with the noble Lord, Lord Norton, when he said that having performance in respect of drug education forming part of the data that go to establish league tables will give a salutary shock to quite a number of schools. The noble Lord,

Lord Bates, suggested that that is almost the case, and I drew some encouragement from the quotation that he gave us about the requirements of Ofsted. Yet I have a sense that the prevailing culture in our schools is such that they are not taking that point from Ofsted sufficiently seriously, and if they fail to perform in this regard they may not be able to qualify to be rated "outstanding". I am not sure that enough of them know about it or that enough of them are being seen to act on it.

The noble Lord, Lord Kirkwood, made the point with which I so much agree: that the funding so far provided for the system is—I do not think this was his word—derisory. That is sending a signal from government that this is a second or third-order issue. I know that the Minister does not think it is at all but I hope he will reflect on how he can, tactfully as always, bring more effective pressure to bear on his ministerial colleagues in the Department for Education. He undertook that he would talk to them. I also understand that it is very difficult for them to persuade the system as a whole that it has got to take on yet another task in a new way. There are endless pressures on schools. New Ministers and officials are for ever coming up with new policies and asking the people in the front line to implement their bright ideas. I understand all those difficulties, but having acknowledged that, we have all recognised and are all fully persuaded that we have got to do better on education and that that is going to be fundamental to the success of the overall strategy.

I am glad that my noble friend Lord Rosser drew attention to a significant section in the report of the expert panel which should give strength to the Minister's elbow. I was grateful for the remarks from the noble Baroness, Lady Hamwee, who survived her education, which is something that everybody has to do. I was grateful to the Minister for a series of thoughtful and helpful points. Of course he is right that the term "legal highs" has been profoundly unhelpful, and I have every sympathy with the Government in their creation of an aggravated offence of supplying psychoactive substances in proximity to schools. I think there is an amendment which adds other institutions where children may be present.

If the Minister would be kind enough to write to us clarifying the figures—what is being spent on what, on public account in this field—that would be very helpful. I was also much encouraged by what he said about wanting young people themselves to be involved in the debate, as it were owning the issue and the problem and to help us all to find better ways to deal with it. I look forward to returning to this broad issue at Report and in the meantime beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Clause 3: Exempted substances

Amendment 14

Moved by ***Baroness Hamwee***

14: Clause 3, page 2, line 8, at end insert—

"( ) add any substance;"

Baroness Hamwee: My noble friend and I also have in this group Amendments 19 and 22. This takes us to the exemptions from the substances which may be the subject of the commission of an offence, and the other provisions in the Bill.

Our first amendment would allow the Secretary of State, by regulation, to add other substances to the list in Schedule 1. I wondered whether that point was covered by,

"add … any description of substance",

but I do not think that normal language would mean that, and the Constitution Committee—I suspect the noble Lord, Lord Norton of Louth, is going to mention this—did not think so either. If it is not going to be possible in the Bill as drafted for other substances to be added, then why not? That seems to fly in the face of the respect that we all pay to the scientific process.

Dealing with certainty of provision and ministerial authority in respect of exempted substances, the Constitution Committee commented—I will mention just this one paragraph—on the powers of the Secretary of State being,

"unconstrained by any explicit statement of the purpose or purposes for which that power may be exercised",

and suggested that:

"The House may wish to consider whether it is appropriate to confer upon the Secretary of State a power … unconstrained by any textual indication as to the purpose".

That is part of the theme of certainty, which we touched on earlier. Amendment 19 would require the Secretary of State to exercise that power to add any substance—my addition—or to add or vary any description, or remove any substance, on the basis of recommendations of the Medicines and Healthcare Products Regulatory Agency; in other words, to implement its recommendations. The Secretary of State must also use the power to include a substance where that body or the Advisory Council on the Misuse of Drugs,

"determines that the substance poses a low overall risk".

As regards the bodies which would make recommendations or a determination under this amendment, more than respect has been paid to both those bodies during this debate. The ACMD should be at the front and centre of this debate; it seems to have been somewhat sidelined in some of the consideration of the Bill. Our amendment in the next group, which we will look at next week, addresses that point.

In proposed new subsection (2B) in Amendment 19, we refer to the determination of a substance which poses a low overall risk. I can see that phrase might be thought to be rather woolly and insufficiently tough on drugs. However, it comes straight from Section 1 of the Misuse of Drugs Act, which sets out the role and responsibilities of the ACMD, whose duty is to keep under review drugs, the misuse of which,

"is having or appears to them"—

the ACMD—

"capable of having harmful effects sufficient to constitute a social problem".

It goes on to talk about,

"preventing the misuse of … drugs or dealing with social problems connected with their misuse".

[Baroness Hamwee]
I take that to be very wide indeed, and to include health. We think that that phrase would properly link assessments as to what should be exempted with terminology which must now be understood in this field. I beg to move.

Baroness Meacher: My Lords, in speaking to Amendment 16 I will also support Amendments 14, 17, 18 and 19. Amendment 19, on low-harm substances, links very closely with Amendment 16, and I will concentrate on Amendment 16 because of that particular focus.

Amendment 16 seeks to exempt from the scope of the Bill substances deemed to pose low health, social and safety risks. One of the objectives is to take a small step towards harmonising the Bill with the EU regulation. The Government have every right to opt out of the EU regulation, and of course they did so. However, there are very good reasons for attempting to move towards a degree of harmonisation. Paragraph 1.1 of the EU regulation says that,

"national restriction measures, which may differ depending on the Member State and on the substance, can hamper trade in the internal market and hinder the development of future industrial or commercial uses".

So there are free market issues where the UK may cause problems for our own industries, and indeed trade, if the Bill goes ahead unamended. Amendment 16 goes some way towards reducing those obstacles to trade. Does the Minister know how significant the commercial and trade implications of the Bill will be for the UK if it is not amended in the way that Amendment 16 suggests and, if not, will he have these barriers assessed before introducing the Bill?

10 pm

The focus of the EU regulation, which this country should follow, in my view, is to treat very differently those psychoactive substances that pose severe risks, as distinct from medium and low risks. As we were arguing earlier in relation to Amendment 12, one of the really useful roles for any Government is to provide clear information about the level of risk of any particular substance. Of course, another is to provide effective treatment for those in trouble with drugs, but we will come to that later. The first role—the provision of information—is very badly served by this Bill. By banning all psychoactive substances—except, of course, a few really dangerous ones, such as alcohol and nicotine—the Government are giving out the most extraordinary message. What the legislation is actually saying to young people is, "Carry on drinking and smoking, even though these things actually kill you, but don't, for goodness' sake, take herbal cannabis"—which of course has never killed anybody and, if it is the right consistency, can actually be helpful for people. The noble Lord, Lord Howarth, said that all these things are a bit dangerous. However, Professor Curran has said very clearly that, if the CBD and THC balance is right, cannabis does not have to harm anybody at all. And of course the CBD itself will be of tremendous benefit to psychotic patients. What sort of Alice in Wonderland world are we living in where we are giving out these strange and contrary messages?

A second very important aspect of informing young people is that, if low-risk substances were controlled through regulations and properly labelled, young people would have, for the very first time, real information on the label about the risk levels, side-effects, maximum dose and so on, as I think I mentioned in an earlier debate. This would be an infinitely safer environment for young people. The illegal drug dealer, on the other hand, gives no information at all. They cut these substances with all sorts of poisons and goodness knows what else. The young person has no idea what is in the substance that they are buying or how strong it is—one week it is one strength and another week it might be something completely different. No wonder young people are dying. This really is a very serious problem.

The EU regulation provides free movement of new psychoactive substances—this is a completely different point now—for commercial and industrial use and for scientific research and development, which we will come on to on the next Committee day. It also provides for a graduated set of restriction measures for substances posing risks, proportionate to their level of risk. Do we not need such a system here? I really would be grateful if the Minister could tell me whether he will take this issue away—the issue of proportionality as related to information. Will he talk to his EU counterparts and find out why they came up with this structure and system, and consider whether, even at this late stage, it may be wise to introduce the principle of proportionality of response into the Bill? The manifesto commitment to ban psychoactive substances would remain. It would simply be adjusted to improve the health and safety of young people. I very much recognise that we are not here to wreck or demolish the Bill but to improve it.

The EU policy follows the idea of the Government's temporary class drug orders, which resulted in a substance apparently posing severe risks being immediately banned from the market as fast as it could be done pending its risk assessment. The EU plans exactly that sort of response, except that it wants to speed up the process—which of course we could do equally well here. The big difference is that TCDOs make no provision for a proportionate response at the end of the assessment period.

Following an impact assessment of policy alternatives, the EU regulation refers in paragraph 2.1 to experts and practitioners, pointing out that,

"new legislation on new psychoactive substances should be calibrated to the different levels of risks posed by these substances".

Does the Minister have any problem with that idea? If so, perhaps he could explain what his problem is with a proportionate system of this kind.

Finally, the amendment proposes that an independent committee should be responsible for determining whether a substance represents a low risk. We suggest that the independent committee—when I say "we", I mean the experts, not me—should be nominated by the Royal College of Psychiatrists, the British Pharmacological Society and the Academy of Medical Sciences. I understand that the European Council has not yet sorted out how to determine what is and what is not a low-risk substance. Perhaps Britain could take the lead by putting forward this proposal.

Lord Howarth of Newport: My Lords, I want to speak to Amendments 17 and 18, which I have tabled rather impertinently as amendments to Amendment 16 in the name of the noble Baroness, Lady Meacher. Here I think that the substantial measure of agreement and meeting of minds that we had in the previous debate on education will rapidly dissipate.

I remind the Committee that it is my belief that prohibition has broadly failed and that it is because of that failure that we have the problem of new psychoactive substances. I believe that our objectives should be to protect people, particularly young people but people of all ages, from the dangers of drugs and to minimise the harms that they may cause. In nothing I say do I mean to imply that I would encourage the consumption of drugs—we are looking for the least bad solution to a very intractable and very important problem. My proposal is therefore pragmatic, but I believe that the least bad way to go is selectively and cautiously to legalise certain drugs and very strictly to regulate their availability.

The purveyors of psychoactive substances, after all, seek to create and distribute substances that mimic the effect of controlled drugs, and they do so quite unscrupulously. They do not mind how corrupt, how adulterated, how toxic and how dangerous those substances are, and that is the problem that we are up against. It seems to me therefore that it would be more prudent and more responsible, rather than to have a blanket prohibition or ban, to make legally available one substance in each of the three principal classes of drugs. The first would be a stimulant—it might be MDMA, better known as ecstasy. The second would be a depressant, which might be cannabis—the noble Baroness, Lady Meacher, spoke of the significance of the ratio of THC to CBD within any individual variety of cannabis. If you have no THC, you have no "high", as I understand it, so I guess that there would have to be some element of THC if people were to use the drug. We would seek to provide a version of cannabis that was the safest kind—that does the trick in the sense of making people feel that this is the substance that gives them the experience that they are looking for. Thirdly, there should be a hallucinogen: perhaps magic mushrooms or mescaline. In all those cases, I propose that we legalise and regulate drugs that are of relatively low risk, of which society has long experience, and which in many societies have become socialised and in their use normalised.

The Minister was quite quickly dismissive of the experiment that has been initiated in New Zealand. It is perfectly true that the expert committee, having carefully considered the policy adopted in New Zealand, decided it could not recommend it, and that the policy has run into a number of practical difficulties there. But essentially the New Zealand approach was to find a way, very carefully and selectively, to legalise the use of drugs that have been demonstrated to be of low risk, and I do not actually think that the story of the New Zealand experiment has yet reached an end.

At all events, I emphasise that there would have to be strict regulation and quality control and that these drugs should be introduced only in circumstances of the best security that we can provide to their users. There should be regulation of their composition and their strength; there should be control over how they are transported; manufacturing should be licensed and strictly regulated, as should retailing; there should be no sales to children; I believe that no advertising should be permitted; marketing would certainly have to be very strictly regulated; and so forth. That is the type of regime that we already operate in our society. That is how we deal with alcohol and tobacco—two drugs, as the noble Baroness said, which are, by any reasonable standard of judgment, more dangerous than cannabis—and with medicines. So there are already models. There is already a basis of selective legalisation and regulation on which we can build—and, no doubt, which needs to be improved.

The availability of these drugs should be accompanied by advice as to their safe use, exactly as happens when you collect a prescription for medicine; there should be full information. Of course, as we have already argued, this all needs to be set in a context of education, to help people to make mature and wise decisions.

The Lord Bishop of Bristol: I just wanted some clarification. One thing that worries me is whether, in the end, the direction of Amendment 18 will not prove to be a bit confusing. I think it was John Maxwell who said that when people say, "Yes, but", nobody ever hears the "Yes". If you say, "No, but", does anybody hear the "No"?

Lord Howarth of Newport: I hope that I can offer some reassurance to the right reverend Prelate, if he will follow me in the argument that I want briefly to unfold. Let me continue by noting that there would be the advantage, as with alcohol and tobacco, that the Government could tax these substances and use the lever of taxation to influence the preferences of consumers and their behaviour. Of course, the Exchequer would benefit, and I know the great importance that the Minister and, indeed, all of us attach to the reduction of the deficit. A new source of taxation would be not unwelcome, I think, to the Exchequer. What I am recommending is, in effect, a market solution, a kind of reverse Gresham's law. I believe that relatively good drugs would drive out bad drugs. It works in the Netherlands, where safer varieties of cannabis are made available in licensed shops and there is no demand in that country for the synthetic cannabinoids that are so fashionable and so popular in this country—and so very dangerous to their users.

Of course, there will always be people who are inveterate and irremediable risk-takers, and young people will always be tempted to challenge authority. But I suspect that most consumers would be very happy if they knew that they could obtain legally a psychoactive substance that they could be assured was relatively safe. After all, that has been the attraction—albeit the illusory and deceptive attraction—of so-called legal highs. Why would people go to dodgy dealers to buy white powders about which they knew nothing if they had a safer and legal alternative available to them? There may be a fear that the legal availability of certain drugs would lead to an increase in consumption; but I mentioned in an earlier debate the report by Dr Deborah Hasin of the Department of Epidemiology at Columbia University in New York, in which she found that there is no correlation between the availability of medicinal

[Lord Howarth of Newport]
cannabis and increased consumption by teenagers. Public opinion has allowed the state governments of Colorado, Washington and Oregon and the District of Columbia to legalise and regulate cannabis. The same process has happened although with a very different model in Uruguay. This is a less dangerous approach than the prohibitionist approach, which we have had nearly 50 years of experience to demonstrate does not work. What I am putting forward is by no means perfect, but I believe it would be safer and better than the kind of anarchy that, paradoxically, prohibition creates. I would be grateful if the Minister would, if he does not agree with me, explain why he does not agree with me.

10.15 pm

Lord Bates: At the invitation of the noble Lord, Lord Howarth, I will tell him why we disagree with him. He is right to say that in the previous groups we explored certain elements of common ground and were willing to look at them. But here, in essence, we go to the heart of the difference—a philosophical difference—between the two sides. On the one hand, does one go down the line of leaving the door open—in the right reverend Prelate's helpful phrase, the "yes, but" approach? Or, do you say, "No. We have tried that. It is a blanket ban. We have been very clear about that". Do you go down that route?

The expert panel wrestled with this. It was not an easy call. It set out opportunities for creating a regulatory model and looked at the New Zealand model very carefully indeed. The panel saw that there were some opportunities and good standards could be achieved—all of the points the noble Lord mentioned. But the panel said that the problem with creating a regulatory model is that it does nothing about the availability of new psychoactive substances, and use of "approved" NPS may increase, with "low risk" considered "safe" by the public. There could be the possibility that approved NPS may act as a gateway to illicit drugs. There may be a risk that unregulated drugs could be passed off as being regulated. The model could be costly and timely to implement, including establishing a regulatory body. It would not be a simple system to enforce, including the need for substance testing and test purchases. It could be difficult to prove the long-term safety of a product before it is authorised. It would be a challenge to define "low risk" and it could be a legal risk if "low-risk" products actually caused long-term harms.

Having weighed up all those points, the panel came down on the side of a blanket ban, saying that a regulatory model would not provide a proportionate response, as the infrastructure required to support the approach following primary legislation would take 12 to 18 months to develop, based on New Zealand estimates, and a mechanism for controlling NPS that were not "low risk" would still be needed, which could lead to confusing messages about NPS overall.

The regulatory power in Clause 3 has been designed to provide clarity so that there is no doubt as to our position on new psychoactive substances—they are banned—and to future-proof the list of exempted substances and ensure that substances such as medicinal products are not inadvertently caught by a blanket ban provided for in the Bill.

Schedule 1 contains broad categories of established substances and products that we want to exclude from this regime—mostly because they are already regulated by other legislation, not because the Government consider them harm free, as is the case with smoking and alcohol. Certainly the Government do not go around with a cavalier attitude. They spend a great deal of time and employ various taxation and duty regimes to dissuade people from consuming either in excess. The Home Office expert panel considered the merits of a regulatory regime as part of their examination of how best to enhance our legislative response to new psychoactive substances. In looking at the opportunities and risks presented by such an approach, the panel considered the regulatory regime adopted in New Zealand. I will not deny that the expert panel identified some opportunities inherent in such an approach. I have touched on some of those.

Effectively, these amendments challenge what I would call an essential principle of the Bill before us and undermine the essence of the Government's approach, which has been to listen to the views of the expert panel, consider the evidence and come forward with legislation. That is what we have done. These amendments would challenge the very heart of that principle. For that reason, I am afraid, the Government cannot support them. I ask the noble Lord to consider withdrawing them.

Baroness Hamwee: My Lords, I do not know whether I missed it, but the response seemed to be almost entirely to the noble Lord, Lord Howarth. I clearly need to go back and read what the answer was to the first of the amendments and my other amendments in the group. Given the time—

Baroness Meacher: I feel awful intervening at this time of night. We all need to go home. I just want to raise the point that the expert panel was established, as I understood it, rather than referring to the ACMD for its advice on some of these issues. I do not want the Minister to reply right now—perhaps he can do so when we next meet—on the question of how the expert panel was selected. It seems extraordinary to me that any set of experts would advise against having a calibrated system of low, medium and high risk and risk-associated penalties and responses to drugs. At this late hour I do not wish to say more, but I would be grateful if the Minister thought about this before we meet.

Lord Bates: I apologise to the noble Baroness, Lady Hamwee. She drew attention to Clause 3(3) which states:

"Before making any regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate",

and asked for further clarification. We have not specified in the Bill who such persons should be, as the appropriate consultees would need to be tailored to the substance under consideration. That said, and reflecting the terms of Amendments 16 and 19, the Royal College of Psychiatrists, the British Pharmacological Society and

the Academy of Medical Sciences could well be part of the consultation process. I will leave to one side the matters relating to the role of the Advisory Council on the Misuse of Drugs because they will be raised in subsequent amendments. Again, I apologise to the noble Baroness for not covering that, but I got a little carried away in responding to the challenge of the noble Lord, Lord Howarth.

Baroness Hamwee: My Lords, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

House resumed.

House adjourned at 10.24 pm.

Grand Committee

Tuesday, 23 June 2015.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Harris of Richmond) (LD): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Charities (Protection and Social Investment) Bill [HL]

Committee (1st Day)

3.30 pm

Relevant document: 1st Report from the Delegated Powers Committee

Clause 1: Official warnings by the Commission

Amendment 1

Moved by ***Baroness Barker***

1: Clause 1, page 2, line 6, leave out "how" and insert "when and where"

Baroness Barker (LD): My Lords, good afternoon. I welcome the noble Lord, Lord Bridges, to his first Committee. No doubt he has been briefed extensively and told that these are occasions on which their Lordships are allowed to do absolutely anything they like. I think this is the point of maximum terror for the spokesperson, although I am sure we will treat him gently.

This might well seem the most pedantic amendment that noble Lords have ever seen but we are dealing with charity law, are we not? Let us start as we mean to go on. However, it is a rather important amendment. I want to start the Committee's deliberations by trying to ensure that, throughout our proceedings, we do not stray into the realms of viewing this legislation simply in terms of the extent to which it adds to the arsenal of weapons at the disposal of the commission and without thinking of the impact that some of these measures can have on trustees.

When some of us undertook the work of the scrutiny committee, under the able chairmanship of the noble and learned Lord, Lord Hope of Craighead, we were presented with witnesses who were, by and large, people with professional interests from around the charity world. At times, we rather lost the sense that on the end of this legislation will be individual trustees, the majority of whom we know are perfectly decent and honest. Just a few are not.

On the committee, we considered at some length whether this power to issue a formal warning was really necessary. In the end, we were persuaded that on balance—it was on balance—perhaps the Charity Commission could make fair and good use of it to issue a warning rather than open a statutory inquiry and go through all that that entails. Simply having the power to issue a warning to trustees where it was considered that the actions in which they were engaged presented a fairly low-level risk to the charity or to charities in general is absolutely fine. I agree with that. However, it is still a public warning. It is still something likely to cast a shadow over, if not leave a stain on, a person's reputation. The majority of trustees hold the commission in very high regard. They take very seriously the actions of the commission. For the majority of trustees the prospect of a public warning would actually be quite difficult for them personally if not professionally.

We deliberated long and hard, and were influenced a great deal by the wisdom of the noble Lord, Lord Hodgson. He argued that this was meant to be a proportionate response to very minor misdemeanours, albeit recurring ones, and because this is not meant to be a draconian power, we should not allow an appeal mechanism, making the process a bureaucratic nightmare. I agree, but that makes it all the more important that trustees are alerted in good time that they may be the recipients of a warning, giving them a chance to put right their failures. That is what this power is supposed to be about—the prevention of fairly minor misdemeanours.

For that reason, it is important to ensure that people know where and when the warning will be published. It is one thing for a notice to be published on a part of the Charity Commission's website, to which only those of us who are sufficiently intrepid or boring to make our way there will find it. It is quite another for it to be published prominently somewhere in a local paper, for example—if local papers still exist—in which the charity operates. That could have quite a profound and damaging effect on the charity's reputation.

In putting this apparently small and fussy amendment before your Lordships, I am trying to echo the points made by the Charity Law Association which thinks that trustees ought to be given fair notice that they will be subject to this so that they can try to put matters right. If we do that, this power will serve to act in the preventive way that was envisaged rather than being a rather heavy-handed hammer to crack a nut. In that spirit, I beg to move.

Lord Hope of Craighead (CB): My Lords, there is a great deal that the noble Baroness, Lady Barker, said with which I agree. Perhaps I can take this opportunity to pay my own tribute to the work that she, along with other Members of your Lordships' House who are present, did on the committee. There is a great deal of force in her point about the importance of the notice that is being given to trustees as to what the Charity Commission wants to do with regard to publication. However, I have a concern about the removal of the word "how" and the substitution of the words "when and where" for this reason: when you think carefully about what the words really mean, the effect of the amendment is to narrow the amount of the information that is required by the provision. There are other things built into the word "how" which are not there—the manner in which this is to be done, and how often, are two examples. One point that the Charity Law Association

[Lord Hope of Craighead]
raised with us and is in a memorandum it sent to us in connection with the Committee stage of the Bill is the element of publicity itself and whether anonymity is to be given to the trustees who are the subject of the publication. If one restricts the amount of information simply to "where" and "when", it leaves out the possibility of further inquiry as to the precise way in which this is to be done.

I appreciate the word "how". After all, a three letter word seems very weak but, if you think about it, it is actually quite a powerful word because it embraces so much within it. If you read that together with what is in subsection (6) which enables people to make representations as to "how"—I repeat the word "how"—the publication is to be done, one can see that it gives scope for a good deal more inquiry.

I have huge respect for the noble Baroness, Lady Barker—I am entirely in sympathy with what she is seeking to do—but I would respectfully suggest that "how" is probably the best word to use. If it is to be replaced by something else, then there would need to be more in it than simply "where" and "when". I find that a little untidy, which is why I suggest that we leave the word "how" as it is.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have some sympathy with the noble Baroness's amendment. I hoped that she would have inserted those words in addition to "how", so that it would have been "how", "when" and "where".

Before I address the pros and cons, because this is the first time I am speaking in Committee, I want to take this opportunity to let noble Lords know of a potential, tangential interest that I may have in a matter which will come before them at a later stage. It concerns fundraising. The charities report that I produced, which was published in July 2012, has a whole chapter—Chapter 8—devoted to fundraising. It is 17 pages long and makes a number of recommendations, none of which I resile from. In fact, I think many are equally, if not more, appropriate today.

In my non-political life, as can be seen on the register of interests in your Lordships' House, I am non-executive chairman of a company called Nova Capital Management. Nova is a specialist private equity firm which is focused on what are known as "secondary directs". This means that Nova purchases groups of companies on behalf of groups of institutional investors—often an unloved and neglected division of a much larger company. Nova provides intensive support for management of the individual companies within the group with a view to achieving improved operating and financial performance which, in due course, is reflected in a superior sale price. I play no part in the day-to-day operation of Nova, let alone of any of the individual companies in the various portfolios.

In December 2011, Nova created a company called CNH Capital Partners to take over a public company called Parseq plc. It has three divisions—two need not concern us at all. The third, Parseq Services, has a series of subsidiaries which provide business processing outsourcing services to banks, local authorities and utility companies from locations stretching from Glasgow to Brighton. In February 2013, seven months after my review was completed, the board of Parseq decided to expand its operations by acquiring a company called Panther Group. This, in turn, has a number of subsidiaries. One of these, Pell & Bales, undertakes telephone fundraising for a number of leading charities, including Christian Aid, RNIB, Cancer Research UK, Barnardo's, the National Trust and the Royal British Legion.

As a result of the death of Olive Cooke, Pell & Bales has been caught up in the storm over charity fundraising, in particular because an undercover journalist from the *Sun* was embedded in the business in order to investigate the sector. In its major article of Saturday 6 June, the *Sun* concluded:

> "There is no suggestion Pell & Bales did anything illegal. Indeed, the company is scrupulous in instructing its employees to stick to acceptable practices".

I understand that the management of Pell & Bales has since reported the *Sun* to IPSO as a result of what the company believes are breaches of the press guidelines.

As I have explained, my very tangential association with Pell & Bales began six months after I completed my review. There can be no suggestion that it was in any way influenced by that association. Some might argue that I have nothing to declare. I think it best if I explain this position on the first occasion I speak in Committee. This amendment is not about fundraising but I judge that the sooner I lay out the facts and explain my position the better. In the highly charged atmosphere of cases such as the tragic death of Olive Cooke, truth and accuracy can be early casualties.

With that declaration, I turn to the amendment in the name of the noble Baroness, Lady Barker. As I explained, the ideal situation would be to have "when and where" added to "how". An example is the impact not only on a trustee, but on a charity. The charity might have been given an official warning—or a warning of a warning under new Section 75A(3)—but perhaps I and my fellow trustees do not agree with the commission's determination. We make representations, but the commission decides not to accept them. Our charity has a significant funder and I want to talk to him or her about this case and give the trustees a view of the issues. Such a conversation or discussion is made much clearer if I know when and where the news of the official warning is to be released—the date, time, methodology and so on. "How" could mean no more detail than by a press release on a date yet to be determined. That would be unfair to the charity, which may be contesting the view and wants to be able to talk to its funder to ensure that its side of the argument is heard, without which the case might go by default.

With respect to the noble and learned Lord, Lord Hope of Craighead, I do not entirely take his point because, for a charity trustee, some further clarity in the wording would be a good idea. Therefore, I look forward to hearing my noble friend's response.

3.45 pm

Lord Watson of Invergowrie (Lab): My Lords, I am very pleased to welcome the noble Lord, Lord Bridges, to his first Committee. I am sure that we will have some productive discussions over this and the other Committee sessions, and, indeed, beyond that.

When I looked at the amendment in the names of the noble Baroness, Lady Barker, and of the noble Lord, Lord Wallace of Saltaire, I thought that there is not really much to disagree with, but because they are Lib Dems I thought it was worth a go anyway. As it appeared, we on these Benches reached the conclusion that we could not really see anything untoward about it. But perhaps not unsurprisingly, given his legal brain, the noble and learned Lord, Lord Hope of Craighead, has raised an issue that certainly had not occurred to me.

With noble Lords' indulgence, as a brief aside, the noble and learned Lord and I take our titles from the same county, Perth and Kinross. I am more towards the eastern end, on the outskirts of Dundee where I grew up. The noble and learned Lord mentioned the word "how" and how such a small word could, perhaps, have significant meaning. Let me just enlighten noble Lords that, in Dundee, "how" has a different meaning than is more normally associated with it. If you are at your desk at work in Dundee and you turn to your colleague and say, "It's 15.47, I'm going home now", he or she might say to you, "How?". You might say, "By train or bus", but the answer would be, "Because I'm not feeling very well". "How" tends to mean "why" in Dundee. I use that as an illustration of the fact that the noble and learned Lord, Lord Hope, was indeed right in pointing out that that little three-letter word can contain a bit more than might at first be obvious.

More seriously, I take the noble and learned Lord's point that it could be seen to be narrowing the wording in the Bill. It is certainly right that, wherever possible, individuals should not be identified unless the Charity Commission is very clear that that is the appropriate thing to do. If they are to be identified, they have to have as much notice as possible and an indication of the form in which the commission proposes to publish the warning. Whether that means them saying, "We will put it in these newspapers", or whether they say just "in the media", or "on such and such a date" I do not think is of huge concern. But I accept that the main thrust of this part of the legislation should be to ensure that the individual is given the protection that he or she deserves until such time as the commission reaches its conclusions.

Like other noble Lords, I was a member of the Joint Committee that looked at the draft Bill. In response to the Joint Committee's report, the Government set out new criteria in Clause 1, which are very welcome. However, the remarks we have heard, particularly those from the noble and learned Lord, Lord Hope, mean that we should perhaps return to this issue on Report with a view to coming up with some wording that would be more appropriate. I am not going to suggest anything off the top of my head because I initially thought there was nothing to which you could object in this amendment. Given what we have heard, it may well be that further consideration is needed. It is important for the commission to have this power, but the individual has to be given some consideration. What happens to charities is important, and it is the Charity Commission we are talking about, but let us not forget that individuals as trustees do invaluable work for charities and we have to give them due consideration.

Lord Scott of Foscote (CB): My Lords, noble Lords need to bear in mind that each of the three words "how", "when" and "where" is a preposition, and each word has a slightly different meaning. Since the intention of this part of Clause 1 is plainly to give as wide a discretion to the commission as is practicable, I respectfully suggest that all three words should be included, each meaning something slightly different. If the words were "how, when and where", all would be covered.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, before I address the amendment moved by the noble Baroness, I should repeat my declaration of interest as a trustee of the Foundation Years Trust.

The noble Baroness began by suggesting that she might be seen as pedantic, and I think the other word she used was "fussy". I would not dream of accusing the noble Baroness of being either. Indeed, the whole purpose of this Committee is to kick the tyres of this policy and to do precisely what we are doing, which is to examine every word, even thin little words such as "how".

The noble Baroness began by making an excellent overarching point which I endorse wholeheartedly. We need to ensure that this Bill and all the measures within it are balanced. We are mindful of proportionality. We must also ensure that proper safeguards govern the measures and all the new powers in the Bill. I very much welcome the debate that we are going to have. I would also like once again to put on record my thanks to all noble Lords who spent so much time in the pre-legislative scrutiny committee shaping the Bill before us today.

Taking a step back, the Charity Commission asked for these powers following criticism from the NAO and PAC about its regulatory approach. These powers were a specific recommendation of the NAO in its December 2013 report. Further calls for tougher powers for the commission came from the extremism task force in December 2013 and from the Home Affairs Select Committee.

We consider the Bill is a "must have" because it forms just one part of a multistrand approach to addressing criticisms of the Charity Commission by ensuring that it has the tools it needs to do the job that we and the public expect of it. One of these powers is the power to issue an official warning. As my honourable friend the Minister for Civil Society said to the Joint Committee in pre-legislative scrutiny, this is one of the most important new powers in the Bill. An official warning could be issued to a charity trustee or to the charity itself where the Charity Commission considers there has been a breach of trust or duty or other misconduct or mismanagement. The power would enable the Charity Commission to publish a warning, as we have been discussing. The Charity Commission has said that it would not publish all warnings, which is an important point to note. The decision to publish would be in line with its current policy on publishing the announcement of statutory inquiries, which are considered on a case-by-case basis. The Charity Commission would not publish an official warning if it considered that it would not be in the public interest to do so.

[Lord Bridges of Headley]

Let me give the Committee two brief examples of when the Charity Commission might consider issuing an official warning. Fist, a charity is consistently a little late in submitting its accounts. An official warning would remind the trustees of the seriousness of their non-compliance. Secondly, a charity makes unauthorised payments to a connected company or one that benefits a trustee. The size of the sums involved means that it would be disproportionate for the commission to take firmer action, but it could issue an official warning on future conduct.

As the Committee would expect, and as I mentioned, the power is accompanied by a number of safeguards; I know these were discussed in the committee, and others have been added since then. The first is as follows: the Charity Commission must give notice of its intention to issue a warning to the charity and its trustees. The notice must specify a number of matters, including the grounds for issuing the warning and any action that the commission considers should be taken by the charity to rectify the breach that has given rise to the warning. The notice must specify a period for representations to be made about the proposed warning, and the commission must take account of any representations before it issues any warning. An official warning could also highlight the likely consequences of any further non-compliance, which would be likely to require a more significant intervention by the regulator.

This is the one new regulatory power in the Bill that we and the Charity Commission expect may impact on more charities than the other proposed powers. Most of the powers in the Bill are targeted at serious, deliberate abuse of charity. The official warning power would be used more frequently by the commission as a more reasonable and proportionate way of dealing with breaches where the risks and impact on charitable assets and services are lower.

The Charity Commission's current policy is to consider publishing reports of its non-inquiry work where, first, there is significant public interest in the issues involved and the outcome and, secondly, there are lessons that other charities can learn from them. The commission has explained its proposals for publishing official warnings in evidence to the Joint Committee on the draft protection of charities Bill. In its written evidence, it said:

> "We do not intend to publish all warnings. Whether or not we do so will, in line with our current policy on publishing the announcement of statutory inquiries, depend on whether it is in the public interest. We would not publish an official warning if we consider that it would not be in the public interest to do so".

It went on to say that it would follow its existing practice of inviting comments on factual inaccuracies, which it would take into account, and would publish guidance on the criteria that it would use in deciding whether or not to publish an official warning.

The requirement for certain information to be specified in the notice of an official warning was added in response, as I said, to a recommendation from the Joint Committee on the draft protection of charities Bill. In terms of where the official warning would be published, the Charity Commission already publishes around 25 non-inquiry regulatory case reports on its pages on www.gov.uk. Details can also be published alongside the charity's register entry. It also summarises its regulatory casework and, in particular, identifies each year wider lessons that charities can draw from it in an annual report. To pick up the noble Baroness's point about publication, only in certain cases might the commission consider issuing a press release, and this is always shown to the charity in advance. The commission will also share with the charities where it is to be published.

As to when the commission would publish the official warning, this would always be after the period of representations, and a period for the commission to consider any representations made by the charity. There may be some cases where the commission needs to have further engagement with the charity before it can publish an official warning, based on the representations that it receives from the charity. So it is not possible for the commission to specify exactly when it would publish an official warning at the point at which it issues a notice of intention. However, it would tell the charity before publication. If the charity needed to have such discussions and needed to have an extra time period, I am sure that the commission would listen carefully and respond accordingly. The commission already has in place a procedure and published policy that works which announces the opening of inquiries, and it has had no complaints from charities about the process. The commission would engage with the charity and would not publish without letting them know but, as I have said, it would not be possible to do this in the original notice of intention.

Any published details of warnings would have to be removed by the commission after a period of time. Its current practice in relation to inquiry and case reports is to archive them after a period of two years. The commission will set this out in its guidance on official warnings, which will be published before the power is commenced. As the noble and learned Lord, Lord Hope, suggests, the amendment might well narrow the requirement if it were brought into effect.

I am sympathetic to the intention behind, and I agree with the spirit of, the noble Baroness's amendment to provide further clarity around the publication of an official warning. I think that we agree in principle and I hope that I have been able to offer some reassurances about the way that the process would work. As I have stated, the criteria would be published and the commission would engage with the charity throughout. However, logistics and the nature of the response from the charity to the notice would mean that it would not be able to say when it would be published at such an early stage. On that basis, I hope that the noble Baroness will be able to withdraw the amendment.

4 pm

Baroness Barker: My Lords, I thank noble Lords for the range of contributions, which showed just how important a three-letter word can be. I say to the noble Lord, Lord Watson of Invergowrie, that I speak Scottish as well. It is a good job that the word "aye" is not written into legislation very often because it has a multitude of meanings.

I thank the Minister for his response. I proposed this amendment for two principal reasons. One was picked up by the noble Lord, Lord Hodgson of Astley Abbotts.

When one works with charity trustees, as I have done a lot, it is not unusual for the administration and so on to take much, much longer than it would in, say, a commercial firm. Simply because people are volunteers, processes take time to complete. Whenever I drew up things such as grievance and disciplinary procedures, I used to look at people who had grievance procedures and had taken them either from a local authority or from a standard suggestion by lawyers. The timescales were longer because things just took longer to do. The noble Lord, Lord Hodgson, is right that it is necessary to have something that concentrates the minds of trustees. It is important that they say, "We have to sort this by this date or else this warning is going to be issued".

There is a second reason why I thought it important to put the amendment forward. The Minister said that the Charity Commission would, after a period of time, remove notices and archive them. However, these days, given the development of the web, the issuing of a statement is irrevocable—it is there for ever. I therefore think that it behoves us all to be slightly more careful than we might otherwise have been in the days when things were issued solely on paper and could be torn up without anybody knowing. We need to be that bit more careful about the way in which we pursue these matters.

I bow to the assessment of the terminology given by the noble and learned Lord, Lord Hope of Craighead. I understand the inclusivity of words which lawyers love so well, but I rather favour the suggestion of the noble and learned Lord, Lord Scott, that we should perhaps think about putting all three of these words together. It seems that if the Charity Commission is to exercise this power, it needs to give the utmost consideration to how it communicates with trustees. The one thing that a charity and a charity trustee must value above all else is their reputation. That is the thing that is most vulnerable to attack.

I thank noble Lords for taking part in this debate, which I hope they think was useful, and for the moment I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Hayter of Kentish Town***

2: Clause 1, page 2, line 15, at end insert—

"( ) The Charity Commission may call for and randomly or systematically check the Disclosure and Barring Service checks undertaken by charities on trustees."

Baroness Hayter of Kentish Town (Lab): My Lords, I remind the Committee of my interests as a trustee of a number of quite small charities. In moving Amendment 2, I shall speak also to Amendment 7, both in the names of my noble friend Lord Watson and myself. As with the next group, these amendments are to improve the safeguarding of children and vulnerable adults, particularly in regard to sexual abuse.

Amendment 2 concerns the power for the Charity Commission to check on disclosure and barring service checks undertaken by charities. It follows concerns raised by Mandate Now, a pressure group supported by the Survivors Trust, which lobbies for mandatory reporting of abuse, and is led by adults who experienced child abuse in establishments that were also charities. Mandate Now told us of a charity providing education; in its inspection report, there were references to failure to return—that is, notifications—but the staff concerned went on to abuse elsewhere. They also told us about a charity providing education where the press reported that the head in that case had phoned a receiving establishment to warn it of an abuser who was applying to work there. However, no formal notifications were found that might have ensured the known abuser would not offend elsewhere, and—this is the important thing—the trustees do not appear to have challenged the head.

In 2010, an inspection report on another educational establishment registered with the Charity Commission said that there was no,

"established policy for reporting directly to ... the Independent Safeguarding Authority, responsible for such referrals … The advisability of making such referrals is now clearly understood even when there may not be a strict legal obligation to do so".

Our concern is that it is advisable only—there is no compulsion. In the case that I have just mentioned, neither the management nor trustees made any referral to what is now the DBS, which meant that it did not lead to any action. No action was taken about those trustees for not making those reports.

I think we can all agree that notification should not be an optional extra. More than that, the Charity Commission should be able to check that the system is working as intended. Relying on trustees always to do the DBS checks obviously does not always work.

Another example occurred in an educational establishment which happened to be run by a religious order, where the head ignored the enhanced check, which showed a history of child abuse offences for the new chair. It appears to be rather discretionary as to whether trustees act on information provided by the DBS, when there are no independent checks by a third party that the correct procedure is happening. Amendment 2 gives a power—not a duty—to the Charity Commission to undertake such checks.

Amendment 7 covers perhaps the most glaring anomaly in the current law, which is that someone who has got into debt and is subject to an individual voluntary arrangement, or a person with financial misdemeanours behind them, is automatically excluded from being a trustee, but people on the sexual offenders register, who have surely done far worse than run up their credit card debt, can happily serve as a trustee. To date, the Government have said that when something comes to light, or in areas covered by the DBS, such people should be identified. That is not good enough. We do not want to wait until something has happened, or until other trustees get suspicious and then have to act, possibly against someone with whom they have been working closely on the trust. Nor is it sufficient to deal only with charities which obviously are in contact with children, and thus covered by DBS. There may be other examples, such as a church hall that gets used by guides, or for children's parties. That would not have been covered.

[Baroness Hayter of Kentish Town]

An alcohol misuse charity could decide to run a special programme for the children of problem drinkers or, similarly, a cancer group could offer support to the children of cancer patients. They would not be covered by the current safeguarding regime. Who would think to check on the background of someone, particularly if they were offering to be the treasurer of such a charity? It is a thankless task, as I know. Trustees are all too willing to sign up a suitably qualified person without a thought for their wider background. Indeed, I have had dealings with an accountant who, unbeknown to the trustees using him, admittedly as an adviser rather than a trustee, had been convicted, although not imprisoned because he was having a kidney transplant, as he had been found with more than 1,000 images and videos of child sex abuse on his computer. None of the trustees knew about it.

I know that many trustees are very sympathetic to our proposal to add sexual offences to the criteria that trigger automatic disqualification from being a trustee. Of course we would want a waiver for charities working with ex-offenders which need that input to help them in their work. Those charities would know of the record and there would be no secret.

We also know that many smaller charities, particularly parish charities, depend on hard-pressed volunteers and already find the expanding vigour of the Charity Commission guidelines and reporting somewhat burdensome. Expecting those trustees to think and risk-assess before they approach a new trustee is quite a burden to put on them. Surely the onus should be on the person on the sex offenders register to know they should not, without a waiver, be a trustee. We should not to leave it to chance that someone else would spot it and consider whether it makes them a risk.

This is an opportune moment to add being on the sex offenders register as a category for automatic exclusion, subject to waiver, as this Bill adds terrorism, money-laundering and bribery to such automatic exclusions. I assume that the Government are as concerned about safeguarding children, women and other vulnerable people as they are about debtors and money-laundering. I am therefore very hopeful that this amendment can be accepted. I beg to move.

Baroness Pitkeathley (Lab): My Lords, the noble Baroness, Lady Barker, and the noble Lord, Lord Hodgson, talked about concentrating the mind of trustees. The main attribute of my noble friend's amendment is to work further on that concentration of the mind. Contrary to the assumptions often made that charities regulated by the Charity Commission are the large household names which have skilled, informed trustees who are offered training and induction, most charities are not like that. They are small, with governance that can be a bit hit and miss for some of the reasons we have heard: the difficulty of getting volunteers and so on. I venture to suggest that the majority have no idea about the Charity Commission and its powers and have a very hazy concept of collective responsibility, which we will discuss in the next group of amendments. History shows us that we cannot take the protection of children too seriously. We must also be aware of the serial, repetitive nature of some sexual offences and of the great skill in deception that sexual offenders often have. I therefore very much support these amendments. However, I am wary of the need for balance, which the Minister reminded us about, so I am very pleased that the amendment acknowledges that some charities need positively to seek trustees with experience of, even convictions for, these offences so that they can be helped in their work of rehabilitating offenders.

4.15 pm

Lord Hodgson of Astley Abbotts: My Lords, I would like to focus on Amendment 2. I do not doubt that it is an exceptionally well-meaning amendment. If that sounds patronising, I do not mean to be at all; I think that it is very well meaning. We have all been horrified by the Jimmy Savile cases and the other cases of that nature, and we all want to do everything we can to protect children. The easy option is to say, "Absolutely, we should agree to this", and that would avoid the by-product that one might be accused of being careless about the safety of children.

However, this afternoon I shall resist that temptation and ask my noble friend to reject the amendment. I do so on three grounds: those of efficacy, proportionality and impact. I want to say a word about each of those in turn but, before doing so, I draw the Committee's attention to the fact that, before doing the charities review, I produced another report for the Government on what stopped people volunteering—what stopped people giving money and their time. The report was called *Unshackling Good Neighbours*. I took a lot of evidence from people about this and I should like to refer to some of it.

First, on efficacy, there are not many good outcomes from the terrible saga of Jimmy Savile and other prominent people, but one is that now the doziest trustee of the sleepiest charity is aware of CRB vetting and barring, as well as the legislation and the importance of complying with it. That is for two reasons: first, the risk to trustees themselves if they fail to do so; and, secondly, the risk to the charity they represent. We were talking about fundraising. The rows that there have been over unauthorised fundraising will be as nothing compared with the damage to a charity's reputation if it is shown to be light-handed over the need to check its volunteers as appropriate.

The evidence that I had when preparing the *Unshackling Good Neighbours* report was that screening to prevent undesirable individuals becoming involved with children or vulnerable adults is now pretty fine. Indeed, if I heard the noble Baroness aright, the example that she gave was from 2010, about five years ago. We learned that the dangers, such as they were, were not so much within the institutions, because these undesirable people go where the softer targets are. They know that they are going to be checked if they work in schools with vulnerable adults, so the dangers are outside the school gates and, above all, on the internet, and that is where society needs to apply the pressure to ensure that our children are safe. Therefore, at the moment I do not see why this amendment would add to the efficacy of the vetting and barring arrangements vis-à-vis charities.

Secondly, on proportionality, vetting and barring legislation has nothing to do with charity law. It is the statute on its own that needs to be enforced. Vetting and barring is to do with a well-run organisation, whether it is a charity or not, but it does not particularly apply to charities. I think that government departments and the police need to enforce their own legislation and not pass it around, trying to find somebody else to do the checking for them. I am always concerned that if more and more is passed to charity trustees, fewer and fewer people will wish to take on the risks and responsibilities of what appears to be becoming a very one-sided state of affairs. If, as I believe, the mesh on the screen is pretty fine, should we be imposing another specific role on the Charity Commission? It should do it anyway, and in any case it has the powers to ask for this. The commission is already stretched. Vetting and barring is a role that is not part of charity law and there is already an established enforcement procedure for it.

If we are concerned about the situation with charities, why are we concentrating just on vetting and barring? Why do we not include health and safety? That, too, is very risky for people. Without sounding too flippant about it, a school headmaster whom I talked to said, "Actually, if you want to safeguard children with a new level of screening, the best way is to make sure that everybody everywhere drives at below 30 miles an hour, because that is how most children are injured". Therefore, I think that proportionality is the second important issue.

The third is the question of impact. Surely our shared objective must be to encourage as many of our fellow citizens as possible to become involved in our civil society and to volunteer. It may be strange to the Committee but many potential volunteers find vetting and barring legislation intrusive, especially in the way that it is implemented and shows a lack of personal trust. The law says—I think that the Minister will put me right if I have got this wrong—that it is a question of frequent and intensive contact. Nervous trustees interpret those words pretty widely, and amendments like this will increase that nervousness and increase the likelihood of wholesale vetting and barring checks even when they are not needed.

One of the examples that I received was from a retired doctor living in the north of England: she was 65 and wished to do some work reading to Alzheimer's patients. She was required to carry out the CRB vetting and barring check. She said to me, "Look, I've been before the GMC now for 35 years and if you can't trust me now, what else do you require from me? I'm not going to do it as a matter of principle", and she did not. That seems to me to be a shame. It is important that we do not allow this to become out of all proportion.

I have a second example from a lady who got involved in a Manchester drama group. She was required to be checked and was happy about that but, she says,

"having been approved, we were invited to a session with the local child protection officer. I came away from that meeting with a number of very serious questions as to whether I should get involved with this sort of group. The talk left me feeling I would potentially be placing myself in situations of real risk. The child protection officer focussed the session on ensuring no adult put themselves in a vulnerable position e.g. if a child requests to go to the toilet—in no circumstance should an adult accompany them. If a child (with particular reference to girls) falls and cuts her knee, whilst wearing tights—under no circumstances should any adults remove the girl's tights and help stem the bleed. No adult, whatever sex, should ever be alone with either one or more children. Needless to say, I came away from the session questioning the sense in many of the messages conveyed. As a caring responsible adult … I did not feel at all comfortable with the prospect of not being able to help an injured child".

In accepting the spirit of the noble Baroness's amendment, we have to be prepared to step back from this issue and accept that there is another side, however difficult it is to interpret. Why does this matter so much to us? All of us, particularly as parents, are of course horrified by child abuse and wish to stamp it out. Less attractively, however, there is an industry out there that actually profits from CRB vetting and barring checks. If noble Lords receive the same emails that I do, they will have had one today from one of the agencies that provide vetting and barring checks saying, "If you get checks through us for the next month, we'll put £1 of the check cost towards charity because our chief executive's going to run a marathon"—a way of appearing user-friendly. That is fine, but they are not going to tell us that fewer checks are needed; they will tell us that we need more. Some of the big charities have vetting and barring sections, and they too—after all, it is their job—are going to say, "We need more checks and more emphasis on them; that is the right way forward".

I am not so sure. I think that right now the mesh performs its task pretty well. Is it perfect? Of course not. Whatever the size of the mesh, though, there will be failures, and when they happen we shall be told by someone that if the mesh had been finer we would have caught the person in question, and that will be very hard to rebut. Still, we need to stand back now and not impose further responsibilities on the Charity Commission that, as a by-product, may reduce the willingness to volunteer.

Baroness Barker: My Lords, I wonder if I might ask the noble Baroness, Lady Hayter, a question about her Amendment 11, which, as she explained quite clearly, deals with children. A lot of my work with charities is about vulnerable adults. In fact, the noble Lord, Lord Hodgson of Astley Abbotts, is right: if there has been any silver lining to the horrors that have been unveiled over the last five years it is that there is now a much clearer focus on the need to protect children in all settings. That includes in charities.

The law governing abuse of vulnerable adults is much less robust. If one were to think about this in a strategic way, the increase in dementia that will happen over the next 10 to 20 years, barring the discovery of an effective medical treatment, means that scope for abuse of older people will be far greater than it is now. That is something to which good charities—there are many of them—are alive. They put in place robust procedures with their staff and their volunteers. I happen to think that it is no less serious than abuse of children. If I have an objection to that amendment it is that omission.

Baroness Hayter of Kentish Town: I believe we are still on Amendment 7. I will deal with that when we come to Amendment 11.

Baroness Barker: I am sorry; I thought that they had been grouped together. I apologise to the noble Baroness.

Lord Hope of Craighead: My Lords, I will say a word or two about Amendment 7, which seeks to add a new "case K", where:

"P has been found guilty of a sexual offence or has been placed on the sex offenders register".

I will sound a note of caution about this amendment, for a variety of reasons.

The previous cases listed, some of which are the subject of other amendments, deal with incidences of dishonesty, failure to observe court orders and things of that kind. They cast doubt on the probity of the individual managing trust funds and are reasons for thinking that there might be some mismanagement of the funds. Indeed, terrorism is added, for reasons that we all understand. What is being introduced here is something that is not generic to the others, although it deals with an undoubtedly very disturbing social problem, which is people who abuse children, although it is not confined to child abuse, which I will come back to in a moment. There is a question of whether it is right to bring other criminal offences into the automatic disqualification field. One can think of other cases—extreme violence, for example. Crimes of violence are not listed here. There may be other crimes of a kind that society would regard as repugnant, but they are not listed here either. I have some doubt as to whether it is right to put the sexual offences chapter into the automatic disqualification field.

There are other reasons for being concerned about the wording. There are two chapters here. First, there is being found guilty of "a sexual offence". There is no qualification as to how serious that offence may be. Anything that falls within the broad chapter of sexual offences would be included here, some of which may not require or justify a sentence of imprisonment at all. Then there is "the sex offenders register". The position is that a person is placed on the sex offenders register as a matter of law if a sentence of 30 months or more is passed. So far so good: you are dealing with the more serious categories to justify being put on that register, but the initial part—conviction for "a sexual offence"—does not include everything.

There is a feature of the register that has been cured by order, but which caused concern in a case on which I sat in the Supreme Court. An 11 year-old boy who had committed a sexual offence—a very serious one, because he was sentenced to more than 30 months' imprisonment or detention—was placed on the register. As it stood at that time, in 2010, the presence of his name on the register was without limit of time. It is an indefinite feature.

4.29 pm

Sitting suspended for a Division in the House.

4.39 pm

Lord Hope of Craighead: My Lords, I will resume what I was attempting to say. Before we broke for the vote, I drew attention to the width of the expression "a sexual offence", which is a cause of some concern. There are a number of points to be made as far as the sex offenders register is concerned. First, it applies to people who have been sentenced to 30 months or more of imprisonment or detention. Secondly, subject to an order that came into force in 2012 and gives a certain power to the chief officer of police, the entry on the register is indefinite, without limit of time.

The case that I was about to mention came before the Supreme Court in 2010 and led eventually to the making of the Sexual Offences Act 2003 (Remedial) Order 2012. It was a case where a child aged 11 was convicted of an offence. It caused real grounds for concern in that the crime he committed meant that he would have had a permanent position on the register. One has to wonder whether somebody who committed an offence of that kind when a teenager and who reached the age of 60, let us say, should really be subject to the automatic disqualification which would flow from this amendment if it were to stand as it is.

I appreciate that the chief officer of police has the power to remove people from the register but I do not know how often that power has actually been exercised. It may be that the Minister can find out from other sources as to the efficacy of the order, but it is a ground for concern that placing on the register has such a powerful effect on the individual. We heard evidence from a body called Unlock. It made the point that there are some people for whom rehabilitation is so important. Contributing to public life by participating in charities, years after an event which happened at a much earlier stage in their life, is something that they would greatly value. There are real grounds for concern about the width of the amendment and its suitability, and whether it really falls into the nature of offences that would justify automatic disqualification.

I raise these issues as a note of caution. I would not go to the point of voting against the amendment if it were pressed to a vote—which, of course, it cannot be in Grand Committee—but these points suggest that the question requires careful consideration before the noble Lord would accept the amendment.

Lord Bridges of Headley: My Lords, let me start by echoing what my noble friend Lord Hodgson of Astley Abbotts said. We all agree that we must do all we can to ensure that the vulnerable—be they young or old or, as the noble Baroness, Lady Barker, said, those with dementia—are protected within charities. The question we are grappling with is how best to do so.

The Charity Commission takes safeguarding issues very seriously. Its statement of regulatory approach makes it clear that the abuse of vulnerable beneficiaries is a matter to which the commission will pay particular attention, alongside terrorist abuse of charities and fraud. The Charity Commission's Director of Investigations, Monitoring and Enforcement has said:

"The public relies on trustees to have robust procedures in place so that people working in a charity with access to beneficiaries are suitable to hold those roles".

Trustees must,

"ensure their charity has appropriate and robust policies and procedures in place to safeguard the charity's beneficiaries, including a process for recording incidents, concerns and referrals".

The Charity Commission publishes detailed guidance for charities on their safeguarding responsibilities. It explains the legal requirements for charities working with children and vulnerable groups and how they must safeguard them from harm. It covers what safeguarding involves, what child protection policies and processes should include, and explains the Charity Commission's role in ensuring that charities follow the law.

The Protection of Freedoms Act 2012 established, as your Lordships know, the Disclosure and Barring Service or DBS, which processes criminal records checks and manages the barred children's and barred adults' lists of unsuitable people who should not work in regulated activities with these groups. The DBS decides who is unsuitable to work or volunteer with vulnerable groups. There are two points to stress: it is an offence first, for a barred person to apply for such work, paid or voluntary; and secondly, for a charity to employ a barred person in such work. Furthermore, Sections 35 and 36 of the Safeguarding Vulnerable Groups Act 2006 imposed a duty on regulated activity providers and personnel suppliers to provide the DPS with information where there is a risk of harm to a child or vulnerable adult. There is an established policy of reporting abuse directly to the DBS.

4.45 pm

Turning to charities, when appointing new trustees or recruiting employees who will engage in regulated activities with children or vulnerable adults, charities should ensure that appropriate checks are undertaken. As I said, it is an offence for a person to permit a barred individual to engage in a regulated activity if he knows or has reason to believe they are barred. The Protection of Freedoms Act 2012 includes a duty on regulated providers to check whether a person is barred but this is not yet commenced.

The Charity Commission requires charities working with children or vulnerable adults to have in place policies and processes for safeguarding them. Where concerns are raised with the commission about safeguarding issues in a charity, the commission may request information from the charity about its safeguarding policy and evidence to demonstrate that that has been properly implemented. This could include requesting details of DBS checks that have been carried out on trustees, staff and volunteers. Where DBS checks have not been carried out and should have been, the charity may have committed an offence if it permitted a barred person to engage in regulated activity, knowing or with the reasonable belief that the person is barred from that activity.

That is the background. Turning to the noble Baroness's first amendment, the Charity Commission does not need a specific power to enable it to call for or either randomly or systematically check that charities have undertaken proper DBS checks on trustees—or for that matter staff or volunteers. It can do so under its existing powers. Of course, there is a policy question of whether the commission should undertake random checks of charities' procedures in relation to DBS checks rather than wait for concerns to be raised with it, and whether that would be an effective use of the commission's limited resources.

Here I point to the report of my noble friend Lord Hodgson, which he mentioned, *Unshackling Good Neighbours*. In that, my noble friend questioned regulatory duplication. The task force report said:

"A second aspect of this red tape 'band-wagon' is the tendency for regulators to, as it was put to us, 'take in each other's washing' (i.e. to ask questions about regulations which are not directly their concern). For example, appropriate CRB checks are a legal requirement. Should the Charity Commission (responsible for enforcing Charity Law) be asking about CRB checks or OFSTED (responsible for educational standards) be asking questions about PAT checks? Should the responsibility not lie with the organisations to decide what is required to comply with the law? The present situation, in which small",

civil society organisations,

"are asked over and over about regulatory compliance, tends to undermine their confidence in their own judgment and to feel that 'they must do something'".

We need to bear in mind that almost all trustees are volunteers, as my noble friend Lord Hodgson pointed out. We do not want to impose onerous or duplicative requirements that could have—to coin a phrase—a chilling effect on the willingness of people to step up to serve as trustees. This is an important element of the proportionality argument that I made at the start. It is important that charities, like private and public sector employers, have in place the proper safeguarding policies and processes, and, where required by law, obtain the necessary DBS checks.

I have some sympathy with the noble Baroness's second amendment in this group. Like all noble Lords involved in the debate, I want to ensure that unsuitable individuals are not able to serve in positions of responsibility where they could present a risk to children or vulnerable adults. However, to add to what the noble and learned Lord, Lord Hope, said, I would like noble Lords to consider a number of potential issues of concern were we to consider such an amendment. The first is the question of proportionality. As the noble and learned Lord said, the sex offender register is very wide-ranging, and more than 43,000 people are on it. Any sexual offence with a sentence of more than 30 months results in an indefinite notification requirement to be on the sex offender register. As the noble and learned Lord pointed out, there is an issue about the efficacy of the order, and I will look into that point. There is also a question about relevance. Should a person on the sex offender register be banned from being a trustee of a charity that has nothing to do with children or vulnerable adults—for example, a historic building preservation trust?

In framing the criminal offences that give rise to automatic disqualification from charity trusteeship, we have been careful to consider offences that are relevant to the role of a charity trustee: those involving deception or dishonesty, support for terrorism or money laundering, for example. In these cases, an unspent conviction, with the proviso of a waiver to aid rehabilitation, is relevant to the role of a charity trustee. It is not so clear that sex offences would always be relevant to a person's ability to serve as a charity trustee. Where it is, there is already a system in

[Lord Bridges of Headley]
place to protect children and vulnerable adults from the risk presented by unsuitable people. There is the mechanism of the DBS, which decides who is unsuitable to work or volunteer in regulated activity with vulnerable groups, and it is illegal for a barred person to apply for such work or for a charity to employ such a person. This system is in place not just for charities but for other social enterprises.

There is another important failsafe to think about. It is the disqualification power in Clause 10. The Charity Commission has said that it would consider using this power where someone is serving as a charity trustee who is clearly unsuitable, given former convictions for sex offences, but who is not barred from serving as a charity trustee because the role involves no regulated activity. The Clause 10 disqualification power would give protection in such circumstances, enabling the Charity Commission to disqualify a person who is unfit from serving as a charity trustee and senior manager. A disqualification order could be limited to a particular class of charity, in this case those working with children or vulnerable adults.

I hope that the noble Baroness will recognise that a specific power to request from charities details of their DBS checks is not necessary and that she is reassured that the Charity Commission takes these matters very seriously and will consider how it can secure greater assurance that charities that require them obtain the proper DBS checks. In relation to extending automatic disqualification to individuals on the sex offender register or who are guilty of a sexual offence, I hope the noble Baroness will accept my explanation that the DBS system is the right system to protect children and vulnerable adults from unsuitable individuals regardless of whether the organisation is in the public, private or third sector.

While I am very sympathetic with the aims of the noble Baroness further to protect children and vulnerable adults, I hope she will understand that I am not able to accept her amendments today. I will, however, commit to considering and discussing with the Charity Commission whether there is more that can be done in this area, and I am happy to meet the noble Baroness before Report to feed back on those discussions.

Baroness Hayter of Kentish Town: I will certainly take up that offer. I want to make only a couple of comments. I thank noble Lords who participated in this debate. My noble friend Lady Pitkeathley quite rightly said that this is about concentrating the mind. If we do not get this movement, I hope nobody reading this in a few years' time says that the Minister was being very complacent. I do not think anyone who spoke was complacent, but the feeling coming across is that everything is fine as it is, and I am not sure that that is correct. It is quite right that the case was five years ago but the charities that have dealt with abused children have been with us this week and last. They retain those concerns and will not be reassured by some of the things that they have heard along the lines of, "Don't worry, it's all there".

I was not suggesting that the Charity Commission had to check that charities were doing their job with DBS; I was suggesting that it has the power to do so. I want to read *Hansard* very carefully about whether it has that power or not. At one point the Minister was saying that there was a power for the regulators that had not yet been implemented, but at another point he seemed to be saying that the commission could do this. Whether it could, short of an inquiry, I am not certain. Perhaps that is something we could clarify. I think that I read out some of the stuff that was said. The charities concerned have been told that these spot checks, if you like, could not be done.

There is also something beyond the charity itself. We have seen the damage that was done both to the NHS and to the BBC by their complete failure over Jimmy Savile. I would hate to find that a charity where this sort of thing happened then damaged the whole of the charitable sector. That risk remains.

I thank the noble and learned Lord, Lord Hope, for his comments. I certainly think that the wording of this could be greatly improved. It would be about serious sexual offenders. I think that some of the comments about being on the register for life probably affect other things even more than this particular one, and that is more a question about the register itself. I think that I emphasised the word "waiver" a few times, not only for ex-offenders in general but for here. A waiver to get someone back into charitable work or into civil society is great. As people know, I was and still am very involved in alcohol misuse. If we did not use ex-offenders working for us, we would be rather short of hands to do it, so the waiver is very important.

My concern remains that we are more concerned about money than about people. We are adding money-launderers to the people who will be barred and we are very worried about people's ability to look after funds, but beneficiaries are probably rather more important.

The issue remains that we do not know which charities these people could be involved in—even, I have to say, a charity working to restore historical buildings and churches. If a woman gets raped in one of those buildings, I would not want to be the Minister who said, "Oh well, that's a safe charity because it doesn't see children". Those are empty properties late at night. As a woman I would be very worried if someone who could have been on the sex register, not for a child but for a serious sexual offence, looked terribly respectable in preserving an old building, and I was the one there late at night. Having said that, though, I welcome the offer from the Minister to discuss this further, particularly Amendment 7, because, as I say, I am very worried that debtors, money-launderers and terrorists, or the people who help to fund terrorism, should be excluded but people with perhaps quite serious findings, not just about children but about women, would be able to be a charitable trustee unknown to all of us. I look forward to discussing that further, but for the moment I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 1 agreed.

Clause 2 agreed.

5 pm

Amendment 3

Moved by ***Baroness Hayter of Kentish Town***

3: After Clause 2, insert the following new Clause—

"Reporting misdemeanours

A trustee must report to the Charity Commission any serious incident that results in, or risks causing, significant harm to their charity's work, beneficiaries or reputation."

Baroness Hayter of Kentish Town: My Lords, this is in a way part of the same issue—it is about where we put responsibility. In moving Amendment 3, which relates to reporting misdemeanours, I shall speak also to Amendment 11, which concerns the power to disqualify all trustees where there has been a collective failure to protect children or, indeed, vulnerable adults, as the amendment should have said. They are not mentioned in the current wording, but I will come on to that.

The Charity Commission's guidelines on reporting serious incidents list—I shall keep to the order used—significant items to report. They include loss of money, damage to property and, only thirdly, harm to beneficiaries. The examples given have the same order of priority. They start with fraud and theft, go on to a large donation from an unverified source linked to terrorism, a disqualified person acting as a trustee, then not having a policy to safeguard your charity's vulnerable beneficiaries, not having vetting procedures to check prospective trustees, and, only lastly, suspicions, allegations or, indeed, incidents of abuse of vulnerable beneficiaries. That order does not seem to give great confidence that beneficiaries rank very highly.

In the same guidance, the commission warns that if trustees fail to report a serious incident, the commission "may", not "must", consider this mismanagement and take regulatory action. Therefore, it is possible that trustees could have failed to record an incident of abuse of a vulnerable beneficiary and still no regulatory action would be taken. So not only does abuse of vulnerable beneficiaries rank below big donations or theft but failure to report is only possible evidence of mismanagement.

We should compare that with the duty on auditors, which, again, relates to money rather than to beneficiaries. The Charities Act 2011 places a duty on auditors to report matters of material significance to the Charity Commission, so there is a higher requirement on auditors for anything relating to money than there is on trustees for abuse of beneficiaries.

For that reason, amendments are needed both to make reporting mandatory and also, where there has been a collective failure of a board to identify, report or deal with serious allegations or incidents, to enable—not force—the Charity Commission to replace the whole group. At present, the Charity Commission would have to seek to disqualify each trustee one by one, probably showing evidence of individual responsibility, whereas if on the watch of a whole group of trustees things were seriously amiss and there had been a collective failure, the amendments would enable them to be removed as a collective so that the charity could move forward in the interests of its beneficiaries.

Although, as has already been pointed out by the noble Baroness, Lady Barker, Amendment 11 deals with a failure of trustees to protect children, we also have in mind other vulnerable beneficiaries, including older people who may be at risk of elder abuse. Perhaps I may cite some examples of why we think that these two amendments are necessary and important. We know of cases in more than one charity where incidents of abuse of children were not reported as serious incidents by trustees. That shows that the general duty is not strong enough and not sufficient. We also know that trustees who may not be expert in child abuse and safeguarding work very much at the behest of the staff, who may have little more than cursory training in safeguarding.

This is particularly the case in trusts which do not concentrate on children. The Charity Commission may be notified by relatives of children that major incidents are not being taken seriously by the charity and the trustees. However, in one such case the families were advised by a government department that the Charity Commission was the only party able to address the failings of trustees to protect children. In that case the Charity Commission disagreed, feeling that it did not have the powers to intervene. It could only trigger the beginning of an inquiry. It appears that it lacks the power either to remove the trustee board as a whole, because it can do it only one by one, or indeed to appoint a new trustee with relevant experience to assist the board with the complex area of child protection.

This need for a power to remove all trustees also arises from the case of an institution where there were several instances of child-to-child abuse. An investigation by families and their lawyers showed that the staff had failed to appreciate the cumulative danger facing children, and they therefore failed to report. The fact of repeated sexual injuries involving different children over time should have led the trustees to ask some very challenging questions of the child protection officer there, as well as of the management, but they failed to do so. In that case the charity finally had to close. However, had the Charity Commission had the power to act in the way that we are proposing and been able to remove several trustees simultaneously, the closure might not have been necessary. Without the scope for agile action, matters can drag on, further damaging not only the children concerned but the charity's reputation and, ultimately, its future. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I was slightly surprised to see that the noble and learned Lord, Lord Hope of Craighead, was not going to rise to his feet to take us through the significant words "any serious incident", as serious incidents obviously can be in the eye of the beholder, the second point,

"results in, or risks causing",

which requires one to take a view of the future, which is also quite demanding, and the definition applied to "significant harm". I wonder about the wording of this amendment, which I think would have a pretty chilling effect on trustees and might well lead to them

[Lord Hodgson of Astley Abbotts]
ringing the Charity Commission with inquiries about the nature of particular incidents and whether they qualified under this quite broadly drawn clause, or indeed might lead to a rash of reports to the Charity Commission, which may or may not be a good use of the commission's time and energy to follow up.

For my part, I go back to my wish to expect trustees to behave responsibly and for the Charity Commission to check them, but not to impose other and further duties. I drew a different conclusion from the noble Baroness about the Charity Commission's guidance on its website, which seems to be a much better way of dealing with this than putting it into statute. The charity's trustees would have to be aware of that guidance and follow it. I think that the noble Baroness was slightly unfair to the commission about the order in which it has rated the different offences. Just because child abuse comes a bit further down the list does not mean that it is considered less important; I do not think that is a fair conclusion to draw. It is more important that we should have flexible guidance and that the Charity Commission empower trustees. We should not impose in statute quite wide-ranging and imprecise duties that will be a further reason why people do not want to act as a trustee.

Baroness Barker: My Lords, I say to the noble Baroness, Lady Hayter, that I do not think anyone in this House feels that the whole matter of child abuse has been done and that there are no more protections to be had. There is a question about the extent to which we need to change the law as opposed to the extent to which we need to give advice and change practice within organisations. I rather think that large organisations, such as the BBC, and indeed small organisations, are very far from having fully worked out their response to the revelations that have come out over the past couple of years.

I, too, take the point made by the noble Lord, Lord Hodgson: I think that the order in which things appear on the Charity Commission website, to be fair to the commission—and we are not always very fair to it—is as much to do with history as with anything else. In the time of Anthony Trollope, financial misdemeanours were at the forefront of the commission's mind, not child abuse. I really think that the climate has changed. I shall not repeat the arguments that I made about older people under the previous group, because I misread the groupings, but I take the point about the protection of vulnerable adults.

I wanted to ask the noble Baroness about her Amendment 11—and perhaps the Minister might help with the answer to this—and the power to disqualify all trustees of a charity. My understanding is that it is a basic tenet of charity law that trustees are jointly and severally liable for decisions that are made or for failures within the charity. So I am surprised to learn that trustees can be removed only as individuals. I should have thought that their joint and several liability would mean that, if something as bad as the examples given by the noble Baroness were to happen, the whole board of a trust would be equally affected by it and would therefore they would all be removed. But maybe my understanding is slightly out of date.

Lord Hope of Craighead: I have a point to make on the wording of the amendment, although it is not quite the same as the noble Lord, Lord Hodgson of Astley Abbotts, thought it might be. It is about Amendment 11, and it is a rather technical point. I am aware that the noble and learned Lord, Lord Scott of Foscote, who knows much more about drafting trust documents of this kind than I do, may have a different view. The point that troubles me is the phrase,

"who are direct beneficiaries of the charity".

As I understand it, to qualify as a charity, individuals as such are not direct beneficiaries. That is the creature of a private trust, where a trust is framed to confer a defined benefit on a particular individual. It would meet the noble Baroness's point if the rather less attractive phrase,

"who are within the objects of the charity",

was substituted. That would then bring in the point that she is considering people on whom the trustees would focus as possible recipients of benefit. That would be the kind of phrase that I would use myself, but I am conscious that the noble and learned Lord may know more on this than I do, although he is shaking his head. It is a point on wording, which would arise if the Minister was attracted by the amendment.

Viscount Eccles (Con): I shall add a thought. I think that we are talking about charities that are deliberately set up to benefit children and added-in vulnerable people, but may I move to museums for a minute? I refer to a registered museum that allows children under 16 to enter free, for example. Let us say that somebody gets into a fracas, one child hits another and somebody else enters in. Widening the responsibilities of the Charity Commission and the trustees of that museum as the amendments propose is completely unrealistic. If there are remedies to be sought, they should be sought under another piece of legislation and not under charity law. We have already had reference to the chilling effect on people volunteering to be trustees if they see that the responsibilities are made so wide and so difficult to adhere to. We really have to be careful. The Minister referred to the limited resources of the Charity Commission. Under existing circumstances, it is not likely that those resources will be added to, to any great degree, at least for a while. We need to be very careful about what responsibilities we place on the Charity Commission and trustees under this proposed legislation.

5.15 pm

Lord Scott of Foscote (CB): My Lords, I think I had an invitation to speak on this from my noble and learned friend Lord Hope. I have puzzled a little bit over the object of Amendment 11. There is a reference in it to where there is,

"sufficient reason to believe there is a collective failure of all trustees to ensure the safety and protection of children who are direct beneficiaries of the charity".

The children may be the objects of the charity in the sense that the charitable money is meant to go to them. However, if all that is intended in the charitable trust in question is that charitable money be applied

for the benefit of the children, it is a little difficult to see how the safety and protection of the children comes into it. Any misuse of the funds of the charity would be a breach of trust. You do not need a provision in the Act to say so. That could be remedied at any time by any of the trustees.

I find it difficult to quite understand what is meant by a,

"failure of all trustees to ensure the safety and protection of children".

If the children are the objects of the charity in the sense that the funds must be used for their benefit, it is not the duty of the trustees to ensure their safety and protection. Their safety and protection may be put at risk by any number of different means that have nothing whatever to do with the objects of the charity. I am little puzzled by the intention behind that as it stands.

Lord Bridges of Headley: My Lords, following what the noble Baroness, Lady Hayter, said in response to the last amendment, I will just put on record that I would certainly not wish to give the impression that I am complacent about these issues. I completely understand that we need to debate and discuss them. As I said right at the start, we need to kick the tyres here. I just wanted to make that perfectly clear.

Let me start by dealing, first, with the proposed new clause on serious incident reporting. It might help if I explain briefly the position as it currently stands. The Charity Commission already requires serious incident reporting from charities with an income of over £25,000 as part of annual return requirements and encourages all charities to report serious incidents immediately as a matter of good practice. The Charity Commission's annual return regulations require charity trustees to sign a declaration each year that there have been no serious incidents in the charity in the year or to give reference to any serious incident reports already made to the regulator and also report serious incidents that have not previously been reported.

On the lists that have been referred to in the debate, I do not think that the order of the listing suggests how serious the Charity Commission thinks those issues are. However, I can tell the noble Baroness, Lady Hayter, that the Charity Commission will look again at the issues it defines as serious.

There are various other legal requirements on charity trustees to report certain matters immediately. For example, there is a duty under terrorism legislation to disclose information about certain possible terrorist financing based offences to the police. Specifically on safeguarding, the Safeguarding Vulnerable Groups Act 2006 places a requirement or legal duty on employers and volunteer managers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances where a person has been dismissed or removed from working with children or vulnerable adults. That is in addition to any referral to a body such as a local authority safeguarding team.

As regards charities themselves, charity trustees are ultimately responsible for safeguarding within their charity. The Charity Commission's role in safeguarding is to ensure that charity trustees take steps to protect and safeguard their beneficiaries. This means that charities working with vulnerable beneficiaries must have in place appropriate safeguarding policies and procedures, and must monitor them on an ongoing basis to ensure they are effectively implemented. The Charity Commission can and does take action against charities and trustees where they fail to do so but it is not the role of the Charity Commission to investigate suspected abuse. If there are allegations of abuse of vulnerable beneficiaries, the Charity Commission expects trustees to handle them properly and, where appropriate, report allegations to the police, social services or other agencies. Where the commission itself has serious concerns, it can and does refer them to the police or other agencies.

As I said at Second Reading, the Bill is about striking the right balance. While on the face of it there are many attractions to imposing a new serious incident reporting duty on charities, we have to acknowledge that it would be a new reporting requirement that would affect tens of thousands of small charities. Furthermore, and this is an important point, there is also the concern that the charities that would meet their obligations under a duty to immediately report serious incidents are those charities that would do so as a matter of good practice, and have already taken appropriate action to address the issue. Charities bent on abusing their position of trust would be unlikely to report the matter to their regulator. The danger would be that we would simply create a lot of red tape for the vast majority of honest charities, while those poorly managed or involved in abuse would ignore the requirement.

Under the amendment, diligent trustees might consider it necessary to report to the Charity Commission every time there was a risk to beneficiaries or the charity's reputation. It is not hard to see how the commission could be inundated with queries and unnecessary reports. There is also the question about whether the commission would be able to cope, and what it would do with such a volume of reports.

The Government are committed to minimising regulatory burdens for charities, particularly small charities. We do not want to impose new burdens, particularly when the implications for the commission and the impact on charities have not been fully considered.

I do not want to appear overly negative towards this amendment as I believe there is much to be said for it, but I hope that the noble Baroness will also accept that there are downsides and that we do not want to tie up small charities with red tape. I hope that on that basis she will feel able to withdraw her amendment.

Lord Hodgson of Astley Abbotts: I have a question, which does not have to be answered today. The Minister refers to the fact that the Charity Commission generally refers matters to the police. Are we satisfied that police forces around the country always refer matters to the commission? I wonder sometimes if the commission is not up here while the police forces down there are looking into things. Is the information flow sufficiently strong? I am not asking for a response today; this is something that we can pick up later. However, it is an issue that has come up from time to time in the discussions that we have been having.

Lord Bridges of Headley: My noble friend makes a very good point about the information exchange between agencies across government, and I am more than happy to pick that up with him in writing or at a later stage.

I turn to the noble Baroness's Amendment 11. This amendment seeks to empower the Charity Commission to disqualify an entire trustee board where it collectively fails to ensure adequate protections for children who are the charity's beneficiaries. Later on we will come to debate Clause 10, which will confer the power for the commission to disqualify on a case-by-case basis; suffice it to say that it is one of the most important powers in the Bill. That clause is relevant to this amendment so it may help the Committee if I give a short overview of it now before going on to consider the noble Baroness's amendment.

Most unfit individuals will be caught by the existing—and, under the Bill, extended—automatic disqualification criteria, but the Charity Commission needs a power to act in cases where individuals are not excluded by automatic disqualification. The whole point of this power is to give the commission the ability to disqualify an individual whose conduct clearly makes them unfit to be a charity trustee, where, if the commission were not to act, there would be a real risk, or at least a reputational risk, to charities.

We carefully considered the report of the Joint Committee on the draft protection of charities Bill, and made improvements to this provision as a result. More detail about the operation of the provision has been included in the Bill, and it is now a three-limbed test: first, one of the conditions A to F must be satisfied; secondly, the commission must consider that the person's conduct makes them unfit to be a charity trustee, and draft guidance has been published on that; and, thirdly, the commission must consider that exercising the power is in the public interest, to protect public trust and confidence in charities. While the power may be relatively broad, its use would be targeted. The commission has said that it expects to use this power on a relatively low number of occasions each year.

The commission already has the power to act, and has done so, in cases where there has been a collective failure of trustees in relation to systemic governance issues. The powers to remove trustees in Sections 79 and 80 of the Charities Act 2011 do not explicitly or implicitly contain any restriction on removing trustees where that leaves one or none in place. Neither does the proposed disqualification power in Clause 10. There is, therefore, no reason why the commission would not remove all trustees on the ground of ensuring the safety and protection of children, where this was appropriate, proportionate and in accordance with best regulatory principles.

In circumstances where there is an impact on the beneficiaries of the charity, the commission has tended to appoint an interim manager, under Section 76 of the Charities Act 2011, to ensure the continued operation of the charity and to get it back on track before new trustees can be appointed and take over. However, there has been a case—and I will not name the particular charity concerned—where the commission has removed all 10 trustees on the board for collective governance failings.

The noble Baroness, Lady Barker, made a point about trustees having joint liability. The Charity Commission is required to act proportionately and so, in most cases, would target regulatory action on those most culpable or responsible for misconduct or mismanagement.

The noble Baroness's amendment deals specifically with collective trustee failure relating to safeguarding. We would not want to cast any doubt on the commission's existing liability to take action relating to collective trustee failures, or limit that by making specific provision. On the basis that the commission can, and does, already act to address collective trustee failures where it is proportionate to do so, I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Hayter of Kentish Town: I thank the Minister, particularly on that second point. The reassurance that action for collective failure can be taken answers the point we were seeking to make.

On reporting, I have greater concerns. In answer to the noble and learned Lord, Lord Scott, we know of schools where abuse that was taking place was not being reported. Clearly, the recommendations and guidelines for reporting are not being followed. This is the problem. You have an educational establishment where abuse is going on and it is not being reported. It is that failure to report which gives rise to concern.

The noble Lord, Lord Hodgson said that we expect trustees to behave responsibly. Of course—but this issue is where they do not. I have now heard the phrase "red tape" used twice and I jib slightly every time I hear "red tape bandwagon". It is not red tape. We are talking about protecting vulnerable people.

Lord Hodgson of Astley Abbotts: The noble Baroness has used the word "complacent". She has used the phrase "red tape". Nobody is in any way complacent about the importance of protecting children. The question is how do we do it effectively and are we getting the right answers to make it happen, or is it coming at a cost that is out of all proportion? One can argue that there is no cost too high, but the reality is that we have to have a system that ensures we get the proportionate, right result. Is this system going to be perfect? I have never said that it would be, but we need not be complacent about it. What we are trying to do is to give trustees the confidence to decide what is best for their charity, rather than saying, "Here is all this wraparound that you have to look at", which terrifies them and means that people do not become trustees at all.

Baroness Hayter of Kentish Town: The noble Lord is absolutely right. Are we doing it properly? Representatives of abused people are coming to me, saying, "No, it is not working right". That is the difference between us. We are hearing that there is a failure at present. There has to be a balance. The noble Lord is saying, "No, we have it about right". The people representing the families of abused children

where something did not happen are saying, "No, it is not right". This is a charity Bill. If they are correct that it is not working properly, this is our opportunity to make it better. This is what we are seeking to do.

The order of the guidelines may be historical, but the issue is that, sadly, we know far more about sex abuse than we used to. It is probably already going on. It happened to my aunt when she was a child—she would be 109 if she was alive. This is not new, but we know more about it. Sadly, we know that it is far more common than we think. We are trying to do something to make reporting and awareness of it better. The only difference between us is that we are hearing from the charities concerned that the policies and the reporting requirements do not seem to be working. We are trying to get it right.

I, of course, defer to the noble and learned Lord, Lord Hope, about whether the phrasing should be "direct beneficiaries" or,

"who are within the objects of the charity".

We were trying to say,

"those people for whom they provide a service".

I am not going to try to draft, but we are talking about establishments that provide a service for a group of people where there is some sort of abuse going on and they fail to notice it. It is well hidden; people do not come along in dirty macs to abuse children. Either trustees really do not know because they do not have the qualifications, or they are not dealing with it properly and are not reporting it. We are trying to lift the bar.

5.30 pm

Lord Bridges of Headley: I want to make this one point to the noble Baroness. I asked the commission what its communication to the sector would be when the relevant changes on automatic disqualification come in. I completely agree that we need to ensure that not only are these new measures properly communicated, but we take the opportunity to remind all charities of their existing responsibilities, not just on this, but on other issues, although I would suggest especially on this. I will not bore the Committee with the six bullet points that I have been given about e-newsletters, press releases et cetera, but I can assure the noble Baroness that I have asked the Charity Commission to do this. It has given me its assurances, which I am happy to pass on.

Baroness Hayter of Kentish Town: That is helpful. Having been reassured about the ability to take action where there is a collective failure, we probably will not pursue that. We may, however, want to come back on the bar on reporting.

Lord Scott of Foscote: I wonder if the noble Baroness could help me with one point. If a scholarship is set up for a particular school, the money is charitable money and is used to provide scholarships for people who perhaps otherwise would not be able to go to the school. I find it extraordinary to suppose that the trustees of the charity must examine what is going on in the school to see that there are no misdemeanours among the staff towards the boys or things like that. If that is the intention of the proposed new clause, it seems to me that it is full of difficulties. If that is not the intention then the wording is not quite right.

Baroness Hayter of Kentish Town: If they are the trustees of the school they have that responsibility now.

Lord Scott of Foscote: They are not trustees of the school; they are trustees of the charitable trust that is funding the scholarships.

Baroness Hayter of Kentish Town: The wording may not be right, but we are talking about where, basically, they are running an establishment, such as a music school. They are the trustee running the school; they therefore have these responsibilities. They cannot say, "I am a trustee, it is not my responsibility". They have the responsibility to ensure that they have the right management and that they are trained correctly. It is some time since I have done that, but they have to have those policies in place. This group of people, who are running an organisation either for children or for vulnerable people, has that responsibility.

The bit that we are trying to add is where it has come to their notice—or they have not asked the question right—that abuse is going on in those areas where they have responsibility. We want it to be a duty on them, not just in guidelines, that they should report that abuse. I am not a draftsperson, but what we are driving at is probably clear. It is raising the bar of when they need to report. The guidelines are already there, the duties are on them, and what we are hearing is that sadly some trustees fail to report what they should. For the moment, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Clause 3: Range of conduct to be considered when exercising powers

Amendment 4

Moved by ***Lord Hope of Craighead***

4: Clause 3, page 2, line 39, leave out "privy to" and insert "participated in"

Lord Hope of Craighead: I shall speak also to Amendment 9 which is in my name and is grouped with Amendment 4. The amendment takes out the words "privy to" in the two places to which these amendments refer and inserts the words "participated in". This is really a discussion about the use of language. The background can be narrated by referring to paragraph 122 of the committee's report, in which we mentioned that a number of witnesses expressed concerns about the wording of this clause. Among the phrases referred to are "privy to the misconduct or management" and "facilitated it", which we decided did not require further comment.

[Lord Hope of Craighead]

However, we picked up "privy", which had been drawn to our attention by, as footnote 157 states, four charities: Bond, Joseph Rowntree Charitable Trust, Muslim Charities Forum and NCVO, which all expressed concern about the wording. "Privy" is a curious word and really rather antique. In the *Shorter Oxford English Dictionary* one of the definitions is,

"sharing in the secret of a person's plans".

I am not quite sure what that means in this context. The other possible meaning is,

"a person having a part or an interest in an action, matter or thing",

which perhaps comes closer to what the draftsman has in mind.

When we were trying to find an equivalent formula, we suggested, in paragraph 125 of our report, "aware of", but there may be more in it than that. There may be something more active than simply knowledge, which is why I am now suggesting "participated", which is actually doing something to assist the act of misconduct or whatever it is. Either way, I suggest that "privy" already looks antique, and if this Bill is going to survive for a number of years, it will become increasingly so. It may be in the spirit of the present Government, as expressed by Mr Gove yesterday, to try to modernise and clarify language, and here is an opportunity to try to do the same thing. I offer the words "participated in" as an alternative to what we put into the report, but the basic suggestion is that something should be done to clarify what "privy" means.

This is an important clause because it deals with a situation where these very important powers may be exercised. Not only does the Charity Commission need to know what it should be driving at but the people against whom the powers are being exercised are entitled to know as well. I beg to move.

Lord Scott of Foscote: I entirely support the amendments proposed by my noble and learned friend Lord Hope for the reasons he has given. As he said, in the Oxford dictionary there are two alternative definitions of the expression "privy to" and neither would be appropriate in this part of the Bill. On,

"sharing in the secret of a person's plans",

I suppose that spouses share in the secrets of the plans of their partners, but that does not make them people who ought to be subject to the provisions of this Bill. The other meaning is,

"a person having a part or an interest in an action, matter or thing".

"Interest" is not appropriate. The substituted words suggested by my noble and learned friend—"participated in"—seem much better and should be accepted.

Baroness Barker: My Lords, as a member of the committee, I want to support the noble and learned Lord, Lord Hope. I love going to Hampton Court. When you go there, particularly if you are a kid, you get to understand how this term came to be. We are not in Tudor times but it is a very important matter. A number of the charities we talked to in the course of our discussions work internationally. They work in very difficult situations, such as in war situations around the world, and at times it can be quite difficult to ascertain the extent to which the trustees know what is happening in their charities.

On the last set of amendments, the noble Baroness, Lady Hayter, tried to take us to a place where we could understand the difference between management and governance. We are talking very much about governance here, not about the people who run or manage charities and are therefore close to the day-to-day activities of those charities. If the question is about the extent to which trustees in a position of governance need to know what is being done by their charities or can inadvertently be assumed to have known that something adverse happened, then that is absolutely wrong.

I am always interested in things that clarify governance for trustees. Governance is very difficult to pin down. This change of language is an attempt to help the trustees of today understand that distinction between governance and management, and that is laudable.

Lord Watson of Invergowrie: My Lords, I start by saying that the Opposition support these amendments as well. One of the issues arising among a number of organisations in response to the Bill is that it lacks clarity in various ways. If one of the more straightforward means of overcoming some of that lack of clarity is changing the wording as suggested here, then we should all welcome that.

The noble and learned Lord, Lord Hope, mentioned the recommendation of the Joint Committee and that the wording "aware of" was suggested. In response to the committee's recommendations, the Government stated in their report of March this year:

"The Government will explore implementing the Committee's recommendation to replace 'privy to' with 'aware of' with Parliamentary Counsel. The term 'privy to' is already widely used in the existing legislation and we want to carefully consider the implications of any change before committing to a change of wording".

Following that consideration, the Bill was not changed and, of course, "privy to" remains in it.

The noble and learned Lord, Lord Hope, told us why he came back with amended wording. My only thought on the matter is that a former Law Lord's understanding of the law would be something to which I would give weighty consideration—to put it mildly. Can the Minister say why, and indeed whether, Parliamentary Counsel continues to believe that that wording is right? This is a fairly straightforward change that should be made to the Bill.

Lord Bridges of Headley: My Lords, I stand with some trepidation to debate with the noble and learned Lord, Lord Hope, on this matter. Mention has been made of my right honourable friend the Justice Secretary and his remarks yesterday. I have been very careful in this debate not to use "impact" as a verb. I am also very intrigued by this area. This debate over the word "privy" makes me wonder whether it needs to be modernised in terms of the Privy Council, but I do not want to get into that right now.

It strikes me that what we are debating is what the layman understands versus what is legally accurate and watertight. The Joint Committee that considered the draft Bill, chaired by the noble and learned Lord, recommended, as the noble and learned Lord just said, that the term "privy to" be removed and replaced with "aware of", so that the Bill referred to a person who was aware of an action that constituted misconduct.

5.45 pm

As has been said, there were real concerns about the lack of clarity. There has been careful consideration, and it was decided to retain the current reference to "privy to". I shall explain why. Our research suggested that "privy to" and "aware of" may not amount to the same thing. "Privy to" can comprise more than mere knowledge and include an element of knowing concurrence or agreement as well, as the noble and learned Lord referred to. We did not think it appropriate to amend the Bill in a way that might impose a lower threshold for intervention by the Charity Commission.

The amendment tabled by the noble and learned Lord proposes to replace "privy to" with "participated in". On the face of it, this looks as though it might be a higher threshold for intervention, because clearly "participated in" would appear to require some sort of positive action beyond agreement or knowing concurrence. We would be reluctant to raise the threshold in the light of that. I recognise the need for clear language in legislation that leaves no doubt as to its effects, so I would be happy to give some further consideration to whether there is an alternative formulation to "privy to" that maintains the threshold for intervention at the same level.

As I have said, we would need to have particular regard to how an alternative formulation would work with the rest of clause, which currently refers to conduct that,

"contributed to or facilitated the misconduct or mismanagement".

Furthermore, the term "privy to", as I am sure the Committee knows, is already used in Section 79 of the 2011 Act in relation to trustee removal and Section 178 of that Act in relation to trustee disqualification. Any alternative formulation would need to work in the context of those provisions as well. On that basis, I invite the noble and learned Lord to withdraw his amendment.

Lord Hope of Craighead: My Lords, I am very grateful to the Minister for his very helpful reply. I take the point that we are talking about thresholds. The problem is that the word "privy" could be read as meaning "aware", which is a low threshold. It could be read differently to mean "participating", I suggest, which is a somewhat higher threshold, although perhaps not the highest conceivable one. I understand the Minister to be saying that he will look again at this with a view to seeing whether it could be more clearly expressed to avoid doubt.

Of course I understand the point that within the 2011 Act the word "privy" appears, which I suppose might mean that I should have asked for more amendments to be put in at each point where the phrase occurs and I had not done my homework sufficiently to find them all. That would be a rather laborious exercise. However, there is an opportunity here to try to remove the doubt as to where exactly the threshold should be placed but, on the basis of what I understand the Minister to say, I am happy to beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Baroness Barker***

5: Clause 3, page 3, leave out lines 3 to 6

Baroness Barker: My Lords, I shall speak also to Amendment 10. I hesitate to suggest this, but these are perhaps two of the most substantive amendments before us today. During the work of the pre-legislative scrutiny committee, it became clear that there was broad agreement that the commission should have the power to disqualify some people from being trustees. Furthermore, there was agreement that there should be an automatic power to disqualify some people from being trustees. We listened to various people from all around the sector, who agreed on many of the measures in this Bill that we might not debate in great detail, such as the power to disqualify someone who might well have evaded disqualification because they had already resigned. There was a general consensus that the commission needed more powers to disqualify unsuitable people to ensure that the reputation of individual charities, and charities as a whole, was upheld. However, we also heard that by and large trustees are overwhelmingly, for the most part, honest people who very occasionally, in rare circumstances, make mistakes, and in even rarer circumstances commit criminal acts. It was against that background that we deliberated the powers in the draft Bill.

The two elements of the draft Bill that received the widest criticism of all were the conditions under which these powers would be exercised, which are the subject of these two amendments. In Clause 3, the range of conduct to be considered by the commission when exercising its powers to disqualify includes many with which we would have no quarrel whatever, where people have been found guilty of misconduct and mismanagement. The point on which there was the most discussion and disagreement among the witnesses who came before us was Clause 9(3)(b)—that the commission could take into account not just a person's conduct in relation to the charity of which they had already been deemed guilty of mismanagement and misconduct such that an inquiry had been opened but,

"any other conduct of that person that appears to the Commission to be damaging or likely to be damaging to public trust and confidence in charities generally or particular charities or classes of charity".

So, any other conduct at any time or in any other circumstances. That is a very wide power, and it is one that has drawn criticism not just from bodies that exist to champion charities, such as ACEVO, but, most significantly, from the Charity Law Association working party, the body of charity lawyers who have spent a considerable amount of time working on this. The association agrees that the commission should have

[Baroness Barker]
this power but, if it is going to have it, there needs to be clarity and transparency about how it would be exercised. Any trustee who found themselves subject to the power would then clearly understand the evidence that was being used to come to a judgment about them.

The government response to the draft report noted that the commission was already required to produce a statement of reasons under Section 86 of the Charities Act 2011, when it exercises its compliance powers, but noted that it would explore whether an amendment to the Bill was needed to make this clear. There has not been any such amendment. So in introducing this probing amendment, I wish to discuss and get on the record some of the criteria that would be used.

As the Minister said in the debate on the previous group of amendments, the Charity Commission has produced a draft policy paper on how it might use this proposed power to disqualify people. Eventually perhaps the commission could get round to sending it to those of us who were members of the Select Committee and who are discussing the Bill. It is a guidance paper that is comforting in that it makes a series of heartening statements, particularly in relation to Clause 10, but it raises a number of problems too. As the Minister said, the power to disqualify in the new sections introduced by Clause 10 comes in three parts: somebody has to have been guilty of one of the conditions labelled A to F as set out in new Section 181A(7); the person is unfit to be a trustee; and the order to disqualify somebody is desirable in the public interest in order to protect public confidence.

I cannot take exception to conditions A, C, D and E. Condition A states that,

"the person has been cautioned for a … offence against a charity or",

in the administration of a charity, for which the conviction would be automatic disqualification. Condition C is that,

"the person has been found by Her Majesty's Revenue and Customs not to be a fit and proper person to be a manager of a body or trust".

Condition D states that the person was,

"a trustee … officer, agent or employee of a charity at a time when there was misconduct or mismanagement",

and the person was responsible for, contributed to or facilitated the misconduct or mismanagement. Condition E is that an officer, employee or corporate trustee was responsible for, contributed to or facilitated misconduct or mismanagement of a charity. I do not think anyone would think that any of those would be a reason not to disbar.

The problems lie in conditions B and F. Condition B has already been the focus of some discussion and will be so again. Under that condition, which is in two parts, where a person has been convicted of an offence in another country that is against, or involves the administration of, a charity or a similar body, the person would face automatic disqualification from acting as a trustee if—this comes in the second part—the offence would have constituted a disqualifying offence if committed here. In the Charity Commission's policy paper there is no "and" or "or". There is no interrelationship between those two parts; they are just stated as bullet points.

I have a question for the Minister. If someone who is active in parts of the world where gay people are persecuted is found guilty in a court of law of breaking the law of that country and then comes to Britain, would they be barred from being a trustee of a charity? After all, they broke the law in their own country. If someone was found guilty in Russia of breaking the law under that country's increasingly draconian laws against NGOs and charities, would they then be regarded in this country as ineligible to be a trustee of a charity under this provision?

By far the biggest problem with this clause is condition F, which we are seeking to delete:

"that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order"—

in the view of the Charity Commission. That, I rather think, drives a coach and horses through all the other conditions, because if I could not debar someone under any of the other conditions I am sure that I would go to that one.

6 pm

The second test to be applied is someone's fitness to be a trustee. Again, fitness to be a trustee is not defined in the legislation; that is left to the judgment of the commission. In a paper, the commission said that it would look at three broad categories under which it would debar people: honesty and integrity; competence; and credibility. It has set out in some detail how it would stop the sorts of things that it would begin to look at. I have no problem with the examples that it has given as failures of honesty and integrity: that is, things like exploiting a position of trust for personal gain, dishonesty, deception or cheating. I do not have a problem with competence either, because the commission says that it would take the competences of trustees that we all know and love as CC3, the longstanding guidance by the Charity Commission about trusteeship, and if someone was to fail on them, I would understand that.

The problem is credibility, under which a person's conduct can damage their personal credibility and reputation. Again, the commission has come up with a number of behaviours that I suppose would be acceptable as a reason to disqualify people: being negligent, repeated failure to comply with requirements on tax matters or having been penalised by HMRC. Fine; I agree with that. However,

"conduct which shows a material risk of harm to the work of charities in general",

is very wide.

The third test is whether or not there has been a failure to act in the public interest to protect trust and confidence in charities. I think that what has happened, particularly by the inclusion of condition F, is that we have given the Charity Commission a power and then we have given it a whole series of escape routes, or wriggle room, by which it can exercise its judgment in

a subjective way. My particular objection to condition F is where it gives the commission the power to retrospectively judge the past conduct of an individual. The noble and learned Lord, Lord Hope of Craighead, spoke before about the fact that people may do things as young people. Under the power of this clause as it stands, that can come back to haunt them and be taken into account by the Charity Commission. I have no doubt that the commission would argue that it would take past conduct into account only if it felt that it would damage trust and confidence in charities, but that is not as objective and straightforward a test as one might think.

All told, these two provisions together, Clause 3 and Clause 10, bring to what should be an objective test something that is far too wide and unclear for trustees to have confidence, first, that they themselves will know that they are likely to be deemed unfit to be a trustee or not to be disqualified, and, secondly, that they will know on what grounds the Charity Commission might disqualify them. Let us not forget that to be disqualified as a trustee has a profound affect on a person's life. It really affects their reputation, not just their standing within their community but their professional reputation too. This is not a power that we should give the commission without very serious consideration. I beg to move.

Baroness Warwick of Undercliffe (Lab): My Lords, I was sorry not to be able to take part in the Second Reading debate on the Bill, particularly as I was fortunate enough to serve under the excellent chairmanship of the noble and learned Lord, Lord Hope of Craighead, on the pre-legislative scrutiny committee. I declare my interests as chair of a charity, International Students House, as a member of the councils of two universities—UCL and Nottingham Trent—and as a member of the advisory council of NCVO.

As a member of the committee, I want to comment briefly on this amendment. I certainly do not want to repeat the points made by the noble Baroness. However, it was quite clear that we felt that, in the course of a statutory inquiry, the commission should not be limited to evidence of misconduct and/or mismanagement in the administration of the specific charity subject to such an inquiry. One discussion we had was around the Cup Trust, where the promoters of the scheme had a history of using charities in tax schemes.

However, we felt that the provisions of this part of the Bill were very broadly drawn since what is damaging to public trust and confidence in charities is obviously an open and potentially very subjective test. We shared the concerns of the Joint Committee on Human Rights, which expressed its anxiety about the breadth of this provision. We also shared the concerns of NCVO and several other witnesses—as the noble Baroness said—about the risks associated with this power and its lack of clarity. In particular, I know that NCVO was concerned that, in the absence of guidance, trustees and charities will be uncertain about the possible consequences of their conduct in relation to matters that will probably not have anything to do with the management or administration of the charity. I am very conscious of the points made by so many noble Lords about the reaction of trustees to the chilling effect of some of the commission's powers. We are very unclear about the impact those powers will have.

As I said, I want to speak on this only briefly. I do not wish to exclude the reference to conduct not associated with charitable activities because that is very important. I hope the Government will look again at this. They said they would. They have not included any reference to this in the Bill, so I hope they will look again and be more explicit about the constraints on this apparently unlimited power.

Lord Hope of Craighead: My Lords, I just add a word to what the noble Baroness, Lady Warwick of Undercliffe, said by drawing attention to two paragraphs in our report—paragraphs 120 and 121. In paragraph 120, we refer to evidence from the Charity Law Association. It told us that, in its view,

"the wording of this power was 'very wide' and that it had concerns about how conduct would be deemed relevant for consideration by the Commission",

if it was given that very wide power. In paragraph 121, we referred to the Muslim Charities Forum—this is on page 41 of the report—which expressed a concern that,

"the provision would allow the Commission to pass judgment on the political views of charity trustees, potentially infringing upon freedom of association and expression".

A particular concern—and we quote from its evidence—was that trustees might, in a personal capacity,

"express support for Palestinian Statehood, speak out against the crack-down on Freedom of Association in the aftermath of the Arab Spring, or merely voice their anger at aspects of Western foreign policy".

That could all,

"potentially fall under the net of supporting terrorism and/or extremism".

It would then fall within the very broad description which is given in the two paragraphs to which these amendments refer.

I have to confess that we did not make any specific recommendation in our report. However, in paragraph 124, we state:

"we share the concerns of the JCHR and other witnesses about the risks associated with the power and its lack of clarity".

I wanted to make these points to emphasise that there was a strong evidential basis for the concerns that the noble Baroness, Lady Barker, has expressed. These two references are in addition to those that the noble Baroness, Lady Warwick, mentioned in her short speech.

Lord Hodgson of Astley Abbotts: My Lords, having served on the pre-legislative scrutiny committee, I understand the concerns about the width of this clause, but if we were accept this amendment, we would go from a very broad power to a very narrow one. As I read it, we have to take into account, first, the effect of a person's behaviour within the charity about to be inquired into and secondly, the conduct of that person in any other charity. That does not seem satisfactory because there are clearly issues that range more widely. The behaviour of a trustee in general life is an indication of their seriousness. For example, the existence of county court judgments would indicate that their personal

[Lord Hodgson of Astley Abbotts]
financial behaviour may be a bit erratic. It may be that they had been a director of commercial company which had gone bankrupt and which had been unfavourably commented upon by the companies' inspectorate. It might even have resulted in them being banned as a company director for a time. These are all issues which the Charity Commission might reasonably take into account when considering a particular situation, if what can be seen as a proven rotten apple is likely to result in damage to the position, reputation, trust and confidence in the charitable sector generally.

While I have some sympathy with the concerns of the noble Baroness, I do not think striking out subsection (3)(b) of new Section 76A is the right answer. It would be too narrow a prism and the Charity Commission would have its hands unduly tied. We must find some better way to sort it out.

Lord Watson of Invergowrie: My Lords, we think this clause in its generality provides an important addition to the powers of the commission. It is appropriate that a person's activity outwith their work with or for a charity should be taken into consideration. That is not to say that we are uncritical of the wording of the two paragraphs referred to in these amendments in the name of the noble Baroness, Lady Barker.

One reason it is a useful addition is that it would only apply after a statutory inquiry had begun. That would be a sign that the Charity Commission already believed that there was evidence of misconduct or mismanagement. That is clear from the last two lines of page 2 of the Bill. Of course, there are concerns—some of which noble Lords have referred to in the Joint Committee's report. It is again a question of provisions being drawn too widely and lacking clarity.

The Government's response to the Joint Committee's report stated that they would,

"look to revise the draft Bill to make this clearer".

Unfortunately that has not been done. I invite the Minister to say why the Government eventually proved unable or unwilling to do so. It is regrettable, although I do not think it constitutes a reason to remove the wording completely from the Bill. I do not think that is appropriate. We agree with comments that have been made about the need to refine the wording, and perhaps some attention might be given to the report published yesterday by your Lordships' Select Committee on the Constitution on this and two other Bills. Paragraph 41 of the Select Committee's report was critical of new Section 76A to be inserted by the Bill. I am sure the Minister has already read that report and taken it on board. It is important that that should be considered further before Report.

The final paragraph of that report states:

"The concerns identified by the JCHR from a human-rights perspective are mirrored by corresponding constitutional concerns on the grounds of legal certainty. We draw these concerns to the attention of the House".

That simply adds to the arguments we have already heard in relation to these amendments.

An important suggestion of the Select Committee's report is that conduct should be qualified in terms of its seriousness. It must be recalled that this activity does not need to lead to a charge or a conviction. On these amendments, and I think in a previous amendment, the noble Baroness, Lady Barker, mentioned that things that you do at one stage in your life these days follow you around through social media. It is very possible that a person a lot younger than me and a lot more able on social media might well do something that seems relatively trivial but that could come back to haunt them in later years. That has to be borne in mind.

The noble and learned Lord, Lord Hope, referred to evidence that the Joint Committee received about political causes. That is a concern. It could be that somebody who was publicly critical of government policy or of the Charity Commission might find that coming back to them. I do not mean that as a trivial point. The point is that we do not know what would be regarded as something that could effectively add to charges already assembled by the Charity Commission in targeting an individual. It is a question of uncertainty. We have heard this point several times this afternoon. In light of what the Minister has heard, I hope he will reconsider this matter, possibly with a view even to bringing forward a government amendment on Report. Given those remarks and the report of the Select Committee on the Constitution, I hope we may be able to look forward to that when we consider this matter again.

Lord Bridges of Headley: My Lords, this has been a very stimulating debate and I pay tribute to the noble Baroness, Lady Barker, for provoking it. I shall first address Amendment 5 about the proposed powers of the commission to take into consideration the conduct of a person outside a charity. I recognise that these are broad powers in that they allow the commission to take into account any outside conduct. However, these powers are necessary to enable the commission to address conduct which could seriously damage public trust and confidence in charities and need to be viewed in the context of the other criteria that apply to their use, along with the various safeguards in place.

Just as we have to place a large degree of trust in charity trustees to exercise their discretion properly in running their charities, we need to trust the Charity Commission to regulate independently and in the public interest. Of course, there is a range of safeguards, not least the independent judicial oversight provided by the Charity Tribunal, which has shown since it started work in 2008 that it is not afraid to criticise the Charity Commission in the few cases where it considers that the commission has overstepped the mark and acted disproportionately.

As I and others said on Second Reading, the Bill seeks to achieve a balance. The powers that it would confer on the Charity Commission need to be broad enough to make them useful. If they are too narrow they would be impractical and go unused—a point that my noble friend Lord Hodgson made. But charities need to know the circumstances when the powers may be used and I believe that the Bill achieves that balance.

The purpose of the noble Baroness's first amendment would be, as we have discussed, to limit the other conduct that the Charity Commission could take into account when considering the exercise of its compliance

powers. It is important that we retain this part of the clause as it prevents the undermining of public trust and confidence in charities, as all relevant—I stress "relevant"—conduct ought to be taken into consideration before the commission determines how to act accordingly. The commission could not take account of any irrelevant conduct. Indeed, I argue that the commission could be criticised for failing to act, or for taking only weak regulatory action, if it were unable to take into account relevant evidence of misconduct of an individual outside of a charity.

I shall illustrate this with an example. The Charity Commission opens an inquiry into charity A regarding concerns of financial mismanagement. It establishes misconduct and mismanagement against trustee X, an accountant, as large payments have been taken out and not accounted for. Blank cheques have also been signed by trustee X. The commission then approaches other relevant regulators which provide them with information that trustee X has had two cases of professional misconduct for accountancy irregularities in previous employment. Under Clause 3 as proposed, the commission would be able to take this other evidence into account before deciding what action it would be proportionate to take in the circumstances. If the amendment were to be accepted, the commission would be able to give no weight to this other, potentially compelling, evidence.

I emphasise that safeguards would be in place to ensure that any conduct outside of a charity would be only that which was relevant to the decision being considered by the commission. I shall illustrate those safeguards. First, there must be a statutory inquiry open and the Charity Commission must be satisfied that there is misconduct or mismanagement linked to the individual in the charity under inquiry before it can rely on any conduct from outside the charity as a makeweight in its decision-making.

Secondly, the commission, when exercising its powers, must provide a statement of reasons under Section 86 of the Charities Act 2011, which would set out the evidence it relied on in making the decision. This would include any evidence it relied on from outside the charity. No amendment to the Bill is needed to ensure that that is the case; we can amend the Explanatory Notes to make that clear.

Thirdly, as with all the Charity Commission's compliance powers, the commission would have to be satisfied that the exercise of the power would be in line with the principles of best regulatory practice, including that it is proportionate, accountable, consistent, transparent and targeted only at cases where action is needed, as set out in Section 16 of the Charities Act 2011.

Finally, there is, of course, a right of appeal to the Charity Tribunal in relation to the exercise of the commission's compliance and remedial powers, ensuring judicial oversight of the exercise of the relevant power.

The noble Baroness's second amendment would remove the condition that enables the Charity Commission to consider disqualification on the basis of conduct likely to damage public trust and confidence in charities. The power to disqualify from charity trusteeship and senior management positions is indeed a significant power. As such it is important that the process is rigorous but fair, and, once again, balanced.

I shall explain what that will mean in practice. First, the individual must have met tougher new criteria to become a trustee and not be automatically disqualified in the first place. Secondly, before the commission can decide to disqualify an individual, three new conditions need to be met, as set out in the guidance issued by the Charity Commission. First, one of criteria A to F is met; secondly, the individual is considered to be unfit to be a charity trustee, defined by that guidance; and, thirdly, the commission considers it,

"desirable in the public interest in order to protect public trust and confidence",

in charities.

The commission then has to give notice of its intention to disqualify and give a period for representations to be made before any decision is made. If a decision is made to disqualify, the disqualification could take effect only after a period of time has elapsed in which the individual can lodge an appeal with the tribunal—that is, 42 days. If the decision is appealed to the tribunal, obviously the tribunal would be able to confirm or overturn the disqualification. In making a decision, the tribunal would consider the case entirely afresh on the basis of all the evidence before it; it would not simply review the Charity Commission's original decision. Lastly, all the commission's actions in this process would have to abide by Section 16 of the Charities Act 2011.

As was said just a moment ago, the Joint Committee that undertook pre-legislative scrutiny agreed that there was a,

"need for a broad power to disqualify an individual in certain instances, not all of which can be specifically identified and encapsulated in legislation".

The noble Baroness, Lady Barker, referred to one scenario and asked whether a person could be disqualified on the basis of an overseas conviction in a country where homosexuality is illegal. An overseas conviction is not enough on its own. As I have said, the commission must also be satisfied that a person is unfit to be a charity trustee and that disqualification is in the public interest to protect public trust and confidence in charity. Furthermore, the conviction must concern a charity; on its own, it would not trigger disqualification. I draw the noble Baroness's attention to that point in the little box on page 3 of the guidance, where it talks about a,

"conviction abroad for bribery or terrorist financing in connection with a charity or similar body",

and says that such a conviction,

"would take account of any concerns raised about any court or other legal processes, their compliance with right to a fair trial … and whether the standards of evidence and justice would not be accepted in a UK or European court".

think that that is all pretty relevant with regard to her scenario.

Baroness Barker: Before the Minister moves on, the point that I made about Russia is that it is entirely possible that someone could be prosecuted there under its new, draconian laws about NGOs. That is not far-fetched; it could well arise that someone comes to

[Baroness Barker]
this country from Russia having been found guilty of an offence under those laws against a charity, and that person then wants to serve as a trustee of a British charity. Believe me, organisations such as Stonewall are regularly subject to challenge as to whether their activities comply with all sorts of things, which they do. So it is not a far-fetched scenario.

Lord Bridges of Headley: I thank the noble Baroness for that point. The power would be discretionary and on a case-by-case basis. I refer her to test 3, which says that a,

"disqualification must be desirable in the public interest in order to protect public trust and confidence".

It goes on to say that that the,

"test will, for example, allow the commission the flexibility to take account of circumstances in which the risk of (further) damage to charity is minimal and it would not be in the public interest to act against the individual".

I am happy to write to the noble Baroness and illustrate this issue further, as she makes a good point.

As I was saying, condition F is a comparatively broad criterion, but we consider it necessary to enable the Charity Commission to address conduct that could seriously damage public trust and confidence in charities but which would not be caught by one of the other criteria. The condition needs to be considered in context of the other limbs of the exercise of the disqualification power—those that I have just described: fitness, and that disqualification is desirable in the public interest to protect public trust and confidence in charities—and the safeguards relating to the operation of the power, including the right of appeal to the Charity Tribunal.

6.30 pm

The Charity Commission's draft guidance on how it would exercise the power should provide reassurance that it will use the power only when there is a clear case for doing so, that the commission would clearly explain what it would take into account before using the power, and that in exercising the power the commission would provide an explanation identifying the conduct in question and why it thought the conduct met condition F. Crucially, the commission has committed to consulting widely before it finalises its guidance on the use of this power and will do so before the commencement of the relevant provisions.

I shall also address the point made by the noble and learned Lord, Lord Hope, about the political views of charitable trustees and whether the clause might potentially infringe upon freedom of association and expression. Charity trustees are entitled to their own political views in private. However, they must never use a charity as a vehicle to promote any party political views. That is not permitted under charity law. In relation to extremist views, all charities obviously must comply with UK law and so must not promote or support terrorism or extremism or other illegal conduct such as racial or religious hatred. Nor can a charity's name, premises or money be used to promote extremist and other activities that are inappropriate under charity law. Furthermore, the Charity Commission has published detailed guidance on charities and extremism to raise awareness among trustees of the legal requirements placed on them in relation to both criminal law and charity law so that they can properly discharge their duties in the interests of their charity.

The disqualification power may appear to be broad, but is not so when considered in the context of the other requirements of the disqualification provision, and the commission has been clear that it will be narrow in its application. I repeat the point I made earlier about the need for powers in the Bill to be usable by the Charity Commission: if we attempt to so narrowly draw criteria for the regulator's intervention, we will end up with powers that would go unused and abuse that would go unaddressed, and we may find ourselves back in a few years' time having this debate all over again. We have to trust in the regulator to use these powers proportionately and in a targeted way. On that basis, I hope that the noble Baroness will be persuaded to withdraw the amendment.

Baroness Barker: My Lords, I thank the Minister for his comprehensive and considered response. I say to other noble Lords that this is Committee and these were probing amendments. Although I am rather glad that we have had this discussion, I am not sure that we have satisfactorily answered the point.

I say to the Minister that I understand why lawyers, particularly charity lawyers, wish to have powers that are broad and can be used in a number of different circumstances. However, when those powers are as broad as they are in the Bill, they do not help individuals to understand their fitness to serve as a trustee. Part of the law must be about enabling those who use it to know what it means. It would have been possible, had the Government been so minded, to have addressed this problem in a different way, particularly on the matter of fitness or unfitness. They could have heeded the advice given to us by the Charity Law Association about the list of matters and criteria that could be taken into account, such as the Company Directors Disqualification Act, which has a long list of factors, which would enable somebody to know the criteria that would be used to determine whether they are fit.

On the reliance on the tribunal, in the Joint Committee debates there was a level of agreement that the tribunal works perhaps far better than anticipated by those who took part in the painful process of debating the legislation that set it up. However, I say to the Minister that, as it stands at the moment, it is only when there has been an order to disqualify and that matter has come before the tribunal that anybody will be in a position to make an independent assessment of whether the commission is acting correctly and proportionately. By that time, a person will find themselves on the end of a potential disqualification which could have a profound impact on not just their involvement as a trustee but their professional life, too.

These provisions are way too wide. They do not serve the purpose of explaining matters to people who may wish to put themselves forward as trustees but who would be so unsuitable that they would be disqualified. It does not help charities to have this lack of clarity about who they should or should not have on their trustee boards. This is a matter to which I

think we may return at a later stage but for the moment I thank noble Lords for their contributions and beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Clause 3 agreed.

Clauses 4 and 5 agreed.

Committee adjourned at 6.37 pm.

Volume 762
No. 19

Tuesday
23 June 2015

CONTENTS

Tuesday 23 June 2015